Sex in the Witness Stand: Erotic Sensationalism, Voyeurism, Sexual Boasting, and Bawdy Humor in Nineteenth-Century Illinois Courts

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Twenty-something John Dunn remembered July 17, 1872 well. A witness for the defense in both a bastardy trial brought by 15-year-old Mary Morgan and a later seduction suit brought by her father, John would recount that summer day by drawing on the rough, sexual slang he likely used in conversations with male friends. After he was sworn in, John informed the legal participants and curious local spectators gathered at the Perry County Circuit Court that the July 17 buggy ride with young Mary had presented him with the opportunity to "feel of her titties and monkey." John's testimony was hardly the most vulgar given during the proceedings. Another character witness, Robert B. Ward, disclosed a particularly salacious conversation he had overheard while in the "privy" behind a DuQuoin general store. Eavesdropping, Ward listened to two young men discuss Mary Morgan's "condition" with one another. The man Ward recognized, Thomas Williams, told his friend he would leave the state rather than marry a girl who "ran around screwing this one and that one," if Mary did happen to "swear the child on him." Thomas's buddy agreed that dodging the law would be preferable to matrimony with Mary for she had not "behaved herself." "I have screwed her as

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often as I have fingers and toes, or oftener, and you know it," he confided to Thomas. "Yes I know that," Thomas replied, "She don't know more than a hog whose child it is."[1]

The story that unfolded in this southwestern Illinois community in 1872 exemplifies the many contradictions inherent in the nineteenth-century sexual culture, particularly its perspectives on female sexuality. Unsurprisingly, the complexity at the heart of "Victorian" sexual ideology has long made it one of interest to scholars.[2] Notwithstanding considerable attention to the period's evolving sexual landscape, historians have not fully grappled with the legal and cultural implications of sexualized discussions occurring under the auspices of juridical authority, such as those so colorfully relayed by the witnesses in Mary Morgan's seduction trial. This historiographical oversight is a product of both the questions scholars have asked and the places they have investigated.

Scholars have typically turned to two subjects in order to examine the character and evolution of the public sexual conversation across the nineteenth century—the rapidly expanding print medium and the colorful but extraordinary historical figures counted as sex "radicals" in their day. Scholars of the emergent popular press, for example, have traced changes in the tone and content of sexual language and argued that erotica underwent democratization in access but depoliticization in content over the course of the eighteenth and nineteenth centuries.[3] Such a characterization

1. *Woodside v. Morgan,* File No. 10558 (1879), Illinois Supreme Court Case File, Illinois State Archives, Abstract 4–6, 13.

2. For recent scholarship on the effects of legal culture on nineteenth-century sexual mores see, for example, Helen Lefkowitz Horowitz, *Rereading Sex: Battles over Sexual Knowledge and Suppression in Nineteenth Century America* (New York: Knopf, 2002); Lisa Duggan, *Sapphic Slashers: Sex, Violence, and American Modernity* (London: Duke University Press, 2000); Peter Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth Century South* (Chapel Hill: University of North Carolina Press, 1995); Mary Frances Berry, *The Pig Farmer's Daughter and other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present* (New York: Knopf, 1999); Mark Carroll, *Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823–1860* (Austin: University of Texas Press, 2001); Mary Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885–1920* (Chapel Hill: University of North Carolina Press, 1995); Stephen Robertson, *Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880–1960* (Chapel Hill: University of North Carolina Press, 2005); and Sharon Wood, *The Freedom of the Streets: Work, Citizenship, and Sexuality in a Gilded Age City* (Chapel Hill: University of North Carolina Press, 2005).

3. See Clare Lyons, *Sex among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730–1830* (Chapel Hill: University of North Carolina Press, 2006) for a discussion of the rising import of erotic print culture in the late eighteenth and early nineteenth centuries. For an overview of the democratization of pornographic

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overlooks the ways in which the legal arena continued to link eroticism and power throughout the second half of the nineteenth century. Historians of nineteenth-century sex reformers have, in turn, presented a more nuanced picture of the sheer diversity of belief and practice within so-called Victorian sexual culture.[4] From this recent scholarship, nineteenth-century sexual culture looks less monolithic and more unruly than has been traditionally understood. Nonetheless, the notion that the public sexual conversation underwent particular scrutiny and regulation in the second half of the century, thanks in part to moral reformers such as Anthony Comstock, remains more firmly rooted in the historiography. Consequently, we tend to regard nineteenth-century America as a time when the voices of individuals pushing for a more open public sexual environment were stifled, although not stamped out.[5]

Battles over what could be said and written within the public sphere—contests that pitted moralists against both sex reformers and obscene print publishers—represent a narrow accounting of a public sexual culture full of eroticization.[6] As I argue here, contemporaries on the lookout for titillation could and did turn to venues other than print culture. As an examination of a range of civil sexual prosecutions heard in Illinois courts during the second half of the nineteenth century will show, a different public forum —local courthouses—regularly authorized candid sexual storytelling.[7]

literature in eighteenth-century Western culture, see Lynn Hunt, *The Invention of Pornography: Obscenity and the Origins of Modernity 1500–1800* (New York: Zone Books, 1993). See Lisa Sigel, *International Exposure: Perspectives on Modern European Pornography 1800–2000* (New Brunswick, NJ: Rutgers University Press, 2005) for a discussion of pornography in modern European societies.

4. Joanne Passet, *Sex Radicals and the Quest for Women's Equality* (Urbana: University of Illinois Press, 2003); and Sandra Ellen Schroer, *State of 'the Union': Marriage and Free Love in the Late 1800s* (New York: Routledge, 2005).

5. Wayne Fuller, *Morality and the Mail in Nineteenth-Century America* (Urbana: University of Illinois Press, 2003), Nicola Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton: Princeton University Press, 1997); and Alison Parker, *Purifying America: Women, Cultural Reform, and Pro-Censorship Activism, 1873–1933* (Urbana: University of Illinois Press, 1997).

6. The goals and tactics of sex radicals and those producing and peddling commercial representations of sex were, of course, vastly different. Moral reformers, however, tended to lump these groups together, a quite effective way of marginalizing sex reformers' efforts to expand the limits of public sexual discourse.

7. This article draws from every seduction, breach of promise of marriage, and bastardy suit appealed to the Illinois Supreme Court during the nineteenth and early twentieth centuries, eighty-nine cases in all. These suits fall in between the years 1842 and 1906. For a more complete picture of these legal actions, I have examined another eighty-five suits from the northern Illinois counties of Kane and Will and the central Illinois counties of Logan and Shelby. Because of the nature of local county court research in Illinois, these suits do not

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Those on quests for eroticized fanfare often had to go no further than the seduction, breach of promise of marriage, and bastardy trials playing out in their local courthouse.[8] While resolving disputes in domestic law, these

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reflect all of the cases heard in these counties. I chose counties where at least one local court systems' records had been indexed by case type. These proceedings came from the Kane County Circuit Court, the Will County Court, the Logan County Circuit Court, and the Shelby County Circuit Court. Bastardy actions were the easiest to locate because the compilers of the index generally labeled these suits as such. Seduction and breach of promise of marriage suits, in contrast, were usually designated with the general modifiers, "trespass" and "assumpsit," respectively. I was able to find some of the latter suits by putting the names of the defendants found in bastardy actions into the search index (seduction, breach of promise, and bastardy actions were often complementary undertakings, with one young woman and her family bringing multiple causes of action against a former lover). Because Illinois counties had multiple jurisdictions that could hear these proceedings (county courts, circuit courts, and some city courts), again, the suits researched for this article do not reflect all of the possible cases brought in a particular county. This article draws primarily on records from the Illinois Supreme Court because they often include full trial transcripts, allowing for an analysis of the language used over the course of the trial. Illinois county and circuit court records, in contrast, do not generally include full trial transcripts. See footnote 24 for a lengthy discussion of procedural developments in seduction, breach of promise, and bastardy law during the nineteenth century. My periodization covers the era in which these proceedings reached their popular heyday. See Lea Vandervelde, "The Legal Ways of Seduction," *Stanford Law Review* 48 (1996): 817–901 for a further examination of the rising importance and prevalence of seduction and breach of promise torts during the second half of the nineteenth century. There was some criticism of these common law actions throughout the second half of the nineteenth century, but sustained pressure against the use of these suits did not gain ground until the early twentieth century. In the first few decades of the twentieth century, social pressure mounted against civil litigation measures, particularly seduction and breach of promise cases. "Anti-heart balm" reformers argued that placing legal penalties on breached engagements or deceitful sexual machinations the same as one would on breached or fraudulent mercantile agreements debased and trivialized intimate relationships. As women made strides in the workplace and women's rights activists adopted more radical policies, the lexicon of female victimization simply appeared more and more discordant with early twentieth-century women's rising independence. For more on these proceedings' gradual decline in terms of legal and social importance see Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1988), 33–63; and Berry, *The Pig Farmer's Daughter*, 143–51.

8. For more general treatments on Illinois law and the judiciary see Keith R. Schlesinger, *The Power that Governs: The Evolution of Judicial Activism in a Midwestern State, 1840–1890* (New York: Garland, 1990); Ronald G. Klein, *Law on the Prairie, 1830–1900* (DeKalb, Illinois: Gurler Heritage Association, 1982); and Michael D. Sublett, *Paper Counties: The Illinois Experience, 1825–1867* (New York: P. Lang, 1990). ln's *Samuel H. Treat: Prairie Justice* (Springfield, IL: Illinois Historic Preservation Agency, 2005) is a biography and history of Treat's career as judge of the Eighth Judicial Circuit and as an Illinois Supreme Court justice. Scholarship on law and legal culture and institutions in nineteenth-century Illinois tends to focus on urban Chicago (particularly its early twentieth-century juvenile justice and family court system) or on the period in which Abraham Lincoln

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proceedings did much more. They permitted erotic sensationalism, voyeurism, sexual boasting, and bawdy humor to flourish and to command authority. In the very public space of the courtroom, prurient spectators might hear about the intimate goings-on of neighbors, acquaintances, or strangers, while newspaper reporters culled the next day's salacious headlines.[9] Instead of seeing the era of Comstock as a time in which public discourse about sexuality went underground, we should turn our attention to the amative spectacles of rural and small-town courthouses.[10] Here, explicit and

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was a practicing lawyer in Illinois. See Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003); Victoria Getis, *The Juvenile Court and the Progressives* (Urbana: University of Illinois Press, 2000); and Richard Cahan, *A Court that Shaped America: Chicago's Federal District Court from Abe Lincoln to Abbie Hoffman* (Evanston: Northwestern University Press, 2002). For examples of works that investigate law in Illinois as it related to Lincoln's legal practice, see Daniel Stowell, *In Tender Consideration: Women, Families, and the Law in Abraham Lincoln's Illinois* (Urbana: University of Illinois Press, 2002); and Dan W. Bannister and Barbara Hughett, *Lincoln and the Illinois Supreme Court* (Springfield, Illinois: Dan W. Bannister, 1995). Julie Fenster's work of popular history, *The Case of Abe Lincoln: A Story of Adultery, Murder, and the Making of a Great President* (New York: Palgrave Macmillan, 2007), examines Lincoln's role as a defense lawyer in a mid-century Springfield, Illinois murder case, which implicated an adulterous wife.

9. For an analysis of the cultural effects of the sensationalistic journalism style see Amy Gilman Srebnick, *The Mysterious Death of Mary Rogers: Sex and Culture in Nineteenth-Century New York* (New York: Oxford University Press, 1997); and Patricia Cline Cohen, *The Murder of Helen Jewett: The Life and Death of a Prostitute in Nineteenth-Century New York* (New York: Alfred A. Knopf, 1998). Srebnick and Cohen look largely at the coverage of the murder trial of Helen Jewett by the mass media, not sexual sensationalism in the law itself. Michael Grossberg's *A Judgment for Solomon: The D'Hauteville Case and Legal Antebellum America* (New York: Cambridge University Press, 1996) provides an intriguing account of the ways in which popular trials shaped gender norms and patterns of familial governance. Grossberg also explores the ways in which popular interest in a particular trial often depended upon its amenability to sensationalism. However, as the D'Hauteville divorce case did not deal very extensively with issues of a sexual nature, Grossberg does not investigate the social or cultural implications of sexually graphic legal conversations.

10. The Comstock Act, passed by Congress in 1873, banned the distribution of "obscene" publications through the postal system. Material subject to indictment under the law included both erotica and information on birth control and abortions. As such, the Comstock Act was one of the first federal attempts at suppressing the trade in "licentious" print. In recent years, some scholars have begun to challenge the assumption that moral censure efforts originated with the Comstock Laws as well as the idea that these obscenity laws were largely effective. See, in particular, Donna Dennis, *Licentious Gotham: Erotic Publishing and its Prosecution in Nineteenth-Century New York* (Cambridge: Harvard University Press, 2009). For a discussion of obscenity prosecution in nineteenth-century Chicago, see Shirley J. Burton's *Obscenity in Victorian America: Struggles over Definition and Concomitant Prosecutions in Chicago's Federal Court, 1873–1913* (PhD diss., University of Illinois-Chicago, 1991); Shirley J. Burton, "Obscene, Lewd, and Lascivious: Ida Craddock and the

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often intentionally coarse dialogue infused all levels of the juridical process —from the examination of litigants and witnesses to the closing arguments directed at the jury to the briefs that provided appellate judges with the facts and arguments of the trial. Nineteenth-century courts were not simply spaces to regulate print obscenity or to police sexuality, rather the courts themselves, in their examinations of "illicit sex," produced "obscenity."[11]

Unearthing the erotic underbelly of Illinois' nineteenth-century legal order fundamentally reshapes not only how we interpret the sexual culture of the long nineteenth century, but also how we understand the functions of law in the realm of sexual regulation. This article turns to the sexual narratives told by Illinois newspapers, female litigants, male witnesses and litigants, and attorneys.[12] It argues that these intimate conversations as a whole had the effect of inciting—rather than quelling—a raucous culture of sexuality. The discourse produced by each of these four groups contributed to this legal climate of unabashed eroticism in different, but nonetheless complementary, ways. Newspapers' coverage of sexual trials generated erotic sensationalism, whereas young women's courtroom testimony fueled community voyeurism. Sexual suits offered male witnesses and litigants public platforms for sexual aggrandizement, and they presented lawyers with respectable venues for telling dirty jokes.[13]

Criminally Obscene Women of Chicago, 1873–1913," *Michigan Historical Review* 19 (1993): 1–16.

11. On the productive possibilities of legal prohibitions on sex, see, especially, Michel Foucault, *The History of Sexuality: An Introduction*, Vol. 1 (New York: Random House, 1978).

12. The structure of my article is meant to reinforce my argument by modeling the ways in which spectators themselves would have experienced the "obscenity" of court day. I begin with newspaper coverage of incidents of "illicit" sex. Newspapers often kicked off a local community's curiosity about a particular "illicit" sexual incident by following it from the date of the original complaint before a justice of the peace and alerting readers—in sensationalized ways—as to when the examinations of witnesses would occur. The remaining three sections of my article center on the sexual conversations that occurred in the courtrooms. The order in which the sections appear follows the typical pattern by which these civil suits unfolded—the examination of female litigants, rebutting evidence offered by defendants and the male witnesses they subpoenaed to damage the credibility of women's sexual narratives, and, finally, the arguments of attorneys.

13. Although dealing with different kinds of sources and a different subject matter, Karen Halttunen's work on nineteenth-century popular murder literature offers similar insight into the ways in which nineteenth-century Americans sought out venues that allowed them to "imaginatively view" scenes of an illicit nature, in her case "terrible scenes of violence death." Her chapter, "The Pornography of Violence," investigates how the genre deliberately used themes of death and violence to provoke readers' pleasure. See Karen Haltunnen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge: Harvard University Press, 1999), 60–90. Peter Wagner's work on the transcripts of

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Sex on trial thus kept bawdy language in the public lexicon in an era when restrictions against speaking and writing about sex publically were on the rise. What is more central, however,is that the social authority of the law legitimized courthouse conversations in ways that print culture or private expression never could.[14] As a result, the sexually explicit language of court day supplied a valuable medium through which legal participants conveyed and trial observers heard competing understandings of male and female culpability for sexual indiscretions.[15] The immense popular appeal of the impudent sexual environment that developed in

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eighteenth and early nineteenth-century criminal conversation and divorce proceedings in England as a genre of erotica is a similarly useful reference point; see Wagner, "Trial Reports as a Genre of Eighteenth-Century Erotica," *British Journal for Eighteenth-Century Studies* 5 (1982) 22. As this article argues, however, courtrooms themselves, not simply the newspaper articles or published trial reports that sexual legal proceedings generated, functioned as eroticized venues.

14. On a theoretical level, my work draws upon scholarship that stresses the social and cultural importance of the law. My work, for example, emphasizes that the sexual conversations generated by ordinary people were central to legal developments and legal culture. It also establishes local courtrooms' roles in shaping the wider sexual culture and illuminates local courts as sites of public authority as well as social, recreational, and eroticized spaces. For more on the law as an "authorizing discourse," with the power to shape and to limit the imagination, see Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (New York: Cambridge University Press, 2010); Tomlins and Bruce Mann, *The Many Legalities of Early America,* (Chapel Hill: University of North Carolina Press, 2000); Tomlins, *Law, Labor, and Ideology in the Early American Republic* (Cambridge: Cambridge University Press, 1993); and Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings Law Journal* 38 (1987): 814–53. For a discussion of what a law and society centered approach might bring to historical studies of legal sexual proceedings, see Stephen Robertson, "What's Law Got to Do with It? Legal Records and Sexual Histories," *Journal of the History of Sexuality* 14 (2005): 161–85.

15. Sexually explicit discourse did not originate in mid-nineteenth-century courts. Both eighteenth and early-twentieth-century trials that dealt with intimate matters also deployed lurid language. However, the social influence of legal sexual conversations in the second half of the nineteenth century was likely more pronounced than in the period preceding and following it. As legal scholars have shown, in the increasingly secular world of the nineteenth century, the legal system became the principle arena for sociopolitical decision making, and garnered widespread spectator participation. Colonial courts, on the other hand, served as only one among several authoritative community spaces, whereas early twentieth-century courts lost wide-scale community involvement. Finally, civil sexual litigation reached its popular heyday in the second half of the nineteenth century, no doubt augmenting the social influence of sexual conversations engendered by these trials. See Bruce Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill: University of North Carolina Press, 1987) for a discussion of the gradual decline of alternative dispute-resolution spaces. See Christopher Tomlins, *Law, Labor, and Ideology* for an analysis of the growing authority of nineteenth-century courts. See Allen Steinburg, *The Transformation of Criminal Justice, Philadelphia* (Chapel Hill: University of North

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local courthouses (in tandem with its position as a regulatory institution) meant that the law stood in a distinctive position to shape wider sexual ideologies. In considering precisely what kinds of sexual meanings law forged, we must again view these sexualized legal spectacles as decidedly counterintuitive, even subversive. By allowing men to publicly advertise and boast about their sexual experiences, this type of litigation earned already-percolating conversations about naturally aggressive male sexual drives widespread cultural traction. More radical, civil sexual trials publicly exposed more assertive components of feminine sexuality even as it circulated a paradigm of sexual passivity and vulnerability borrowed from the era's popular literature. These proceedings could not have reached their heyday at a better time. As state and federal obscenity laws clamped down on the public sexual conversation at large—particularly on the individuals who insisted on portraying female sexual agency—a climate of unadulterated eroticism emerged front and center in the one public venue where discussions of this aspect of female sexuality endured without threat of prosecution.[16]

Setting the Scene: Sexual Trials in Illinois Courthouses

Seduction, breach of promise of marriage, and bastardy litigation had legal histories that long preceded their use during the nineteenth century. Beginning in the middle decades of that era, however, procedural developments radically altered the social functions of the proceedings. Seduction litigation, once focused on compensation for tangible injuries, increasingly turned on what might be called "injuries to the mind." The gravamen of the action now centered on the internal distress seduction brought to the household of the seduced woman, including its effects on the family's standing within the community.[17] Breach of promise suits moved along a similar

Carolina Press, 1989) for the argument that a less participatory criminal justice system dominated by the late nineteenth-century.

16. See Dennis, *Licentious Gotham*. As Dennis shows, nineteenth-century obscenity indictments reveal that authorities generally found "representations of female sexual desire or pleasure, narrated by women in the first person" to be the most offensive, and, therefore, indictable. See, especially, pages 93–126 and 167–98.

17. The growing social concern for seduced women during this era led many states to criminalize seduction in the latter decades of the nineteenth century. These states, however, often continued to allow civil seduction proceedings. Illinois fathers, for example, continued to bring civil seduction proceedings even after the state had criminalized seduction. See the following works for further explanations of developments in seduction law during the nineteenth century: Mary Frances Berry, "Judging Morality: Sexual Behavior and Legal

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trajectory, increasingly taking into account the mental anguish and suffering a spurned lover felt as well as the reputational damage she was likely to experience. Breach suits also began to allot additional compensation to female plaintiffs who could prove they had been jilted and seduced.[18] While seduction and breach of promise proceedings took on more punitive functions, bastardy litigation took on a substantially less castigatory one, at least for the women involved in these suits. A hybrid of civil and criminal law, bastardy retained some of its compulsory role (men who failed to comply with rulings could face property injunctions or imprisonment), but now ranked no higher than a misdemeanor.[19] In other ways, bastardy developed more similarity to seduction litigation. In case after case litigated during the second half of the century, plaintiff lawyers framed their arguments around a seduction motif. They referred to their clients as "vulnerable," and "helpless," and used words such as "treacherous," "villainous," and "black-hearted" to vilify the actions of defendants, actions plaintiff lawyers ultimately labeled as "seduction."[20] The clearest signifier of how closely related these civil actions were, however, concerns

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Consequences in the Late Nineteenth-Century South," *Journal of American History* 78 (1991): 835–56 and *The Pig Farmer's Daughter*, 127–51; and Vandervelde, "The Legal Ways of Seduction," 817–901. For Canadian developments, see Patrick Brode, *Courted and Abandoned: Seduction in Canadian Law* (Toronto: University of Toronto Press, 2002).

18. Although Illinois was not the first state to rule in favor of allowing evidence of seduction to increase award allotments to breach of promise plaintiffs, its rulings were widely cited as precedent by other states adjudicating similar proceedings. See *Century Edition of the American Digest*, Vol. 43 (St. Paul: West Publishing Company, 1903), 2830–926; Vol. 8 (1899), 910–66; Vol. 6 (1899), 1802–2050.

19. Bastardy law in mid-to-late nineteenth-century Illinois bore no penalties (monetary or otherwise) for the women involved, and it was up to the discretion of unmarried mothers whether they would bring proceedings against putative fathers. Illinois courts regularly dismissed bastardy actions when brought by individuals other than unmarried mothers. Although overseers of the poor could bring paternity proceedings against purported fathers in instances where the child was likely to become a burden on public coffers and the mother refused to sue for support, in Illinois, poor-law-administered bastardy proceedings seem to have been quite rare. No official-administered bastardy proceedings have been found in any of the four county courts examined (Shelby, Logan, Kane, and Will) or in the suits appealed to the Illinois Supreme Court. For a discussion of changes in late eighteenth-century bastardy law, see Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639–1789* (Chapel Hill: University of North Carolina Press, 1995), 157–230; Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard Based on Her Diary, 1785–1812* (New York: Vintage Books, 1991), 147–61; and Lyons, *Sex among the Rabble*. See Michael Grossberg, *Governing the Hearth*, 196–233, for developments in nineteenth-century bastardy law.

20. Nearly all of the prosecuting lawyers in bastardy suits appealed to the Illinois Supreme Court used literary templates of seduction to argue their cases. For some of the most colorful examples see *Roberts v. People,* File No. 21729 (1881), Illinois Supreme Court Case File,

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the tendency of young women to treat former lovers to all three types of litigation.[21]

The engine of litigation was ultimately fueled by both internal legal changes and social transformations and cultural pressures. Greater mobility—especially for men—and less static, cohesive communities had rendered single women and girls more vulnerable to male sexual coercion and abandonment. At the same time, procedural developments broadened access to the proceedings that might respond to and regulate out-of-wedlock sexuality. They also expanded the possible damages awarded in such suits, rendering them all the more attractive.

As more young women and their kin thronged court dockets, the wider public was, in turn, exposed to and captivated by the real-life experiences of "seduction" happening in their midst. With reputational injury as the new gravamen, the actions took on the sentimental, affective language of nineteenth-century domesticity. Judicial opinions made use of flowery figures of speech to condemn acts of seduction. For example, one mid-century judge referred to seduction as a "flagitious outrage upon the peace and happiness of the family circle." Yet these trials were anything but stilted affairs. This painstaking focus on reputational harm and the attendant inquiry into unseemly sexual encounters it entailed also produced the stuff of melodrama. At once a respectable defense of family honor and a raucous inquiry into the most intimate of affairs, these trials proved quite a seductive combination for the crowds who gathered to watch them unfold.[22]

Beyond becoming more lucrative and accessible, civil sexual trials were also quite dependable undertakings. Eighty-three percent of the cases appealed to Illinois' Supreme Court during the second half of the nineteenth century awarded for the plaintiff or her family at the county court level, the Supreme Court affirmed the lower courts' decisions in approximately 65% of these suits. Similarly high success rates for women involved in civil sexual trials have been documented by other scholars.[23] That these

Illinois State Archives, Transcript 93–104; and *Scharf v. People,* File No. 11209 (1890), Illinois Supreme Court Case File, Illinois State Archives, People's Brief 4, 25.

21. Nearly half of the breach of promise suits heard on appeal in the Illinois Supreme Court referenced seduction and/or bastardy proceedings pending in other courts. Likewise, more than half of the Illinois Supreme Court seduction cases referred to coterminous breach of promise or bastardy proceedings.

22. *Anderson v. Ryan*, Supreme Court of Illinois, at Springfield, 8 Ill. 583; 1846 Ill. Lexis 83; 3 Gilm. 583, Lexis Nexis case report, 1–3.

23. For a discussion of the difficulties defendants involved in breach of promise suits and bastardy actions had in trying to prove their innocence, see Michael Grossberg, *Governing the Hearth*, 40–43 and 217, 226–228. See Lea Vandervelde, "The Legal Ways of Seduction,

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actions were civil accounts, at least in part, for the high numbers of verdicts favorable to plaintiffs. Unlike criminal sexual trials, guilt was proven through "a preponderance of the evidence," rather than established "beyond reasonable doubt." These legal outcomes were influenced by the very cultural assumptions that undergirded popular understanding of seduction: that men, not women, instigated acts of intimacy outside the safety of matrimony.[24]

Although civil sexual proceedings underwent various legal modifications in the middle decades of the nineteenth century, they appropriated themes from the literary template of seduction with striking regularity across the period. This is not to suggest some static Victorian popular culture. On the contrary, nineteenth-century civil sexual trials exposed just how malleable the era's notions of sex and sexuality could be. Still, some regular features emerged. Successful litigation established women's sexual vulnerability and men's sexual aggression, the same themes that coursed through seduction literature. One need only look at the number of times nineteenth-century presses republished the most popular late eighteenth-century seduction novels to appreciate the continuities within

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885–90 for a discussion of skyrocketing damage awards rendered in seduction suits during the second half of the nineteenth century. For an examination of the profitability of mid-century seduction suits for Canadian young women, see Patrick Brode, *Courted and Abandoned*, 70, 97, 108–9, 113–14. Beyond trial outcomes that were favorably advantageous to female litigants, there is evidence to suggest that families and communities sometimes reacted to particular acts of seduction with outrage and violence. David Huftalin spent the year following his daughter's alleged kidnapping and seduction repeatedly damaging crops and farm tools belonging to the man he claimed brought about his daughter's "ruin." David also enlisted the assistance of his neighbors. In the middle of the night, David and several of his friends proceeded to blow horns and shoot at the house of the purported rogue. It would seem that David recruited his comrades to perform a kind of shaming ritual on his daughter's seducer. David himself described his actions as type of "chivareeing," claiming he was protecting his neighborhood from the maneuverings of a dissolute man. A central Illinois community similarly supported a local young woman whom they believed had been seduced. These residents nearly started a riot in their Scott County courthouse. They swarmed the witness stand when a migratory farm worker from Kansas began to falsely—in their minds—testify to intimacy with the local girl. See *Peak v. People,* File No. 5356 (1875), Illinois Supreme Court Case File, Illinois State Archives, Transcript 68–74; and *Huftalin v. Misner*, File No. 18002, Illinois Supreme Court Case Files, Illinois State Archives, Transcript 23–30.

24. The following 1851 judicial opinion stands as an example of the common belief that men were the chief culprits behind out-of-wedlock sex acts: "Nor is it true, that illicit intercourse is usually an act of mutual imprudence. In a vast majority of cases, the female is imposed upon, and the consequences attending such intercourse are visited upon her with ten-fold severity." *Tubbs v. Van Kleek,* Supreme Court of Illinois, at Ottawa, 12 Ill. 446; 1851 Ill. Lexis 33, Lexis Nexis case report, 1–3.

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Victorian sexual culture.[25] Then again, civil sexual trials also gave rise to other, considerably less conventional sexual themes: meanings that this article is far more invested in uncovering.

In Illinois, young women of both moderate and wealthy means were able to successfully harness and make use of these tropes of female sexual vulnerability and victimization. The ethnicity of female plaintiffs likewise varied widely, with both immigrant and native-born American women enlisting the aid of local legal systems to find solutions to their romantic woes. Still, there were limits to its applications. Few African American or older female plaintiffs (those older than their mid-twenties) appeared in these suits, indicating that legal seduction scripts had particular kinds of fallen heroines in mind (read, white and youthful).[26]

25. Some of the more popular American seduction novels include Susanna Rowson, *Charlotte Temple, A Tale of Truth,* (London: Minerva Press, 1791; Repr. New York: W.W. Norton, 2010); Hannah Webster Foster, *The Coquette, or The History of Eliza Wharton* (Boston: Printed by Samuel Etheridge for E. Larkin, 1797; Repr. Oxford: Oxford University Press, 1986); and —Sally S.B.K. Wood, *Julia and the Illuminated Baron* (Portsmouth, NH: Oracle Press, 1800). Contemporaries' appetite for reading material that considered the particular hardships young women of courting age might experience can be seen in the number of times seduction novels were reprinted. Susanna Rowson's *Charlotte Temple: A Tale of Truth* was first published in London in 1791; it became the first American best-selling novel when it was reprinted in Philadelphia in 1794. It has been estimated that the sentimental classic reached an audience of as many as 500,000, and went through 152 editions before 1905. Hannah Webster Foster's *The Coquette* likewise reached a mass audience. The novel first appeared in 1797, and during the 1820s was published eight times in only 5 years. New editions of the novel appeared with striking regularity throughout the nineteenth century. The American public was so enamored with the characters Susanna Rowson created that wax effigies of Charlotte Temple and her seducer, Captain Montraville, were displayed in novelty museums throughout the northeast. For more on the genre, see Rodney Hessinger, "Insidious Murderers of Female Innocence," in *Sex and Sexuality in Early America,* ed. Merril D. Smith (New York: New York University Press, 1998), 262–66; Susan M. Stabile, "Still(ed) Lives," *American Literary History* 22 (2010), 390–412; Donna Bontatibus, *The Seduction Novel of the Early Nation: A Call for Socio-Political Reform* (East Lansing, Michigan State University Press, 1999); Deborah Lutz, *The Dangerous Lover: Gothic Villains, Byronism, and the Nineteenth Century Seduction Narrative* (Columbus, OH: Ohio State University Press, 2006); and Richard Godbeer, *The Sexual Revolution in Early America* (Baltimore: Johns Hopkins University Press, 2002), 264–334.

26. Although a few African-American families in Illinois sought out criminal law in the aftermath of occurrences of rape, there were no black plaintiffs in the seduction, breach of promise, or bastardy proceedings appealed to the Illinois Supreme Court. As other scholars have intimated, common law remedies to the problems of out-of-wedlock intimacy appear to been primarily the province of whites. The infrequency with which African-Americans brought these civil suits speaks volumes. The newfound legal and cultural sympathy to certain women's stories of sexual misfortune reflected and reinforced the racial hierarchies of the period. See Mary Frances Berry, "Judging Morality: Sexual Behavior and Legal

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The shift to reputational injury also seems to have influenced the proceeding's cast of characters. Individuals residing in rural environs more consistently turned to litigation when romances went sour than did those living in urban areas. In particular, these parties were more likely to end up in appeals courts than were their urban counterparts. Only 10% of the civil sexual trials appealed to the Illinois Supreme Court came from Illinois' most populated region, Chicago. It may be that greater anonymity within cities offered urban men better occasions to escape courtroom rulings and to avoid expensive appeals processes. Other scholars have also discussed the rural cast of such litigation, suggesting that the reputational nature of such litigation meant that individuals from close-knit communities were more likely to seek out legal aid for any perceived injuries to social standing.[27]

Eroticized public exchanges were ultimately commonplace in Illinois' local legal life, suggesting that experiences there mirrored local legal cultures around the country. Numerous scholars researching diverse areas of the country have noted widespread community attendance at and newspaper coverage of lawsuits considered scandalous. In many ways, Illinois'

Consequences in the Late Nineteenth-Century South," 835–56 and *The Pig Farmer's Daughter*, 127–51. There was more diversity in terms of the class and ethnic backgrounds of women involved in civil sexual litigation. Both American-born and European immigrants found legal success in these common law actions. Likewise, the monetary means of plaintiffs in seduction, breach of promise, and bastardy cases varied considerably. A few women reaped the benefits that came with several hundred acre farms or from fathers with lucrative professional careers; others made do with smaller tracts of land, and still others came from families facing irregular employment or barely squeaking by on land they rented from more well-to-do neighbors. The pecuniary resources of young women's sexual partners similarly varied widely. Here too, however,, many beaus, at least, grew up on farms. In terms of professional pursuits, Illinois men followed national economic trends. Many farmed only on a part-time basis (either on familial land, their own land, or as farmhands), and practiced other vocations to supplement their incomes, including teaching, law, medicine, store clerking, functioning as a small-time merchant, or working the mines that peppered the central and southern parts of the state. The evidence of litigants' pecuniary resources comes both from information in the cases themselves as well as from my census research on litigants. For further discussion of the varied class and ethnic backgrounds of litigants, see Lea Vandervelde, "The Legal Ways of Seduction," 887–90; and Michael Grossberg, *Governing the Hearth*, 53–56.

27. See Mary Frances Berry, *The Pig Farmer's Daughter*, 127–51, for a similar discussion of the rural cast of these litigations. The research for this piece suggests that although not many urban civil sexual suits were appealed to the Illinois Supreme Court, such suits were routinely heard in the Chicago courts system during the second half of the nineteenth century, as evidenced by an examination of the *Chicago Tribune* during this period. The greater anonymity of urban environs, therefore, seems to have offered city men options other than appeals to the higher court (i.e., running away, moving to a different community, refusing to pay legal settlements).

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adjudication of out-of-wedlock and extramarital intimacies on trial were no different. Illinoisans regularly gathered in their local courthouses to listen to kin, friends, and acquaintances air their dirty laundry. Beyond mere scandal, however, Illinois' sexual suits mattered to contemporaries in political as well as social and recreational terms. In the countryside and small towns of Illinois—the types of locales that saw the greatest numbers of civil sexual proceedings—community members experienced their local courtroom both as a familiar social milieu where one might discuss local politics, handle business matters, or catch up on the latest neighborhood gossip, and as the most recognizable face of state power. In a sense, rural law courts functioned as the cultural space in which the day-to-day lives of ordinary Illinoisans, sources of public amusement, and forms of social authority publicly intertwined. The relative paucity of public entertainment venues and the lack of anonymity within rural communities meant that its legal sexual conversations would hold considerable cultural influence, perhaps more so than in the urban environs that have factored so heavily in historical analyses of the period.[28]

Law and Community: Newspaper Coverage of Sexual Trials

Seduction-laced civil proceedings assumed prominent legal and social importance during the second half of the nineteenth century for a number of reasons. For one, the seduction-themed literature that first grew to prominence in late eighteenth-century United States and Britain had helped secure notions about young women's sexual vulnerability a hallowed place within nineteenth-century Americans' psyches. Several infamous cases of seduction or criminal conversation such as the Henry Ward Beecher/Elizabeth Tilton scandal similarly entrenched this phenomenon into nineteenth-century popular culture.[29] Beyond infiltrating popular culture, contemporary understandings of seduction—inveigling women into sexual encounters through persuasion or other "artifices"—made the

28. For more on life in nineteenth-century Illinois, see Roger Biles, *Illinois: A History of the Land and its People* (Dekalb, IL: Northern Illinois University Press, 2005), 121–47; Douglas K. Meyer, *Making the Heartland Quilt: A Geographical History of Settlement and Migration in Early-Nineteenth-Century Illinois* (Carbondale: Southern Illinois University Press, 2000); and John Mack Faragher, *Sugar Creek: Life on the Illinois Prairie* (New Haven: Yale University Press, 1986).

29. See Richard Wightman Fox, *Trials of intimacy: Love and Loss in the Beecher-Tilton Scandal* (Chicago: University of Chicago Press, 1999); and Laura Korobkin, *Criminal Conversations: Sentimentality and Nineteenth-Century Legal Stories of Adultery* (New York: Columbia University Press, 1998).

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retelling of this male art particularly conducive to eroticization, titillation, and prurience. Unlike criminal prosecutions of rape, which required strict standards of female resistance to male violence, seduction prosecutions hinged on female sexual acquiescence.[30] In other words, seduction assumed female complicity in sexual acts even as it advanced notions about women's unequal bargaining powers in matters of the heart and of passion. These legal proceedings required women to discuss their sexual experiences and they drew out reasons why young women were persuaded to engage in out-of-wedlock sex acts. Because this was an era of rising concern for genteel notions of respectability, female-narrated depictions of sex took on an aura of the forbidden and the illicit. This focus on female sexual motivations thus infused the litigations with much of their titillating cast. At the same time, as Lea Vandervelde has argued, seduction served as an "acceptable outlet for conversations about sex" because of its very prominence in contemporary literature and popular culture.[31]

30. If nineteenth-century rape victims could not prove they had resisted "to the utmost," their resistance would often be legally interpreted as "half-hearted" enough to signify sexual assent. Unsuccessful rape prosecutions, then, also brought up assumptions about female sexual acquiescence. For our purposes, the important distinction between these criminal and civil proceedings is that seduction suits presumed female sexual consent, but nonetheless rendered verdicts on behalf of female litigants. See *Moore v. People,* File No 11375 (1894), Illinois Supreme Court Case File, Illinois State Archives, Transcript 51, for an example of an Illinois rape case in which the defense raised questions about the prosecuting witness's "feeble" attempts at resistance: "If the Jury believe from the evidence that the resistance used by the prosecutrix at the time of the commission of the alleged rape were so feebly exerted by her as to have invited rather than discouraged the advances of the accused, they may well doubt whether the rape was committed."

31. Lea Vandervelde, "The Legal Ways of Seduction," 883–84. It should be said that these proceedings document a range of sexual behaviors. Although the majority of sexual encounters discussed in this article appear to have been consensual, some were unambiguously coercive, and others occupy a range of positions in between. For example, some men undoubtedly convinced their partners to bestow out-of-wedlock sexual favors under false pretenses, indicating their willingness to marry lovers at some point in the future in return for sex, or suggesting that they would marry their sexual partners in the event of pregnancy, but without actually intending to honor these promises. Others made promises to intimate partners, assurances that were not fulfilled, but not because of calculated tactics to persuade female partners to agree to intimacy. Rather, then as in contemporary society, matters of the heart and of sexual passion were often fickle things. Romantic and sexual attachments sometimes simply soured. In still other instances, men used physical and psychological forms of intimidation as way of coercing their female partners to have intercourse with them. Because these suits document a range of sexual behaviors across the spectrum from consensual to coercive, it is necessary to consider the range of legal avenues open to those seeking legal solutions for sexual acts and their consequences. In some ways, nineteenth-century Illinoisans do not seem to have made huge distinctions between rape and seduction. In several suits involving parties who knew one another well (neighbors, employers, and domestic servants) but who were not in a courtship-type of relationship, the young woman or her family first spoke of making a complaint of rape.

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Newspaper coverage of "scandalous" litigation makes evident the immense popularity of civil sexual trials. An examination of the *Chicago Tribune* from its infancy through the early twentieth century, for example, reveals that the paper's editors regularly covered local and nationally prominent legal actions that dealt with sex outside the bonds of matrimony.[32] Several local newspapers from a Mississippi River community have also been consulted in order to give a sense of how presses from more rural parts of Illinois handled trials of sexual misconduct.[33] Neither the *Tribune* nor the Quincy papers offered much in the way of specific

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Fifteen-year-old Mary Lavinia Snell's stepfather and mother originally charged Mary's former employer, Israel Heaps, with rape. The young woman worked as a domestic at Israel's Henry County farm; when she became pregnant she claimed her former employer was the father of her baby. Later, the family worked toward a settlement with Israel for seduction and bastardy. *Heaps v. Dunham,* File No. 21133 (1877), Illinois Supreme Court Case File, Illinois State Archives, Transcript 33–46, 108–41. To give a sense of the incidence of criminal cases of sexual violence in comparison with civil sexual suits, I have also examined twenty rape cases and twenty-two assaults with intent to commit rape suits that were appealed to the Illinois Supreme Court between the years 1852 and 1905. These proceedings had high conviction rates at the lower court level—98%—but the higher court only affirmed 36% of these verdicts. For a general overview of rape in American history and culture, see the edited collection Merril Smith, ed., *Sex without Consent: Rape and Sexual Coercion in America,* (New York: New York University Press, 2001); and Sabine Sielke, *Reading Rape: The Rhetoric of Sexual Violence in American Literature and Culture, 1790–1990* (Princeton: Princeton University Press, 2002). For further reading on rape prosecutions in early America, see Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006). See Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2004) for an analysis of rape law in the South. For further reading on rape law and prosecutions during the late nineteenth and early twentieth centuries, see Odem, *Delinquent Daughters*; Stephen Robertson, *Crimes against Children*; and Sharon Wood, *The Freedom of the Streets*.

32. Using the search term "seduction," this article considers the *Chicago Tribune's* coverage of seduction tales from the paper's beginnings in the late 1840s through the first few years of the twentieth century.

33. Using the term "seduction," this article also considers the Quincy Public Library's *Quincy Historical Newspaper Archive.* The online archive has currently digitized the region's daily newspapers from the years 1835 to 1919. Quincy, Illinois, a southwestern city located on the Mississippi River, was a thriving nineteenth-century transportation center with links by rail and riverboat to destinations along the river and further west. The larger county of Adams, however, was primarily rural. The county's proximity to the Missouri border, particularly Marion and Lewis Counties, meant that the region's papers frequently reported on legal events of interest in both Illinois and Missouri. For more on the early history of Adams County, see *People's History of Quincy and Adams County, Illinois: A Sesquicentennial history* (Quincy: Jost & Kiefer Print. Co., 1974); Ralph Kay and Ralph Frye, *The History of Adams County, Illinois,* (Evansville, IN: Unigraphic, 1977); and David Wilcox, *Quincy and Adams County, History and Representative Men* (Quincy: Great River Genealogical Society, 1985).

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condemnation of particular parties, likely because of editors' worries about libel charges.[34] Both papers typically discussed upcoming and ongoing trials in fairly brief accounts, but what these articles lacked in detail, they made up for in sensationalism and eroticism.

Both news stories and legal records themselves reveal that trials of sexual misconduct drew large crowds and elicited considerable public excitement. A correspondent from the *Chicago Tribune*, for example, began his coverage of an 1866 criminal conversation suit in nearby Kane County with a discussion of courtroom attendees. "The town of Geneva is excited. The large courtroom—fully as large as the circuit court in Chicago—is crowded with bystanders and witnesses," the reporter observed. Similarly, the arrest of a Methodist minister on charges of seduction and bastardy prompted this comment by the *Peoria Transcript*. The holy man's misdeeds, the paper noted, had "excited great interest" in the central Illinois region, largely on account of the prominent "standing of the parties." David Trimble's 1871 arrest for bastardy and abortion likewise created a stir in his sleepy, farming community situated in northwestern Henderson County.[35] Neighborly

34. Again, Illinois newspapers themselves did not often report on local sexual trials in ways that indicated the editors' opinions on the guilt or innocence of the litigants. When viewed as a whole, newspaper coverage of local sexual trials most often only offered brief commentary on the facts of an upcoming or ongoing trial, often with asides regarding the salacious nature of the testimony. It is possible that newspapermen wanted to avoid the possibility of libel charges, and, therefore, limited discussions about the presumed guilt or innocence of parties involved. I have found some noteworthy exceptions to this trend, however. A particularly grievous case of seduction implicating a Knoxville "lady-killer" who had allegedly seduced three local girls under promises of marriage, led a Quincy newspaper to suggest that "lynch law" might well be an appropriate response for the male relatives of the victims to undertake. "The male members of these disgraced families threaten to shoot the unprincipled villain, and it must be confessed, if he receives his due, he will be roughly handled. If lynch law is ever justifiable, it would be under such aggravating circumstances," the author wrote. In a similar vein, after the editor of the *Quincy Journal* reported on several seduction and adultery cases that were making their way into the local legal system, an author of a letter to the editor commended the paper for its outspokenness on the matters. This Mt. Sterling resident also took the time to lament the sexual double standard: "Here the brute enters the family circle, desecrates the sacred temple of virtue, blasts the hopes of the parents, throws the mantle of shame over brothers and sisters, and starts a confiding, lovely girl on the downward road to ruin, while silly mamas and silly girls welcome him back to their society with a 'Oh, he is a little wild, but he will get over that!'" The author went on to offer a solution for ending these "peace-destroying troubles": "When society learns to ostracize and reject these God-forsaken, hell-deserving, virtue-murdering caricatures of men, the same as it does the girl or woman that has fallen, there will be less of these peace-destroying troubles." "Galesburg Sensations," *The Quincy Whig,* February 25, 1871, 1; "A Commendatory Letter," *The Quincy Daily Journal,* November 2, 1883, 4.

35. David Trimble was initially arrested on charges of administering medicines to induce an abortion in Martha Carl; he made bail. A few days later he was arrested again, this time because

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curiosity led surrounding residents to gather on the courthouse grounds on the day David's abortion trial was set to begin. The initial litigation, however, proved to be a letdown. David had been busily engaged all morning in settling the bastardy charge against him and in convincing his former sweetheart to refuse to testify at the abortion trial. When these settlements later fell through, the justice of the peace involved in this arbitration meeting testified as to his role in mediating between the parties. As something of an aside, the esquire mentioned the community's regret when they learned the initial hearing for the abortion suit had been cancelled: "A large crowd was collected, waiting to hear the examination in the felony case and they got disappointed."[36]

The notoriety of civil sexual trials stems from their sensational characteristics. Reporters sought to arrest readers' attention with captions such as "Sad Case of Seduction; Heartless Seduction; Love, Seduction, and Death; Seduction on the Stage: A Pantomimic Libertine; or The History of Shame: Seduction, Despair, and Attempted Murder." Beyond these sentimentalized titles, reporters also made sure to play up the vulgar nature of courtroom statements. An 1859 article, which covered a Milwaukee seduction suit, is quite representative of the *Tribune's* coverage of sexual trials. The piece claimed Milwaukeeans were interested in the suit because the testimony given by his young paramour "rivaled in indecency the most successful cases of criminal conversation."[37]

Small-town newspapers emphasized the amatory aspects of courtroom conversations just as more urban papers did. In January of 1870, for example, the *Quincy Whig* reported that the local courtroom was "jammed" with "excited" Quincy residents, restless to hear the details of a seduction case indicting a local young man, and ready for swift justice, as evidenced by the invective frequently yelled by the crowd: "Hang him." Seduction and bastardy proceedings heard in 1893 in the Circuit Court of Adams County prompted a likeminded declaration from the same paper: "The erotic Tommamichael Enghauser case had another ventilation in the circuit court yesterday in the

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Martha made a bastardy complaint. The parties settled out of court for the bastardy charge, and David allegedly convinced Martha not to testify in the felony charge. *Marshall v. Carl,* File No. 17402 (1871), Illinois Supreme Court Case File, Illinois State Archives, Abstract 1–8.

36. "The Kane County Seduction Case," *Chicago Tribune,* February 13, 1866, 0_1; "The Craig Seduction Case," *Chicago Tribune,* January 24, 1868,. 0_2; and *Marshall v. Carl,* File No. 17402 (1871), Illinois Supreme Court Case File, Illinois State Archives, Abstract 3.

37. "Sad Case of Seduction," *Chicago Tribune,* May 7, 1864, 0_4; "Heartless Seduction," *Chicago Tribune,* April 1, 1864, 0_4; "Love, Seduction, and Death," *Chicago Tribune,* December 24, 1865, 0_1; "Seduction on the Stage," *Chicago Tribune,* December 11, 1863, 4; "The History of Shame," *Chicago Tribune,* August 9, 1865, 0_4; and "The Trial of Sherman M. Booth," *Chicago Tribune,* August 1, 1859, 0_2.

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hearing of the case of John P. Tommamichael against John Enghauser." Yet another Quincy reporter similarly highlighted the ways in which such suits might excite their courtroom audiences: "The dull routine of the law and equity court was enlivened today by a breach of promise suit."[38]

A number of comments from rural reporters indicated that they wanted to alert their readers to the "sensational" litigation unfolding in their very own backyards. "The people of Warsaw [in the west-central county of Hancock] have had the even tenor of their way disturbed by a sensational seduction suit of elephantine proportions," a writer from the *Quincy Daily* announced. What is ultimately different about rural newspaper coverage of sexual trials when compared with those in the *Tribune,* is that small-town newsmen made self-referential comments about the nature of small-town life. Reporters, in many ways, manipulated assumptions about life in the countryside order to insist that scandals might erupt in the most unlikely of places. When a seduction turned bloody in Plymouth (the alleged seducer shot and killed his former lover's father in the days after the father and daughter had made legal plans), a "special correspondent" opened his account of the events with this provincial observation: "Our little town was considerably aroused and much excited through the day yesterday and all night last night . . ." Reporters sometimes made comparisons between the sexual wrongdoings transpiring in rural and small-town America with those presumably going on in big cities. Their statements suggest that reporters expected their readers to be enthused over—if not proud of—the scandal occurring right under their own noses. "Galesburg [in northwestern Illinois] and its vicinity are becoming as famous for sensations as Chicago itself. Murders, seductions, and suicides have been of frequent occurrence in that vicinity of late," one writer exclaimed.[39]

Reporters anticipated that if reading about sexual testimony offered pleasure, this would be all the more so when those intimate narratives were recounted by pretty prosecuting witnesses. The popular press's chronic commentary on the comeliness of female litigants suggests that such remarks sold papers. The *Tribune's* coverage of a sexual suit from Chicago is again typical of such reports. This article made sure to mention when "the young and beautiful" prosecuting witness would give her testimony. Other newspaper accounts also described the victims of sexual "ruin" in terms that referenced their physical appearance—"an

38. "Charge of Abduction and Seduction," *The Quincy Whig,* Repub. in Chicago Tribune, January 12, 1871, 0-3; "Circuit Court," *The Quincy Morning Whig*, November 22, 1893, 8; and "Breach of Promise," *The Quincy Whig,* April 14, 1892, 2.

39. "The Warsaw Scandal," *The Quincy Daily Whig,* October 24, 1886, 3; "Crime," *The Quincy Whig,* August 17, 1876, 1; and "Galesburg Sensations," *The Quincy Whig,* February 25, 1871, 1.

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innocent-looking and very pretty girl," "a buxom-looking German girl," "her bewitching manners and pretty face," "a young and pretty Jewess," and "young, beautiful, and accomplished lady." Although physical descriptions of prosecuting witnesses were generally calculated to engage the reader through brief but to-the-point expressions, sometimes newspapermen offered such lengthy tributes to female plaintiffs' loveliness that even those who had not attended court proceedings might imagine and reflect on their good looks. A Peoria girl's appearance, for example, prompted the following accolade from a *Tribune* reporter: "She is a remarkably handsome and intelligent girl, with dark brown hair, curly and cut short, hazel eyes, florid complexion, medium height and good figure." Sex in the courts, then, created community events that were publicly regarded and reported on in ways not so very different from other forms of popular entertainment. Much like the belles of plays, ballets, and other theatre productions, it was generally the leading ladies of legal dramas who so captivated and entranced their courtroom and reading audiences.[40]

Press correspondents often directly linked the sympathy a girl might garner in consequence of her seduction to her young age. A *Tribune* reporter covering an 1871 seduction suit from Quincy, Illinois wrote, "history gives few parallels of such shocking depravity and especially so when we take into consideration that the ladies in question are so young." An 1874 article similarly drew attention to the youth of an alleged seduction victim from Chicago. The author lamented: "A dastardly and most outrageous case of abduction and seduction, involving the ruin of a young girl—a mere child of fourteen years old—came to the knowledge of a *Tribune* reporter last evening." Ultimately, press coverage of out-of-wedlock sexual trials indicates that reporters drew on the popular literary motif of seduction. If youth was an essential component of that victimization script, the physical beauty of prosecuting witnesses rendered that story all the more palatable to courtroom and reading audiences.[41]

Significantly, local courtrooms attracted both male and female spectators. Women, too, sought out firsthand knowledge of the sexual misconduct occurring in their neighborhoods. The *Chicago Tribune* reported that an 1866 Indiana murder trial, which indicted a father who had allegedly killed his daughter's seducer, drew a "dense crowd" and that the female "schoolmates of the unfortunate girl" were among those in

40. How a Wife was Chosen," *Chicago Tribune,* November 4, 1877, 6; "A New Edition of Don Juan," *Chicago Tribune,* November 19, 1876, 13; "Front Page 8—No Title," *Chicago Tribune,* September 21, 1857, 0_1; "Seduction and Death," *Chicago Tribune,* May 1, 1858, 0_2; and "A Mysterious Affair," *Chicago Tribune,* June 28, 1862, 0_4.

41. "Charge of Abduction and Seduction in Quincy," *Chicago Tribune,* January 12, 1871, 0_3; and "Abduction and Seduction," *Chicago Tribune,* August 26, 1874, 12.

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attendance. An 1887 "sensational divorce case" from Galesburg, Illinois similarly attracted both male and female onlookers, according to newspaper coverage of the proceeding. In addition to detailing the infidelity charges disclosed by witnesses, the newspaperman mentioned that a "considerable portion" of the substantial crowd were women. Another murder trial, this time involving a young and purportedly adulterous wife from Janesville, Wisconsin, gathered a viewing audience so large as to make attendees "uncomfortable." According to the *Tribune* news reporter, "fully three hundred ladies" had convened in the courtroom to hear the young wife's lover recount his "criminal intercourse" with the alleged murderess.[42]

Though local women as well as men attended suits specifically adjudicating illicit sex and cases that merely touched on matters of sexuality, women's presence at such trials appears to have been contested. A *Tribune* journalist's 1888 thought piece on the prevalence of divorce in Illinois not only contended that marriages were too easily sundered in Illinois, he also maintained that the voyeuristic element of such litigation did not contribute to public morality. The reporter was most concerned over the "prurient curiosity of the female mind," noting that "sympathetic females accompany all the supplicants for divorce, male and female . . . as many female spectators as the courtroom can hold." The audience makeup at an 1888 trial involving the abduction and "ruin" of a Chicago girl similarly provoked the *Tribune* correspondent to indicate his unease with women's legal spectatorship. He wrote, "The courtroom was crowded, as a matter of course, and in the audience were many women, who should have been anywhere but there. Much of the testimony was not fit for women to hear; but women will insist on listening to the most disgusting things sometimes." That reporters often pointed out the sex of courtroom bystanders signifies, on the one hand, contemporaries' anxiety over the idea that women gathered in courts of law to hear the licentious particulars of illicit sexual encounters. Then again, press commentary regarding women who attended scandalous trials also attests to the fact that the audience chambers of Illinois courtrooms frequently included a noticeable female presence.[43]

42. "The Bedford Indiana Tragedy," *Chicago Tribune,* May 11, 1866, 0_2; "Rogers against Rogers: Sensational Divorce Case in Progress in Galesburg, Illinois," *Chicago Tribune*, December 18, 1887, 16; and "Criminal News," *Chicago Tribune,* December 13, 1878, 5. See Michael Grossberg, *A Judgment for Solomon,* especially pages 89–167 for a similar discussion of the popularity and theatre-esque nature of scandalous litigation. See, also, Lisa Duggan, *Sapphic Slashers,* especially 61–86 and Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families across the Color Line in Virginia, 1787–1861* (Chapel Hill: University of North Carolina Press, 2003), especially 130–243.

43. Again, we might look at the links between theatre culture and the law. Theaters were often perceived by contemporaries as morally questionable (particularly for women deemed

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While the world of print became one means for Americans to satiate a voracious enthusiasm for sensationalized accounts of out-of-wedlock love turned sour, local courtrooms developed into another. Also, the seduction-laced reports of intimacy unveiled in Illinois courthouses were authentic and explicit. Unlike the blow-by-blow descriptions of seduction presented in print, juridically mediated accounts of seduction did not disappoint their audiences just when matters turned particularly salacious. Print versions of out-of-wedlock and extramarital sex typically excised explicit discussions of sexual intercourse and they did so in ways that only incited reader curiosity ("but the particulars must be supplied by the reader's own imagination" or "it is a great pity, we know, and the reader may blame us for it, but we are here reluctantly compelled to drop the curtain").[44] Sexual litigation, in contrast, was almost guaranteed to dredge up scabrous minutia. In the end, community members may have attended sexual trials because they were genuinely concerned and curious about legal outcomes, but many also flocked to their local courthouse to hear firsthand the naughty tidbits that were certain to accompany such trials. That many of these scandalous facts were related by unmarried young women made sexual testimony all the more illicit.

Legal Voyeurism

Rules of evidence and practices of proof called for candor about the circumstances that brought the parties of a sexual suit to the courtroom.

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as respectable), in part because theaters did often serve as assignation spots for prostitutes and their clients. See Rothman, *Notorious in the Neighborhood,* 96–97, 273; and Marilynn Wood Hill, *Their Sister's Keepers: Prostitution in New York City* (Berkeley: University of California Press, 1993), 199–206. "Divorces Not Too Free," *Chicago Tribune,* October 28, 1888, 27; and "Linnie Sinclair's Case," *Chicago Tribune,* February 24, 1888, 9. For scholarship on the links between contemporary law and popular culture see Richard Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago: University of Chicago Press, 2002).

44. Donna Dennis discusses the ways in which nineteenth-century novelists wrote coyly about sex in *Licentious Gotham*, 109–17. Dennis contends that the stylistic practice of inviting the reader to a particular sexual scene only to abruptly "draw the curtain" on the event transpiring helped "racy book" publishers avoid prosecution for obscenity, and stimulated the reader's curiosity about the forbidden incident at hand. The "drawing the curtain" examples provided in the abovereferenced text come from her analysis of two mid-century "racy books": George Thompson, "City Crimes (1849)," in *Venus in Boston and Other Tales of Nineteenth-Century City Life*, ed. David S. Reynolds and Kimberly R. Gladman (Amherst: University of Massachusetts Press, 2002), 107–309; and George Thompson, *The Delights of Love* (New York: J.H. Farell, n.d.), quoted in Henry Spencer Ashbee, *Catena Liborum Tacendorum* (London: Privately Printed, 1885), 203–209.

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Consequently, court officials required the women bringing such suits to talk about actual sexual experiences. Civil sexual trials presented contemporaries with the opportunity to deliberate whether particular men or women should bear the brunt of responsibility for out-of-wedlock sexual activity, and they also allowed them to publicly debate the very nature of female sexuality. These suits all drew upon notions of feminine sexual passivity and vulnerability framed in opposition to male sexual aggression and licentiousness: a paradigm borrowed from the tales of seduction first outlined in late eighteenth-century novels and broadly disseminated thereafter in popular literature of all genres. At the same time, both cultural and legal understandings of seduction assumed a kind of partial or "half" consent given by women under the spell of ardent male persuasion. Just what the intricacies of this female sexual consent should be was a subject of controversy. The gist of these legal actions, therefore, became twofold: first, to evaluate the types of "artifices" seducers employed to convince their lady loves to surrender their chastity, and second, to assess the degree to which these young women acted as passive sexual partners.

In other words, the success or failure of these civil sexual trials hinged in part on minute considerations of female sexual agency. Once again, the unintended consequences of sexual regulation loom large. Far from acting as a fetter on female sexual expression, the law fixed public attention on the inner workings of female sexual agency by compelling the growing numbers of women who brought these suits to rehash their roles in sexual exchanges. In other words, seduction trials highlighted the very component of female sexuality that the literary genre of seduction had, at least discursively, sought to bury.[45]

45. My references to a bolder female sexuality are based in part on the findings of recent works on late eighteenth-century sexual practices and culture. In *Sex among the Rabble*, Clare Lyons describes in wonderful detail a "pleasure culture" that grew in prominence in Revolutionary-era Philadelphia. For a discussion of premarital sexual activity between young people, see also Godbeer, *The Sexual Revolution in Early America*. Still, I would argue that the viewpoints that legitimated out-of-wedlock sexuality in the late eighteenth century did not simply disappear as the eighteenth century gave way to the nineteenth. Helen Lefkowitz Horowitz, similarly discusses the persistence of older "bawdy" strains of thought within the public sexual conversation in her work, *Rereading Sex*. For treatments of the literary genre of seduction, see Bontatibus, *The Seduction Novel of the Early Nation*; Lutz, *The Dangerous Lover*; Godbeer, *The Sexual Revolution in Early America*, 264–334; ln, "The Republican Wife: Virtue and Seduction in the Early Republic," *William and Mary Quarterly* 44 (1987): 689–721; Mildred Doyle, *Sentimentalism in American Periodicals, 1741–1800* (PhD diss., New York University, 1941); and Rodney Hessinger, "Seduction Tales," *American Masculinities: An Historical Encyclopedia* (New York: Sage Publications, 2003), 408–10.

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The flip side of this legal need for detailed sexual accounts was that the legal participants and numerous spectators attending trial would watch women talk about sex. Legal voyeurism operated on another level as well, by inviting legal participants to vicariously fantasize about the lurid descriptions that were so forthcoming. Prosecuting witnesses were routinely asked for details such as the location and time of a sexual encounter, the position they assumed during the sex act, the duration of a particular episode, whether other individuals were nearby, as well as what words and actions preceded an erotic encounter. Attorneys and other judicial officials elicited this graphic information from female litigants because it was widely assumed that these data allowed juries to weed out far-fetched sexual narratives from the more plausible ones. The legal oversight of out-of-wedlock sexuality thus *encouraged* spectators to visualize the intimate act(s) disclosed and *demanded* vicarious acts of imagination from jury members. In other words, local courts authorized their audiences to adopt voyeurism as a truth-finding technique. Those legal participants who did so might rest assured that illicit sex on trial called for nothing less.

Beyond these institutional and procedural demands, currents within popular culture similarly worked to camouflage the public's voyeuristic interest in female litigants' sexual storytelling as a legitimate enterprise. It was ultimately a particular kind of sexual experience that prosecuting witnesses related to their courtroom audiences—universalized stories of heartless seduction. The messages embedded within their legal narratives were innocence lost and womanhood betrayed, the culprits, malevolent men, the solutions, the damage settlements awarded in seduction, breach of promise of marriage, and bastardy suits. At the same time, although it was male defendants who risked incurring legal penalties for their alleged sexual misconduct, it was female sexuality itself that stood on trial. Civil sexual trials' very invocation of the importance of female chastity meant that the young women who initiated such trials took part in a complex process of asserting, then renouncing, uncovering, and then obscuring female sexual agency. In the end, the leitmotif of seduction meant that the public's prurient curiosity about the sexual revelations of unmarried young women might be masked as necessary, even chivalrous undertakings. Court participants were dispensing justice to the women seemingly wronged by male sexual predation.[46]

46. Michael Grossberg's concept of "judicial patriarchy," that nineteenth-century judges and jurymen functioned as the protectors of women whose husbands or fathers had failed in that regard, offers a useful frame of reference for my discussion of Illinois court participants as the chivalrous "defenders" of womanhood. See Grossberg, *Governing the Hearth*.

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The legal success of civil sexual suits throughout the second half of the nineteenth century depended on female litigants' ability to construct narratives of sexual naiveté and vulnerability out of their own individualized experiences of intimacy. As will be discussed, these experiences spoke as much to women's volition as to their passivity. The trick for the prosecution involved a creative reworking of the sexual double standard and a forthright acknowledgement of men's and women's asymmetrical bargaining powers in romantic concerns. Precisely because women were culturally held to strict standards of chastity, contemporaries often assumed that men led women from the paths of virtue. Social and legal compassion for women caught in the web of illicit sex, therefore, derived from their mobilization of the victimization script.[47]

A key component of establishing young women's status as "victims" within the context of popular seduction stories was to underscore men's duplicitous romantic dealings. The dramas unfolding in Illinois courthouses similarly focused on the treachery of male sexual partners; however, they simultaneously uncovered some of the sexual motives of unmarried women. Prosecuting litigants, for example, often discussed their sexual negotiations with intended husbands in terms of the promises male partners had professed but failed to keep. From these kinds of statements, we can ascertain that many young women in long-term courting relationships deemed their willingness to become sexually active outside of marriage as reasonable exchanges: male partners pledged to marry them, young women agreed to premarital sex. Take, for example, Florence Whitworth who resisted her boyfriend, August Scharf's, sexual advances "for a while," but eventually "yielded through persuasion." Florence defended her decision to become sexually active with August by linking this choice to their recent engagement. "I submitted under his promise to marry me. He promised everything, anything," she reasoned in the estranged couple's 1886 bastardy litigation.[48]

47. See Norma Basch's *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999), 147–85 for a parallel discussion of the prevalence of the female victimization trope in nineteenth-century divorce proceedings.

48. *Scharf v. The People,* File No. 11209 (1890) Illinois Supreme Court Case File, Illinois State Archives, Abstract 1–68. For a similar female perspective on premarital intimacy, see *Wilson v. The People,* File No. 13538 (1861), Illinois Supreme Court Case File, Illinois State Archives, Transcript 15–25. The prosecuting litigant in this suit, 18-year-old Lucy Francis, also identified her beau's marital pledges as the catalyst behind their sexual intimacy. According to Lucy, she became betrothed to the 16-year-old son of her neighbor and employer during her 3 year tenure as a domestic servant. The young man in question, Francis Wilson, made sexual overtures to Lucy in the evenings, while others in the family prepared for bed and she tidied the kitchen. "The first words he said to me were that he

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Other young women pointed both to nuptial pledges and to the language and practices of romantic love to explain how and why male partners convinced them to engage in out-of-wedlock sexual relations. During the 1871 seduction proceedings her father brought against her former fiancé, Rebecca Cosner focused her courtroom statements on her onetime beau's many romantic gestures. The young man had, for example, frequently voiced the following platitude to his sweetheart, "Depend on me and I will be true to you." He had also surprised her with three different engagement rings over the course of their 4-year-long courtship. Rebecca defended her willingness to engage in premarital sex with her former flame by drawing on the language of romantic love. "No man should take such liberties with me, but I never knew before what love meant," she professed. Although this declaration conveyed a kind of implicit acknowledgment of the immorality of sexual intercourse outside of marriage, it simultaneously articulated and justified an understanding of coition as the ultimate expression of love.[49]

The expressions attributed to men negotiating sex with female partners bear remarkable likeness to one another, perhaps indicating that these patterns of erotic negotiation were customary ones. Although there is no means of determining exactly what couples said to one another in the moments before becoming intimate, it is likely that female litigants recognized the kinds of rhetoric that would be accepted by courts. Their courtroom statements indicate that men quite frequently combined pledges to wed and promises to "take care" of their lovers in the event of out-of-wedlock pregnancy with blanket assurances that they would do

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would marry me . . . He wanted to do something to me there [in the kitchen]," Lucy apprised the Iroquois Circuit Court. While Francis "wanted his gratification right there," he asked her "probably half a dozen times" before Lucy would agree to sex. Like other young women of her era, Lucy may have delayed accepting Francis's erotic overtures as a way of measuring his devotion to her. In any case, Lucy justified her premarital sexual activity in terms familiar to her contemporaries. "I was willing for him to have intercourse with me if he would marry me," she conceded. Unfortunately for Lucy, Francis did not uphold his end of the erotic negotiations and never fulfilled his nuptial promise. Young Lucy's next course of action —enlisting the aid of her local county courthouse—was similarly not an out-of-the ordinary undertaking. Here, Lucy offered a story of courtship betrayal that her community could identify with; she mused to court attendees, "I believed he told me the truth when he said he would marry me."

49. Historians have long noted that nineteenth-century Americans increasingly associated sex with one's "inner life" or "essential identity." For the importance of sexual relations to nineteenth-century conceptions of romantic love see Horowitz, *Rereading Sex* and Karen Lystra, *Searching the Heart: Women, Men, and Romantic Love in Nineteenth-Century America* (New York: Oxford University Press, 1992), 56–120. *Mains v. Cosner,* File No. 4590 (1872), Illinois Supreme Court Case File, Illinois State Archives, Transcript 20–28.

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their partners "no harm." In an era in which literary depictions of out-of-wedlock sexuality generally led to abandonment, social exclusion, disease, and even death for the female partner, these generalized declarations appear to have provided reassurance to young women contemplating intimacy with fiancés. Take, for example, 17-year-old Rena Stone who kept steady company with her flame, Charles Mighell, for more than 6 months before their relationship turned physical. According to her testimony in the 1896 seduction suit brought by her father, Charles had hoped for and attempted to pressure Rena into a sexual relationship much earlier. In addition to promising Rena marriage and telling her he loved her, Charles asserted he "would not hurt her, he knew there wouldn't nothing go wrong." Rena also claimed that Charles had insisted he was knowledgeable about contraception from his conversations with physicians. She perhaps understood such comments as affirmation that he could help prevent her from becoming pregnant.[50] Rebecca Cosner's fiancée, Armsted Mains, employed similar inducements in his sexual negotiations with her. Armsted first asserted his love for Rebecca and gave her a present of peppermint candy hearts. He then declared, "No one will find out." After the pair's first sexual encounter, Armsted reassured Rebecca: "I did not hurt you." According to Rebecca, she "believed" Armsted's latter claim because of her "complete confidence" in him. The take-away point for courtroom listeners in both of these narratives was that Rebecca and Rena ended up pregnant and alone in spite of their respective partners' repeated promises.[51]

Young women in romantic relationships appear to have understood "no harm" statements as additional confirmation that beaus would marry them—especially if something were "to go wrong"—or perhaps that they might help them prevent pregnancy altogether.[52] It seems likely that

50. It is difficult to discern from the case itself what type of reproductive information Charles garnered from physicians. What is clear is that Rena took Charles' affirmations of reproductive knowledge as additional confirmation that "nothing would go wrong." It is possible that Charles referred to the rhythm method or to withdrawal before ejaculation. The literature on birth control contends that the rhythm method was the birth control routine nineteenth-century physicians most consistently recommended to their patients. See, for example, Leslie Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997).

51. *Mighell v. Stone,* File No. 27920 (1898), Illinois Supreme Court Case File, Illinois State Archives, Transcript 23–24; and *Mains v. Cosner,* File No. 4590 (1872), Illinois Supreme Court Case File, Illinois State Archives, Transcript 20–28.

52. It seems unlikely that "no harm" language used by men initiating sex with fiancées and short-term partners was a means of convincing women that first sexual encounters were painless. For one, the language used to describe the act of defloration generally centered on the word "pain," rather than harm. Most commonly, "Did he cause you pain," or "Did it cause

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in employing this type of language, men themselves referred to a tradition whereby nonmarital sex was viewed as harmless and pleasurable. Edwards County resident George Mayes drew on this tradition when he told his teenaged partner she "would not suffer" if she allowed him to have "connection" with her. In other words, many men pursuing erotic encounters would have agreed with James Newman, who informed the young woman he propositioned that "a little screw don't hurt nobody," or with the aforementioned Charles Mighell, who simply asked his sexual partner, "What's the matter with having some?" Young women were, of course, the chief targets of a public discourse aimed at preventing out-of-wedlock sexuality. Still, this cultural emphasis on female virginity before marriage was not the only view of sexuality nineteenth-century women encountered. In their erotic negotiations with lovers, young women themselves were presented with an alternative vision of feminine sexuality: a world where out-of-wedlock intimacy presented no harm. Many women implicated in sexual trials undoubtedly lived to regret their decisions to become sexually active outside of marriage. It is nonetheless significant that the rhetoric of "harmless sex" so frequently factored as an extenuating circumstance behind women's out-of-wedlock sexual encounters.[53]

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you pain?" Additionally, women in these suits sometimes unwittingly revealed that the harm or hurt that concerned them was social in nature. For example, one young woman, Pleasant Gaye, told her partner her mother "told her it [out-of-wedlock sex] was harm" before agreeing to sex. Another young woman, Elzina Laws, retorted, "You know what such things come to," after being propositioned by married George Peaks. See *Jones v. People*, File No. 4210 (1870), Illinois Supreme Court Case Files, Illinois State Archives, Transcript 7-8; and *Peak v. People*, File No. 5356 (1875), Illinois Supreme Court Case File, Illinois State Archives, Transcript 1–14. For an Illinois rape cases in which a lawyer directly asks the prosecuting witness if the sexual encounter hurt her, see *Coon v. People*, File No. 21435 (1880), Illinois Supreme Court Case File, Illinois State Archives, Transcript 20; and *Janzen v. People*, File No. 27183 (1895), Illinois Supreme Court Case File, Illinois State Archives, Transcript 17.

53. *Doyle v. Jessup,* File No. 8875 (1862), Illinois Supreme Court Case File, Illinois State Archives, Abstract 2; *Newman v. People,* File No. 29834 (1906), Illinois Supreme Court Case File, Illinois State Archives, Abstract 5; and *Mighell v. Stone*, File No. 27920 (1898), Illinois Supreme Court Case File, Illinois State Archives, Abstract 30–34. There is evidence that men involved in both courtship and more casual sexual relationships made blanket assertions that they would not harm intimate partners during erotic negotiations. The frequent appearance of this dialogue suggests that whereas cultural prescriptions against out-of-wedlock sexuality made young women, in particular, wary of the social dangers of out-of-wedlock intimacy, they had less effect in changing actual sexual behaviors. See, for example, *Jones v. People,* File No. 4210 (1870), Illinois Supreme Court Case File, Illinois State Archives, Transcript 7–8. In this suit, Pleasant Gaye, the complaining witness, revealed that she had had sex with Green H. Jones, her neighbor and former schoolteacher, after he propositioned her. Importantly, she did not make claims that her relationship with Green was one of courtship. According to her testimony, Green had

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As has been discussed, private negotiations between courting couples advanced outlooks on female sexuality other than pure denunciation. Significantly, these conversations became part of the public sexual conversation when female litigants exposed them in local courthouses throughout the nation. Conceivably, these public airings of the circumstances behind young women's sexual decisions lent a measure of respectability to their choices. In other ways, also, the courts unwittingly cast premarital sex as typical (if not acceptable) behavioral patterns for couples promised in marriage. Developments in mid-century seduction and breach of promise law, for example, allowed exemplary damages for both types of litigation if complaining witnesses could prove seduction transpired "under promises of marriage." These legal changes were motivated by a desire to more harshly penalize men found guilty of what was perceived as especially heinous sexual misconduct; that is, "tricking" women into sexual relations by promising them future respectability.[54] Civil sexual law, then, perhaps authorized contemporaries to deem sex between affianced twosomes as ordinary, rather than simply as objectionable. Whatever kind of message court attendees took from civil sexual trials—whether one of tolerance or of reproof—young women's sexual storytelling undoubtedly contributed to the prurient cast of such litigation, because in recounting the circumstances under which they were "induced" to engage in out-of-wedlock intimacy, female litigants could scarcely avoid hinting at their own sexual motives.

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propositioned his onetime student one September evening during a visit at the home of her aunt, where she then resided. During the impromptu reading lesson Green gave Pleasant, he asked her "if she had ever accommodated a man." Taking the comment as both question and invitation, Pleasant responded, "If it was no harm." Green then assured Pleasant that "it was no harm." Still not entirely convinced, Pleasant next referred to the counsel her mother gave her regarding sex outside of marriage, "My mother told me that it was harm." After Green again asserted that sex was harmless, Pleasant walked with him to the garden where they had intercourse.

54. Judicial rhetoric offers the richest example of this condemnatory perspective. See, for example, the following 1851 breach of promise proceeding. This case involved a plaintiff in her early twenties who had allegedly been seduced under pretense of marriage. The circumstances of the suit led the chief justice delivering the opinion of the court to criticize her seducer in virulent terms: "A man who, under pretense and promise of marriage, gains the affections of an innocent girl, seduces and then abandons her, inflicts an injury, for the recompense of which money is wholly inadequate. Such a man, if he deserves the name, is entitled to no sympathy at the hands of either juries or courts, but should be made to respond in heavy damages, the only recompense which the law allows, for the commission of an act [that inflicts] more real suffering and distress, and brings upon her greater disgrace, than any other which man can commit." *Tubbs v. Van Kleek,* File No. 12046 (1851), Illinois Supreme Court of Illinois Case File, Illinois State Archives, misc. court documents, 7–10.

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The seduction script thus helped establish young women's sexual victimization and vulnerability, and it gave rise to racy legal conversations. This dialogue, in turn, offered legal participants' vicarious access to other's sexual pasts. Furthermore, the use of titillating language in civil sexual suits and the prurience that discourse invoked actually cemented women's roles as victims. Female litigants often appeared as damsels in distress, particularly when asked delicate questions. Newspaper accounts of sexual trials frequently noted that prosecuting witnesses would tear up or blush while giving their testimony. Litigants' comportment during trial might even temporarily disrupt court proceedings. Margaret Murtland, party to an 1872 seduction suit, choked up during her trial examination, forcing court officials to allow her leave the courtroom until she could "quiet herself." Similarly, Ada Silvens' whisper-quiet testimony compelled the judge who presided over the case to repeatedly request that she speak up. In a sense, female litigants' behavior in court functioned as a way for legal participants to read their modesty. Securing legal justice may have required frankness, but successful prosecution witnesses could not appear too eager to disclose their sexual pasts.[55]

On the other hand, we should be careful not to assess young women's reluctance to testify exclusively as a courtroom strategy. There were very real reputational issues at stake for both the women and men involved in sexual suits. Given the cultural emphasis on women's sexual decorum as a reflection of character, there was obviously more at stake for female plaintiffs. In most instances, young women's reticence probably did not reflect a premeditated tactical maneuver. Rather, in the minds of jury members and the wider courtroom audience, bashfulness on the part of plaintiffs could serve as affirmation that young women possessed the very kind of sexual naïveté that made them vulnerable to male sexual predation in the first place.

Newsman sometimes held the prurient elements of sexual trials out as bait. A *Quincy Whig* reporter not only alerted his readers as to when the interrogation of witnesses and litigants in upcoming divorce trial, which implicated a minister who had allegedly seduced several of his female parishioners, was likely to occur, he also undoubtedly piqued local community members' interest in the scandal. "In the trial of the case, which will probably take place early in the day, a sufficient amount of nastiness will doubtless be developed to gratify the taste of the most prurient," the reporter pointed out. Beyond disclosing the extent to which courtroom

55. *White v. Murtland*, File No. 5189 (1872), Illinois Supreme Court Case File, Illinois State Archives, Transcript 38–47; and *Bradshaw* v. *People,* File No. 7762 (1894), Illinois Supreme Court Case File, Illinois State Archives, Transcript 84–109.

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conversations would appeal to voyeuristic sensibilities, newspapers also tended to emphasize that examinations were certain to uncover young women's active roles in sexually compromising situations. A *Quincy Herald* reporter, for example, focused his coverage of an 1894 seduction suit on the proceeding's potential for digging up the female litigant's lascivious conduct: "It is claimed that his lawyers are hunting up evidence to prove that Stessia was a naughty girl all around and that there are a number of culprits who will swear to improper intimacy with her."[56]

In order to further illustrate the ways in which civil sexual proceedings both uncovered female sexual agency and advanced narratives of sexual passivity—all the while fanning the prurient flame—we will now turn to a case study analysis of an 1882 Livingston County Court bastardy trial. As was customary for prosecuting litigants in both civil and criminal sexual suits, Rhoda Halleck, the litigant in question, took the witness stand first. A lengthy portion of the prosecution's examination was devoted to substantiating that Rhoda was involved in a long-term relationship with the defendant, a partnership that was abruptly terminated by him. After detailing the essentials of her year-long courtship with thirty-something-year-old Joshua Cox (he took her to plays, called on her at her parent's home, held her on his lap, and kissed her), Rhoda also addressed the when and why behind the termination of her betrothal.

Eventually, however, the prosecution lawyer and, later, the defense attorney, would direct Rhoda into more suggestive dialogue. Both men drew out the explicit details of the couple's sexual relationship. Howcver, the lengthy exchanges between Rhoda and the two lawyers served narrative purposes other than titillation. The prosecution needed to establish, first and foremost, a believable account of intimacy. Given the awkward and likely uncomfortable scene of Rhoda and Joshua's alleged sexual tryst, Rhoda's lawyer maneuvered carefully through a series of questions designed to orient listeners to particular cultural assumptions. In response to her attorney's query, "Tell the jury what he did," Rhoda initially only divulged that the defendant had "connection" with her sometime during the evening of July 4, 1881. It would appear from Rhoda's account that she and her sweetheart—like other unwed couples of their era—found makeshift areas for privacy and intimacy.[57] In Rhoda's case, it happened

56. "Rev. H.O. Hoffman," *The Quincy Whig,* October 14, 1875, 2; "Father Leydon's Fix," *The Quincy Herald,* July 6, 1894, 1 (front page).

57. The layout and size of many rural and small-town homes hindered personal privacy. Young and old, married and single often slept in the same rooms. In the two-to-four-room homes of many Illinois families, there was simply no space to separate sexuality from youth and children. Young people engaged in amatory activities, therefore, often sought out makeshift areas of privacy. Sex, for example, might occur in general sleeping rooms, on deserted

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to be on a chair seated on the front porch of her family's two-room home while her relatives were busy enjoying Fourth of July festivities. Still, Rhoda's legal representative had chosen his words skillfully. Before Rhoda even spoke, the court was directed to view the couple's erotic relationship as something Joshua did. Rhoda then affirmed her role as the passive player in a sexual exchange with Joshua.[58]

Having described the scene of the erotic act, Rhoda's lawyer next asked her to comment more fully as to how coitus might transpire in such a position and location. "Explain manner of the connection more specifically and also the position of the chair?" her attorney prompted. The prosecuting witness then disclosed that Joshua had tipped the "armless chair" back against the "door casing." She meanwhile was situated on the outer edge of the seat. The subsequent round of inquiries not only positioned Rhoda's account of intimacy in more recognizable terms (it likened her depiction of sex to couples engaging in intercourse while lying down), it also obscured her sexual agency.[59] "What effect had that on your body?" "I was in the same position as if I was laying down and he in front of me." "How was his left arm?" "It rested on the back of the chair." "What did he do with his right hand?" "He used it to assist himself?" "Did he disarrange your clothes?" "Yes, he unbuttoned them and put them part way down." This series of questions and answers presented Rhoda and the defendant's coital act as not so different from the more conventional "missionary position." It also established details not demanded by Illinois' bastardy law, which only required the prosecution to ascertain paternity.

Rhoda and her attorney's call and response exchange relayed to the court an important narrative of betrayal by a romantic partner. Also, her trial examination helped convince jury members that the defendant had initiated sexual relations, whereas the plaintiff had merely acquiesced. As this

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roads, on schoolroom benches, and after mealtimes, in kitchens. See *Fidler v. McKinley,* File No. 2633 (1859), Illinois Supreme Court Case File, Illinois State Archives, Transcript 16–17; *Mighell v. Stone,* File No. 27920 (1898), Illinois Supreme Court Case File, Illinois State Archives, Transcript 15–30; *Roberts v. People,* File No. 21729 (1881), Illinois Supreme Court Case File, Illinois State Archives, Transcript unnumbered pages; and *Johnson v. The People,* File No. 25735 (1892), Illinois Supreme Court Case File, Illinois State Archives, Transcript 2–13, 35–36, respectively.

58. *Cox v. People,* File No. 26145 (1884), Illinois Supreme Court Case File, Illinois State Archives, Transcript 37–57. Stephen Robertson's *Crimes against Children,* 73–204, offers further discussion of nineteenth and early twentieth-century lawyers' efforts to paint their female clients in passive sexual roles.

59. See Sharon Wood's *The Freedom of the Streets*, 140–43, for a similar discussion of attorneys' tendency to impose the more conventional "missionary position" on young women's sexual narratives.

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excerpt should make clear, it was often lawyers who excelled as the star actors of Illinois' courtroom dramas. Certainly the legal counsel who argued cases for prosecuting witnesses labored mightily in order to refashion single women's out-of-wedlock intimate encounters into stories of male aggression and female naïveté and victimization. As has been discussed, prosecuting attorneys used the script provided by literary tropes of seduction, casting their clients' experiences in ways that fit that mold. Although downplaying Rhoda's role in a sexual exchange did not establish that Joshua was indeed the father of her child, it did help her garner courtroom sympathy; a feat that in and of itself helped frame her sexual tale as plausible.[60]

The defense, on the other hand, focused on the complexity of nineteenth-century women's undergarments, clothing that ultimately might take more than one hand to unfasten. "Describe again how connection took place and where were his limbs," Joshua's attorney, C. C. Strawn, began. "His limbs were straddled across mine, my limbs were between his, his left hand was on the back of the chair, and the heaviest weight of his body was on his left leg [which remained on the ground]," Rhoda replied. Her response revealed that the defendant had only one hand for unbuttoning and situating her clothing, as he had used his left hand to keep the chair steady. Strawn next posed five questions to Rhoda regarding the intricacies of her undergarments. The witness admitted in these exchanges that there were both buttons and clasps on her "undersuit" and "drawers." This line of questioning was intended to cast doubt on Rhoda's narrative of sexual passivity. How did one person with the aid of only his right hand undo and partially remove multiple layers of complicated garments? The defense, undoubtedly, wished to imply that Rhoda herself assisted Joshua in this endeavor, a fact that might undermine her carefully construed story of female compliance to male sexual pursuit.[61]

Dismissing assertions of sexual passivity only went so far. However much the rhetoric of seduction had seeped into all trials that arbitrated out-of-wedlock sexuality, jury members might believe the prosecuting witness in a bastardy suit initiated or encouraged intimacy and still determine paternity as the prosecution directed. It was up to the defense, then, to present more overt challenges to the young mother's intimate tale. In Joshua Cox's bastardy suit, the defense attempted to invalidate Rhoda's testimony by arguing that it was physically impossible to engage in coitus in the manner she described; demonstrating a lack of imagination on their part!

60. *Cox v. People,* File No. 26145 (1884), Illinois Supreme Court Case File, Illinois State Archives, Transcript 37–57.

61. Ibid., Transcript 44–46.

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Joshua's attorneys ultimately took a route increasingly tread by late nineteenth-century litigators, drawing on the authority of science and medicine to discredit Rhoda's depiction of coitus. "In your judgment," Strawn inquired of Dr. Stiles, a local physician, "do you think defendant could have connection with the prosecuting witness on a chair sitting astraddle of her lap?" As the defense no doubt anticipated, the Fairbury-area physician replied that he did not think Joshua could.[62]

Rhoda's lawyer meanwhile rebutted this damaging defense testimony by associating Rhoda's description of the intimate incident with the more typical missionary position. He rather pointedly asked Dr. Stiles, "Wouldn't a woman resting on the edge of a chair tend to expose her person so as to have the necessary connection?" After tersely agreeing with the attorney, Dr. Stiles attempted to salvage the damage done by his reply. His statement indicates the extent to which out-of-wedlock sexual trials invoked personal acts of imagination from all of its participants. Even learned men might end up reflecting on and disclosing their own sexual histories. "In my opinion it would be impossible to have connection in that position. I cannot say positive because I have never tried it," Dr. Stiles sheepishly disclosed.[63]

After Dr. Stiles's rather detrimental cross-examination, Joshua's legal team went a slightly different route. They offered as pertinent evidence not simply the coital act but also the physical condition of Joshua's "private member," which they claimed had a curvature "malformation" from birth. Although this type of disclosure might have been embarrassing for the defendant, his attorneys undoubtedly hoped that this revelation would, at last, undermine Rhoda's rendition of intimacy with Joshua (in the end, even this tactic did not actually push the county court to decide in his favor).[64] Joshua Cox's introduction of the physical appearance of his genitalia was actually not typical for this type of litigation. Still, it served parallel voyeuristic purposes to the more typical practice of putting female bodies on display.[65] After Joshua and the physician who testified for him

62. Ibid., Abstract 9–11.

63. Ibid.

64. The Illinois Supreme Court would reverse the decisions of both the appellate court and the Livingston County Court. Interestingly, the high court justices' verdict mentions the evidence tending to show that the defendant had a "malformation of the genital organ," as a circumstantial factor in their decision. See *Cox v. People,* Supreme Court of Illinois, 109 Ill. 457; 1884 Ill. LEXIS 1448, LexisNexis case report, 1.

65. In a world rapidly transformed by industrialization, contemporaries' often violent encounters with workplace machines and new and rapid means of transportation increasingly secured a place within the legal system. Here, wounded workers and passengers revealed the very real effects technology presented to the human body, usually by exhibiting the physical injury itself. For an overview of the effect of railroad travelers' injuries on American law and culture, see Barbara Welke, *Recasting American Liberty: Gender, Race, Law and the*

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described the condition of his penis, court attendees were led right back to the scene of the sexual offense. Witnesses were again asked questions as to the likelihood of intercourse transpiring on a chair. Judge and jury were

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Railroad Revolution, 1865–1920 (New York: Cambridge University Press, 2001). See pages 235–46 for an excellent discussion of the nature of injury performance in the courts. See James Schmidt, *Industrial Violence and the Legal Origins of Child Labor* (Cambridge, NY: Cambridge University Press, 2010) for an insightful analysis of the ways in which workers and their families recreated their experiences with industrial violence. On injured laborers and the law see John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge, Mass: Harvard University Press, 2006). However different from industrial accident law in terms of both legal objectives and physical injuries recounted, common law sexual suits similarly put bodies on display. What needs to be noted here is that the female body, and not the male body, factored more frequently in sexual trials. Performative exhibitions and linguistic representations of the female body no doubt added to the prurient elements of sexual litigation. Young women who claimed that physical force served as the inducement that led them to engage in intimacy often rehashed to the court the bruises or scratches received in the scuffle. If the time gap between the incident and its retelling in court was minimal, they might actually reveal the marks of violence on wrists or arms. More often, mothers, female neighbors, and physicians were called to verbally depict any physical injuries sustained by coercive sex that they observed in the aftermath of the incident. As injuries received from coercive seduction suits more frequently involved internal rather than external wounds, physicians took on the task of graphically illustrating the absence of the hymen or injuries to female genitalia, such as inflammation. See, for example, *Heaps v. Dunham*, File No. 21133 (1877), Illinois Supreme Court Case File, Illinois State Archives, Transcript 91-93 (physician testified about checking to see if prosecuting witness's hymen was still intact). Medicalized representations of the female body also emerged in cases of consensual sex, particularly in those suits involving pregnant prosecuting witnesses or recent mothers. In these types of proceedings, doctors again took on the role of translating to the court injuries to female bodies. Displaying intimate body parts was unthinkable, to the legal system and the young woman herself, but explicit descriptions of those parts was legitimate, particularly when related under the guise of medical science. Physicians discussed their physical examinations of expectant prosecuting litigants, indicating to the court the medical markers of pregnancy. See, for example, *Malony v. People*, File No. 1482 (1865), Illinois Supreme Court Case File, Illinois State Archives, Transcript, 15–16. Defense teams, too, called upon medical men to reveal unsavory bits of information about prosecuting litigants. For example, three different physicians testified in an 1875 breach of promise of marriage suit from Vermillion County. When questioned by the defense, the doctors were asked to comment on their diagnosis of a sore located in the prosecuting witness's groin. They were also asked to give their opinion as to whether the child born to the litigants had been syphilitic. Similarly, Elisha Sprague, defendant in another breach of promise suit, arranged for the testimony of a physician who had allegedly performed an abortion on the prosecuting witness several years before the defendant had begun courting her. This evidence was intended to excuse the defendant from his failure to marry his litigious former lover, as it hinted at a licentious past. See, for example, Blackburn v. Mann, File No. 7365 (1877), Illinois Supreme Court Case File, Illinois State Archives, Abstract 2–3, 59–60, 79–80, 120–22; and *Sprague v. Craig*, File No. 15964 (1869), Illinois Supreme Court Case File, Illinois State Archives, Abstract 7–54.

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again implicitly directed to imagine the purported intimate act between Joshua and Rhoda, particularly as they now knew the defendant's reproductive organ "crooked downwards."[66]

The sexual accounts told by prosecuting witnesses (and torn down by defendants and the lawyers who argued cases for them) epitomized a reputable kind of prurience, one that offered titillation without the seedy connotations of pornography. In other words, the location that housed these lurid conversations mattered a great deal. In the courts, quasipornographic tales of out-of-wedlock sex manifested not as quasipornographic accounts of illicit sex, but rather as faithful presentations of the facts of a case. However much legal participants enjoyed listening to and watching young women painstakingly detail their sexual experiences, in a courtroom setting, prurient sexual pleasure might be transformed into a kind of unfortunate incidental: a byproduct that did not inhibit the true purpose of such litigation, which was to find and deliver justice.[67]

Male Erotic Storytelling

Recounting sexual experiences before eager listeners was a practice outside the courts as much as inside the legal system. Sexual trials attracted such large audiences at least in part because community members spent considerable time gossiping with one another about particular episodes of sexual transgression, engendering prurient curiosity in these scandalous goings-on in the weeks or even months before proceedings ever began. Although community gossip networks drew both male and female participants, particular aspects of sexual storytelling have a decidedly masculine cast. Just as voyeurism went hand in hand with the sexual disclosures of female litigants, the intimate storytelling of defendants and male witnesses functioned, in many ways, as extensions of male camaraderie rituals.

66. *Cox* v. *People,* File No. 26145 (1884), Illinois Supreme Court Case File, Illinois State Archives, Abstract 9–13.

67. Other scholars have discussed in some detail the prurient aspects of newspaper coverage of sexual trials. See, for example, Norma Basch, *Framing American Divorce*, 149–52. As Basch notes, literary accounts of trials of sexual misconduct allowed readers vicarious access to real-life stories of infidelity. Authors of the genre, however, invested it with "respectability" by also taking the opportunity to moralize about the "snares of illicit sex." Still, popular literature of all sorts—in that it was frequently and repeatedly condemned as frivolous and somewhat unwholesome throughout the nineteenth century—did not possess the same elements of necessity and legitimacy as did accounts of sex recounted in courtrooms.

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Numerous scholars have detailed urban men's—young and old, married and bachelor—likeminded involvement in a "culture of sexual storytelling." Men talked to male friends about their sexual experiences as a way of establishing their "manhood" and of relating to their peers. Illinois' civil sexual trials indicate that rural and small-town men similarly rehashed their out-of-wedlock sexual adventures to one another on a regular basis. Again, they participated in male patterns of sociability in doing so. When sexual escapades brought men under the purview of the courts, they continued to draw on this culture of male bonding. Defendants, for example, often depended upon sexual conversations they had overheard to identify acquaintances and friends able—or at least willing—to testify to intimacy with prosecuting witnesses, as emphasizing the licentiousness of female partners served as one conceivable way for defendants to exonerate themselves. Significantly, the sexual revelations disclosed by defendants' witnesses were some of the most scandalous given over the course of sexual trials, because such narratives played up young women's flirtatious behavior and active roles in sexually compromising situations. Men's erotic storytelling, however, did more than create and stigmatize "women with reputations." It also constituted one way for men to publically confirm membership in a sexually aggressive breed of manhood: a categorization that did not always bode well for those seeking exoneration from sexual offenses.[68]

Whereas rehashing actual intimate bouts to comrades or spinning yarns about desired/imagined erotic encounters to one another constituted a male cultural tradition followed by men in a wide variety of settings and periods, the nineteenth century ushered in a particularly spirited version of this custom. Rising literacy rates, a growing public world of commercialized sex, and more democratized access to sex-themed reading material helped construct and promote a more national male sexual culture. Through print accounts and visual depictions of sex, men in disparate parts of the nation could now vicariously take part in the erotic adventures of real and invented characters. In other words, men in pursuit of erotically charged subject matter did not have to rely only on the conversations those in their peer networks generated. The Civil War seems to have contributed to a more sweeping culture as well. Publishers of licentious literature

68. For a discussion of urban men's widespread involvement in socializing with peers through erotic disclosures, see Clare Lyons, *Sex among the Rabble.* For an analysis of the pleasure cultures in part engendered through sexual storytelling, see Timothy Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790–1920* (W.W. Norton & Company, 1994); and Patricia Cline Cohen, Timothy Gilfoyle, and Helen Lefkowitz Horowitz, *The Flash Press: Sporting Male Weeklies in 1840s New York* (Chicago: University of Chicago Press, 2008).

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leaped at the chance to turn a profit amidst the military conflict. Sizeable numbers of fighting men eager for distraction from the death and disease that surrounded them presented erotica dealers with quite a captive market. Civil War troops' predilection for purchasing, reading, discussing, and passing along indecent print material has long been noted by historians. Although the end of the war signaled, to some extent, a decline of this market, some men undoubtedly continued the pastime picked up in the war years, whereas others shared memories of the diversion with friends and family back home.[69]

Throughout the second half of the nineteenth century, Illinois men participated in the culture of sexual storytelling with aplomb. In many instances, Illinois men's tendency to brag to their peers about their sexual exploits got them into trouble in the first place. A character witness for Jay Slocum's abduction trial put it this way: "[Jay] blowed about himself and told big stories about himself and what he had done and could do."[70] Frank Maynard similarly opened his mouth about his extramarital sexual relationships one too many times. Seen as a friend and confidante to the adolescent boys in his Sterling neighborhood, Frank permitted area youth to play in his livery barn. He also talked candidly about sex to the boys. In the summer of 1889, when his young paramour, Maggie Nillen, found herself "with child" and appealed to the local justice of the peace for redress, Frank's young comrades stood before the legal system one by one to recount Frank's frequent admissions of impropriety with Maggie. Both of Frank's two young employees, for example, agreed that Frank "commenced talking about girls nearly every day." The disclosures the youth recollected to the court undoubtedly helped to substantiate the veracity of Maggie's story in the minds of the jury. And these courtroom confessions had greater consequences than the recompense Illinois' bastardy law imposed on fathers of illegitimate children, as Frank would later be convicted of perjury for his testimony in the paternity suit.[71]

69. See Donna Dennis, *Licentious Gotham*, 199–257; Thomas P. Lowry, *The Stories the Soldiers Wouldn't Tell: Sex in the Civil War* (Mechanicsburg, PA: Stackpole, 1994); Thomas P. Lowry, *Sexual Misbehavior in the Civil War: A Compendium* (Bloomington: Xlibris, 2006); and LeAnn Whites and Alecia P. Long, *Occupied Women: Gender, Military Occupation, and the American Civil War* (Baton Rouge: Louisiana State University Press, 2009).

70. Abduction statutes were adopted by the Illinois legislature in 1874 and made "enticing" an unmarried female to prostitution or concubinage a criminal offense. In reality, abduction litigations policed behavior very similar to that prosecuted in seduction, bastardy, and breach-of-promise suits.

71. *Slocum v. People,* File No. 21840 (1878), Illinois Supreme Court Case File, Illinois State Archives, Transcript 27; and *Maynard v. People,* File No. 25523 (1890), Illinois Supreme Court Case File, Illinois State Archives, Abstract 3–12, 35–45.

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Other Illinois men similarly recounted alleged sexual experiences in ways that emphasized male bravado and reflected rather insensitive attitudes toward their sexual partners' quandaries. Their confessions subsequently became part of the evidence that prosecuting attorneys brought to the court's attention. James Kessinger, for example, told his friend and then-landlord that he "could get all he wanted" from the young female neighbor helping his wife with housework. James allegedly boasted, "I don't care if I knock her up, I can light out for Montgomery County and she will not follow me there." Nathan Chambers and Ad Hutson engaged in a bit of eroticized swaggering while at work together rafting logs in rural, southeastern Jasper County. Nathan gloated that he "had already been the downfall of one of the Harper family [his wife]." The young man also claimed to "love" his sister-in-law, Ollie, better than his wife. He then informed his buddy he "intended to make a point on Ollie," and that he would "ruin" her. Ad, for his part, encouraged Nathan's sexual fantasizing. "If I was in your place, I would make a point there if it took twenty years," he assured his friend.[72]

Sometimes peers used this male pattern of sociability to encourage the men engaged in out-of-wedlock intimate conduct to face the consequences of their actions. These attempts were not always unsuccessful, and they offer glimpses into young men's sometimes cavalier treatment of former flames. Edward White merely laughed when a male neighbor told him he had not "served" his sexual partner, Margaret Murtland, "right." He then made light of his misconduct, exclaiming, "A stiff prick knows no conscience." Joshua Cox, defendant in an 1882 bastardy suit, also conferred with friends over the "scrape" he found himself in. Joshua's neighbor told him to stop "dodging" the law, although he softened the sentiment with a bit of comic relief: "If I had been having as much fun with that girl as you have, for the last two or three years, and as good fun as that must have been, I would pay for one little insignificant baby without squealing." Joshua, however, took the defense tactic that others in similar positions took: that is, to insinuate someone else had fathered the child. "If you had been having fun, you would hate to pay for some other rooster's work," the young man averred.[73]

Courts called upon male cohorts who were privy to the sexual boasts of their friends not only to corroborate young women's intimate narratives,

72. *Woodside v. Morgan*, File No. 10558 (1879), Illinois Supreme Court Case File, Illinois State Archives, Abstract 11–13; and *Chambers v. People,* File No. 10751 (1882), Illinois Supreme Court Case File, Illinois State Archives, Transcript 30–31, 51.

73. *White v. Murtland*, File No. 5189 (1872), Illinois Supreme Court Case File, Illinois State Archives, Transcript 60–62; and *Cox* v. *People,* File No. 26145 (1884), Illinois Supreme Court Case File, Illinois State Archives, Abstract 8–9.

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but also to cast doubt on them. Because Elzina Laws swore in court that she had only been intimate with the man she named as the father of her child, as a defense tactic he subpoenaed other young men to confess to their "familiarities" with Elzina. Three witnesses, John Martin, James Miner, and Lewis Burkholter, ultimately testified to erotic encounters with the prosecuting witness. As these young men had bragged about "taking liberties" with Elzina to their friends, the prosecution unsurprisingly summoned these neighborhood youth to back up the character witnesses' sexual storytelling. Henry Campbell, for example, relayed his conversation with James Miner to the assembled court, expletive and all: "Miner told me what he did to her. He said he crawled in her window and fucked her."[74]

In much the same way, Archibald McCoy, a defendant in an Ogle County bastardy suit, drew from the culture of male sociability and erotic disclosures in order to invalidate Mary Hilger's paternity charge. Archibald subpoenaed two witnesses to reveal to the court their crude conversations with Mary's cousin, Philip Dietrich. Tellingly, the pair not only avowed that Philip had verbally flaunted his exploits with Mary; they also declared he had encouraged them to see for themselves if he told the truth. The young men, 19 and 20 years of age, respectively, obliged Philip, hiding behind a chicken coup at the time specified by him. Purportedly, they then witnessed the cousins engage in sex a few rods away.[75]

True or not, peeping Tom accounts proved voyeuristic on several levels. This type of testimony suggests that the culture of sexual storytelling was truly vicarious in some situations—offering its listeners not only imaginative entry into a past sexual incident, but also literal visual rights to an intimate act in the process. No doubt inspired by his constant "talk of girls," George Hahn and William Nillen, two of Frank Maynard's adolescent employees, decided they wanted to verify his tales of sexual intrigue for themselves. Therefore, when Maggie Nillen, William's sister, arrived to visit Frank one winter evening in 1889, the boys concluded that this time was as good an opportunity as any. After watching Frank and Maggie go into the bedroom located in the barn as was the couple's customary practice, George proposed that he and William "see what they are doing." In other words, the boys did not "skip off," as was their usual habit. Instead, William good-naturedly aided George in his scheme, yelling and stamping his feet outside the barn, so that his friend could peek into the

74. *Peak v. People,* File No. 5356 (1875), Illinois Supreme Court Case File, Illinois State Archives, Transcript 13–23, 26–30.

75. *McCoy v. People,* File No. 17442 (1872), Illinois Supreme Court Case File, Illinois State Archives, Transcript 14–16.

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window of the bedroom undetected. George, for his part, returned the favor and similarly made "a good deal of noise" when it came William's turn to observe the lovebirds at work. Several months later, the boys recreated the illicit scene and their prurient roles in it for the assembled court. In this way, courtroom narrations of sex—those given by individuals directly involved in the act *and* those supplied by peeping Toms—offered actual sexual incidents a vicarious life beyond the experience itself, and in the decorous public setting of the courthouse, no less. The young men's salacious testimony proved a source of titillation to court spectators. In the days after their appearance on the witness stand, several local residents filed into the defendant's barn to judge the placement of the bed and the location of the window, all in hopes of ascertaining the kinds of sinful activity the youth might have engaged in during that moonlit night.[76]

There is some evidence to suggest that sexual storytelling was not an entirely masculine pastime. This proof yet again originates from the courtroom disclosures of character witnesses. For example, several witnesses in the seduction suit brought by 16-year-old Mary Morgan's family in the summer of 1874 were asked to address the reasons behind her licentious reputation. According to one deponent, he formed his opinion of Mary's "lack of character for chastity and virtue" from both personal observations of her "loose" conduct with other local young men (he once saw her sitting with a male neighbor's knee between her legs) and her own admissions of impropriety. Mary had allegedly told him that she had hidden in an old well with a neighborhood boy, where they "remained for more than an hour and had lots of fun." Nineteen-year-old French immigrant Ersalie Larreau purportedly told her sister and friends that her fiancé would "never find out with whom else she had to do." Likewise, several young male witnesses in Frank Maynard's perjury trial testified that Maggie had enthusiastically informed them of her erotic adventures with various male admirers. As the women who revealed their sexual pasts before male and sometimes mixed audiences were generally unmarried young adults (their listeners were usually single and youthful as well), it is likely that such conversations held flirtatious connotations. Although some women may have advertised their intimate experiences to men or to peers of both sexes, their self-aggrandizement did not serve the same purposes as male sexual boasting.[77]

76. *Maynard v. People,* File No. 25523 (1890), Illinois Supreme Court Case File, Illinois State Archives, Abstract 4–11, 35–37, 63–67.

77. *Woodside v. Morgan,* File No. 10558 (1879), Illinois Supreme Court Case File, Illinois State Archives, Abstract 10–11; *Christman v. People,* File No. 17516 (1872), Illinois Supreme Court Case File, Illinois State Archives, Transcript 22; and *Maynard*

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When men recounted their out-of-wedlock carnal bouts to one another, they both asserted and affirmed the centrality of sexual expression to masculine identity, but if sexual storytelling made the man, it unmade the woman. Mary, Erselie, and Maggie all endured harsh criticism from character witnesses because of their sexual pasts and their public admissions of untoward behaviors. Whereas the legal system frequently tore down male defendants' reputations for "truth and veracity," men rarely faced scrutiny for wanton pasts, despite the fact that they were on trial for sexual offenses. In a culture increasingly enamored of dualistic understandings of male and female sexual natures, self-professed sexually active women had "reputations," braggart sexually active men merely possessed virility.

If sexual storytelling often formed a substantial portion of the evidentiary material that brought out-of-wedlock sexual encounters to the attention of the courts in the first place, this culture of male sociability through erotic disclosures lived on when litigants and witnesses took the witness stand. Despite the considerable monetary penalties incurred if convicted of seduction, breach of promise, or bastardy, some defendants apparently could not resist the opportunity for personal aggrandizement that a full and attentive courtroom audience posed. Married and forty-something George Peak spent a healthy portion of his time at the witness stand cutting up at the expense of the prosecution lawyer. "Don't you think the child looks like you," the attorney asked. George's irreverent rejoinder likely generated a few smirks and perhaps provoked some laughter from the assembled participants and spectators. "I think it looks more like you," he retorted. But George ultimately shot himself in the foot when asked about his relationship with the adolescent prosecuting witness. His assertion that he "was a family man," must have rung hollow in light of his other, less virtuous admissions. George, for example, informed the court that although he had not been in the plaintiff's home for the length of time indicated by her testimony, he had been at the nearby church, jesting with the young women gathered there to clean it. He apparently provoked the women to the point of exasperation, as they proceeded to chase him out with their brooms. This interesting bit of information was one thing, but George simply could not help himself. He blathered still more damaging confessions, no doubt to the chagrin of his lawyers. "I sometimes pinch arms of girls and consider myself something of a ladies' man," George offered. He added, "I might have plucked her in fun," after the prosecution lawyer asked whether he had ever "put his hands on Miss Laws."[78]

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v. People, File No. 25523 (1890), Illinois Supreme Court Case File, Illinois State Archives, Abstract 60–61, 69–71.

78. *Peak v. People,* File No. 5356 (1875), Illinois Supreme Court Case File, Illinois State Archives, Transcript 24–25.

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William Sutton, defendant in an 1870 assault and battery suit, similarly used his trial examination as a platform for advancing his reputation for virility. Virginia Johnson, the prosecuting litigant, sought to recover damages for William's forcible attempts to fondle her. As neighbors established that William had publicly admitted to "intimacy" with Virginia on several occasions, he wisely did not wholly refute Virginia's allegation. Rather, William tried to redefine that intimacy. Whereas Virginia insisted William had grabbed her breasts, coerced her into his bedroom, and endeavored to place his hands under her dress, he said he had only attempted to kiss her. His version of the erotic encounter denied use of physical force. He alleged that he simply went on with his daily farm work after Virginia rebuffed his attempt to kiss her. As the prosecution tackled the task of rendering this tame report suspect, they must have been quite pleased when the defendant himself abetted them in their legal strategies. "Have you been in the habit of kissing your hired girls?" Virginia's lawyers inquired. William, of course, responded in the negative but he also seized the opportunity to reveal the amorous practices of his youth. He answered, "No, I formed a habit in my youth of kissing girls but hadn't been in the habit of doing so since then." The prosecution would not let the defendant off so easily. "Why then did you kiss Miss Johnson?" they retorted. William's reply to this query indicates the lengths that some defendants went to establish their romantic experiences with women, even when such revelations jeopardized their defense. "I thought Jenny was a fair subject for kissing and that it would not hurt her any nor me either," William confidently disclosed. If George Peaks and William Sutton labored under the impression that their marital status and age (George was in his early forties, William in his early fifties) might shield them from jury members' swift judgments, both were sorely mistaken. The county courts handed down guilty verdicts for both men. In the end, both the jury panels and the judges who presided over the trials agreed that self-professed "ladies' men" might do more than pinch girls' arms or attempt to kiss their hired girls.[79]

Male witnesses, too, felt the import of an attentive courtroom audience. Telling sexual stories to buddies was an enjoyable end in itself. Therefore, when the local legal system authorized individuals to repeat those tales in the formal, public setting of the courthouse, many took on that charge with gusto. In many ways, the legal environment lent intimate narratives an air of respectability that they simply did not possess outside the trappings of the courthouse. When men read, viewed, and passed along popular print

79. *Sutton v. Johnson,* File No. 17216 (1871), Illinois Supreme Court Case File, Illinois State Archives, Transcript 51–53.

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depictions of out-of-wedlock sexuality to one another or swapped stories about personal sexual experiences, they participated in an expected, if not accepted, culture of male camaraderie. This pattern of sociability, however, was not something one took up at dinner tables, in parlors, or in most cases, in the company of women. However, the juridical system could and did bring a pastime operating on the margins of respectable life to light before male and female spectators and legal participants; therefore, it is little wonder that nineteenth-century men appear to have relished the occasion to narrate the particularly juicy details of real, embellished, and, undoubtedly in some cases, fabricated sexual experiences to their courtroom audiences.

Although the nineteenth-century Illinois legal system possessed an aura of authority and formality both because of the state power that backed it and because the courthouses that personified its control were increasingly constructed to reflect grandiose and ornate architectural styles, we should not assume that the individuals who stepped inside its doors were overawed by its decorum. The courthouses that dotted the largely rural landscape of Illinois were hardly reflections of the modern, efficient law that elite legal professionals wished to implement. First of all, the local courthouse was both a legal and a social space, and individuals in the surrounding locale gathered as much to convene and gossip with neighbors and friends as to observe legal processes at work. Lawyers had by this time wrested the task of presenting legal arguments to the court from ordinary litigants, but they, in most cases, still learned the trade in the local law offices of their elder colleagues, not in professional law schools. Illinois county court judges were likewise often poorly trained by the standards of prominent professionals. Finally, the local men acting as jury members were sometimes personally acquainted with one or both of the litigants. This familiarity, of course, impeded their ability to deliberate as impartial, "truth" seeking bodies.[80]

The fact that the faces representing the legal power of the state were often familiar ones influenced the ways in which witnesses conducted themselves on the stand. Some proceeded in the same conversational and casual tone as if they were merely rehashing intimate tales before

80. For a summary of the increasing professionalization and growing formalism, in technical pleading and architectural makeup, of the early nineteenth-century legal system see Mann, *Neighbors and Strangers;* and Martha McNamara, *From Tavern to Courthouse: Architecture and Ritual in American Law, 1658–1860* (Baltimore: John Hopkins University Press, 2004). See Laura Edwards for an analysis of the importance of localized legal practices in the nineteenth century, *The People and Their Peace: Legal Culture and the Transformation if Inequality in the Post-Reformation South* (Chapel Hill: University of North Carolina Press, 2009).

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old pals. William Morgan, a thirty-something-year-old witness for the defendant in an 1875 breach of promise case, relayed his purported sexual adventures with the prosecuting witness in the following fashion. "I don't know how often we had sexual intercourse, but did whenever we had a good chance. She told me once that her stepmother had looked in the window and saw me have her stripped naked and the next time I went there she said we were caught," the witness divulged. He then repeated, in a kind of braggart fashion, his role in the erotic encounter: "That was a fact—that I had her in that position [naked]." Louis Shanks, a 23-year-old witness for the defendant in an 1883 bastardy suit, addressed the assembled court in a similarly carefree, tongue-in-cheek manner. "The first time I ever had anything to do with her," Louis declared, "I went over there on an errand, you might say, to borrow an axe . . . she invited me into the house and while I was there I had sexual intercourse with her . . . after that we had intercourse whenever opportunity was offered up."[81]

William and Louis did not simply spin good stories. They also tapped into cultural assumptions about the sexual habits of men in general and women void of virtue in particular. According to both witnesses, they engaged in sex with their respective partners simply because the "opportunity" for intimacy was so frequently presented to them. In doing so, the young men merely followed and satisfied the voracious sexual appetites often branded as natural to the male physiological makeup. In participating in out-of-wedlock sexual encounters, the young women in the tale, on the other hand, defied their natural constitutions and better instincts. Louis and William, then, also had to supply logical explanations for the girls' behavior. Women who allowed themselves to be stripped naked before windows or who agreed to intimacy on the mere pretext of an errand-run were hardly ordinary specimens of the fairer sex. In the world outside the courtroom, these articulated cultural markers of difference afforded narrator and listeners a bit of amusement and pleasure as well as alerting the listeners to potential leads for their own future sexual pursuits. Inside the courtroom, these tales of sexual intrigue also provided entertainment to all participants, save the prosecuting witness herself. But more importantly, when expressed in the principal forum for social and political decision making, intimate narratives and the practice of sexual storytelling took on qualities of necessity, even legitimacy.[82]

81. *Blackburn v. Mann,* File No. 7365 (1877), Illinois Supreme Court Case File, Illinois State Archives, Abstract 74–75; and *Mings v. People,* File No. 6468 (1884), Illinois Supreme Court Case File, Illinois State Archives, Transcript 26–28.

82. *Blackburn v. Mann,* File No. 7365 (1877), Illinois Supreme Court Case File, Illinois State Archives, Abstract 74–75; *Mings v. People,* File No. 6468 (1884), Illinois Supreme Court Case File, Illinois State Archives, Transcript 26–28.

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Although both men and women congregated in courthouses to hear juicy tidbits about their neighbors, the most important audience for litigants remained male. It might seem, then, that defendants implicated in sexual trials possessed a distinct advantage, as they could draw on male traditions of erotic storytelling to win over the men acting as judge and jury. Disclosing one's sexual conquests before these legal officials, however, involved more than mere commentary on the promiscuity of female partners. First and foremost, erotic storytelling affirmed a manhood that associated male sexual experience and bravado with virility. As we have seen, this identification did not necessarily translate into a successful legal strategy. However, in authorizing defendants and male witnesses to deploy this socialization tradition, the courts helped popularize already circulating ideas about aggressive sexual expression as an integral aspect of manhood, inseparable from the masculine identity. In other words, the legal system perhaps unconsciously naturalized the very types of sexual predation they were supposed to police. In many ways, this counterintuitive outcome of legal sexual regulation is perhaps the least surprising of its many unintentional effects.

The Sex Talk of Legal Professionals

Attorneys not only prompted litigants and witnesses to indecorous discourse; they also often initiated it. Scurrilous sexual humor sprung from the public realm of officialdom, as much as it was spoken by private individuals with little direct legal power. The sex talk of legal professionals demonstrates the extent to which sexual sensationalism became more than a way to frame out-of-wedlock intimate episodes as legal problems. Ribaldry also served as one of the more valuable weapons within the legal arsenal, and this kind of artillery could be mobilized by either side. Significantly, attorneys brought bawdy wit, absurdity, and comicality into play for specific ends; namely, to debate perceived differences between male and female sexual urges and propensities.

Although lawyers on both sides of sexual trials adopted provocative imagery and rhetoric in their courtroom pontifications, we will first consider the meanings behind defense attorneys' coarse sex talk. Sometimes sexually graphic lines of questioning took the form of slang. One of the questions posed to the prosecuting litigant in an assault with intent to commit rape best exemplifies this technique. The defense attorney quipped, "Tell the jury how far he got his old Joseph into you?" Yet, the lawyer was not being crass simply for the sake of being crass. Rather, his off-color

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question was geared toward particular aims. If the prosecuting witness signified anything other than bewilderment or incomprehension, she might endanger her case. From the standpoint of contemporaries, female familiarity with and comprehension of indelicate vernacular did not exactly denote sexual innocence or naiveté.[83] In other cases, legal representatives instigated eroticized exchanges through insinuation. For example, the defense lawyer in an 1875 breach of promise suit skillfully urged Sarah Mann, the prosecuting witness, to comment on her supposed sexual encounters with men other than the defendant. Furthermore, he interrogated her in a manner that implied she had in truth engaged in sexual relationships with multiple partners. "He had done a great deal for you, hadn't he," the attorney prodded. After Sarah responded affirmatively, the defense resumed his rather elaborate ploy at portraying Sarah in a negative light. He asked, "And you were very good to him?" Sarah answered, "I tried to be." With this assertion in hand, the attorney dealt Sarah's character a death blow—"And was good to all those other men after you made this promise, as you say, to him?" In the event that the court had missed the meaning of this exchange, the defense then stated his case unambiguously—"Never had connection with other men?"[84]

Attorneys, then, joined litigants and witnesses in addressing the court in a language decidedly un-Victorian. Along these same lines, jury panels and court observers were not the only members of the juridical ensemble who "took spoonfuls of eroticism to help the legal medicine go down." If the briefs directed to appellate and high court judges serve as any indication, lawyers anticipated that justices would welcome their efforts to incorporate bawdy humor into their legal arguments just as audience members and jurymen appreciated legal talk imbued with a healthy dose of ribaldry.[85]

83. *Austine v. People,* File No. 26085 (1884), Illinois Supreme Court Case File, Illinois State Archives, Transcript 60–70. Stephen Robertson's *Crimes against Children* offers further discussion of the legal and social concern that girls and women should be ignorant of the meaning of sexual vernacular.

84. *Blackburn v. Mann,* File No. 7365 (1877), Illinois Supreme Court Case File, Illinois State Archives, Abstract 26. Vulgarity might color not only the examination of witnesses in a trial, but also other legal and semilegal processes. An 1864 article from the *Chicago Tribune* reprinted the affidavit of the plaintiff in a seduction suit in its entirety. According to this reprinted legal document, the Cook County Circuit Court needed to set aside the decision in favor of the defendant that was rendered by a group of arbitrators. The plaintiff's lawyers charged the arbitrators with unprofessional conduct, accusing them of "telling smutty anecdotes and indecent stories" instead of reviewing the facts and law of the case. "The Great Scandal," *Chicago Tribune,* May 28, 1864, 0_3.

85. Lawyers' briefs were essentially distillations of both the facts and arguments of particular cases being appealed to higher courts. As such, they were written legal texts

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Lawyers "played to the crowd" in their statements both to trial attendees and to the judges who reviewed the case after it was appealed. The fact that actors at every level of the judicial hierarchy participated in coarse sexual talk and jesting, and that such language infiltrated all facets of the legal process demonstrates just how critical vulgarity was to the adjudication of out-of-wedlock intimacy.

On the other hand, defense lawyers might use the opposite tactic in brief writing, and instead bemoan the voyeuristic, crude aspects of civil sexual suits. Drawing on middle-class notions of sexual decorum and respectability, they lamented the graphic—and to their minds—licentious evidence such suits forced the court to consider, or worse yet, to visualize. Of course towing the line of Victorian sexual ideology allowed defense teams to take the moral high ground, a tactic intended to secure acquittals for defendants. According to defense lawyers, it was not their client who forced a "tribunal of justice" to hear and adjudicate stories of intimate debauchery. Rather, their client only defended himself from the brazen accusations of an immoral woman. Some, therefore, framed their participation in sexual proceedings as disagreeable, particularly the necessary task of eliciting and articulating scabrous sexual accounts. Joshua Cox's attorneys, for example, began their brief to the Illinois Supreme Court justices with something of an apology: "We dislike to discuss the facts, as this story is so disgusting." These lawyers did go on to recount the evidence, however "disgusting," in ways favorable to their client.[86]

In order to criticize the high number of guilty verdicts rendered in civil sexual trials, defense teams sometimes labeled the entire juridical process as exercises in prurience. C. A. Lake and M. B. Wright, counsel for an 1872 bastardy suit—although particularly pithy—were not alone in their estimations of the true purposes of like cases. "Twelve verdant men . . . are ready to swear that all the defendant is charged with are true, and more besides, that the complaining witness, poor thing, has been shamefully ruined," Lake and Wright wrote sarcastically. The lawyers then conjectured what jury members really wanted to hear—"They are ready for a verdict as soon as they are sworn, only they want to hear the complaining witness tell all how it was done, whether it was this way or that; perpendicular as in this case, horizontal, or at an angle of forty-five degrees, it

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addressed to appellate judges and read by these justices as well as the lawyers on the opposing side. While a different kind of source than the oral testimony given during trial proceedings, briefs were important components of Supreme Court cases. Salacious details and bawdy humor permeate these briefs just as they do courtroom testimony.

86. *Cox v. People,* File No. 26145 (1884), Illinois Supreme Court Case File, Illinois State Archives Appellant Brief 5.

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is all the same, the verdict is guilty in every case." N. M. Knapp and J. G. Henderson, council for an 1874 bastardy proceeding, similarly bewailed the commiseration given to young women implicated in sexual litigation. These attorneys drew the justices' attention to the morally questionable motives of courtroom onlookers. The legal representatives scolded, "A crowded courtroom who, whatever may be said of its moral aspect or the motives that brought most of it together, sympathized with the woman, blind sympathy without judgments."[87]

Although defense attorneys frequently aligned with the central tenets of Victorian sexual ideology in their briefs to judges in order to establish themselves as the vanguards of public morality, some were not above supplying a lurid turn of phrase to the court as well. For example, one prosecuting witness's graphic description of her first sexual experience prompted the lawyer for the defense to give an explanation other than coercion for the witness's repeated sexual encounters with his client. Evoking the legal specifications for seduction and abduction, which required, for conviction, proof that a defendant offered "enticements" or "inducements" to the prosecuting witness, the defense conveyed an overtly sexual understanding of what exactly a man might do to beguile a young woman. The lawyers proposed, "We might say here in regard to enticement, that the extraordinary length of time that this Woodhull Vulcan occupied in performing the act of copulation—half an hour—without counting the preliminary digital performance of twenty minutes, may have been to her irresistible inducement to visit the defendant." In one succinct blow, the defense lawyers made light of the prosecuting witness's assertions of enticement via sexual coercion, they also implicitly discounted the notion that women indulged in out-of-wedlock sex because they were manipulated by male partners. Instead the attorneys insinuated that women valued and were attracted to men with sexual prowess. The defense had further arsenal up their sleeves and went on to paint the possible legal conviction of the defendant as utterly nonsensical. "We hardly think it comes within any known statute to send a man to the penitentiary because nature had endowed him with the organs of Priapus, and the endurance of Hercules," they jeered.[88]

Counsel for other defendants in out-of-wedlock sexual trials similarly deployed intentionally humorous visions of male and female sexual desire

87. *Christman v. People,* File No. 17516 (1872), Illinois Supreme Court Case File, Illinois State Archives, Appellant Brief 4; *Peak* v. *People,* File No. 5125 (1874), Illinois Supreme Court Case File, Illinois State Archives, Appellant Brief 7.

88. *Slocum v. People,* File No. 21840 (1878), Illinois Supreme Court Case File, Illinois State Archives, Brief and Argument of Plaintiffs in Error 10.

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in their arguments. These kinds of statements ultimately acted as calculated commentary on the character and trustworthiness of prosecuting witnesses. The attorneys of an alleged teenaged seducer, Archibald McCoy, contended that the plaintiff's account of a singular intimate incident with her young neighbor contradicted the "common experiences of mankind." His council addressed the court rhetorically: "If appellant being, as he is, a young, unmarried man, disposed to gratify his passions, is it fair to presume he would have been satisfied (when finding his addresses yielded to so graciously) with one single act of gratification?" Single, young men simply did not walk away from the opportunity for repeated sexual encounters. Why, Archibald's lawyers wanted the Illinois Supreme Court justices to speculate, had their client not sought out the company of the prosecuting litigant on other occasions? Archibald's legal representatives drew on the plaintiff's report once more in order to contest the idea that a virginal young woman could be seduced in such a short period of time. The lawyers remarked, "He seems from her testimony to have been with her barely long enough to have performed the act, yet long enough to have overcome the scruples of a coy and diffident maiden, impossible!" George Peak's attorneys were similarly engaged in underscoring inconsistencies in the plaintiff's rendition of intimacy with their client. They simply remarked, "The citadel of a woman's virtue conquered at the first advance?"[89]

Whereas the arguments of Archibald McCoy and George Peak's counsel pointed to the discrepancies between the conduct expected of bashful virgins and the behavior exhibited by prosecuting witnesses, some attorneys were blatantly dismissive of the idea of superior female virtue. Take, for example, the men who represented an 1876 bastardy defendant. These lawyers not only urged the high court to tread carefully (and judge wisely) as they entered "the dingy portals of this Plutonian cave, where sleep the lazy sentinels that watch o'er female virtue," they also mockingly dedicated their argument brief to "one of the Sleeping Sentinels who woke up in time to suggest the points in appellee's brief" (Figure 1). The wisecracks of these attorneys highlighted the fact that notions of female sexual innocence and virtue often brought young women legal victories, but did not seem to keep these women out of trouble in the first place. Adopting militaristic terms to describe female sexual virtue—as many defense lawyers did (citadels, sentinels)—was also quite a departure from sentimental portrayals of women's morality

89. *McCoy v. People,* File No. 17442 (1872), Illinois Supreme Court Case File, Illinois State Archives, Appellant Brief 7; and *McCoy v. People,* File No. 18434 (1873), Illinois Supreme Court Case File, Illinois State Archives, Appellant Brief 2.

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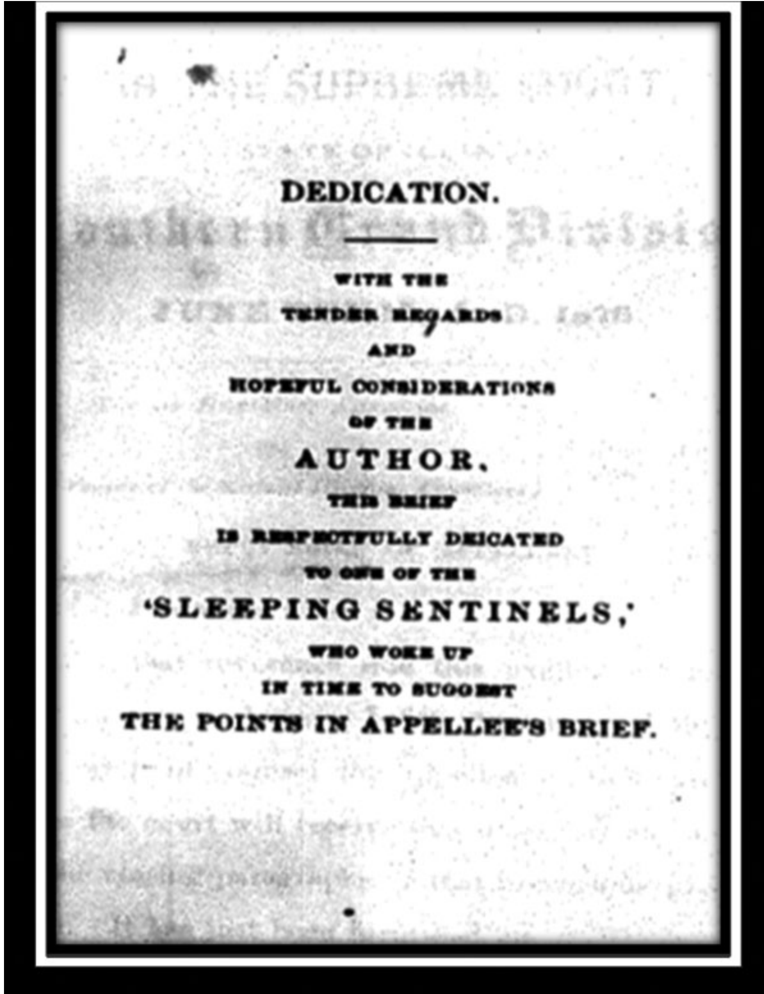

DEDICATION.

WITH THE
TENDER REGARDS
AND
HOPEFUL CONSIDERATIONS
OF THE
AUTHOR,
THIS BRIEF
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Figure 1. 1876 Bastardy Trial Defense Brief.

found in the era's literature and increasingly espoused by middle-class domestic culture. Again, we should consider the discursive work that a calculated turn of phrase might do. If notions of female sexual naiveté emphasized by prosecuting lawyers encouraged courtroom listeners to view prosecuting witnesses as quite helpless and in need of the protection of (male) judges and jury, representing female virtue in strong, martial

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terms might just prompt these same listeners to see women as quite capable of guarding their own virginity; a viewpoint that would not bode well for the women who failed in that regard.[90]

Legal professionals on the opposing side of civil sexual proceedings also merged sophisticated and hard-hitting arguments with pure titillation. Prosecuting attorneys for the aforementioned Rhoda Halleck, for example, tried to turn Joshua Cox's own testimony against him. Joshua maintained that he had never had intercourse with Rhoda, though he did admit he had "never tried anything harder in his life." Rhoda's council pounced on this confession and in their brief to the superior court reminded legal officials of its implications. "At the time appellant was making these efforts towards intercourse with the prosecutrix *he* certainly did not consider his private member very *seriously disabled* by the 'curvature' now relied on by his council to reverse this case [italics in orginal]," the prosecution chided.[91]

Elizabeth Strausbaugh's attorneys took analogous steps to those of Joshua Cox's lawyers, though the Woodford County bastardy case they prosecuted took place several years earlier in 1867. By the middle decades of the nineteenth century, the legal counsel who argued cases for prosecuting litigants opted to refashion their clients' experiences of out-of-wedlock intimacy into stories of male aggression and youthful female imprudence and victimization. As was discussed previously, lawyers latched on to culturally resonant literary tropes of seduction and articulated to the court real life accounts of these grievous sexual maneuvers because they understood that such tactics worked. In their brief to the high court justices, Elizabeth's attorneys displayed their penchant for seduction novels (as well as their apparently frustrated career aims as novelists). Like many of the fictional stories this brief was modeled after, however, the attorneys' argument reads more like a how-to manual in the arts of seduction, rather than a demonstration against it.

The attorneys' dramatic rendition of Elizabeth's coercive sexual ordeal recreated for the Illinois' high court justices an actual scene of lust and violence, struggle and resistance, and, finally, male sexual triumph and female capitulation. "He tripped her, pushed her up against a fence, held both her hands, she remonstrated, he insisted, while the flame of the libertine was at

90. *Hauskins v. People,* File No. 10112 (1876), Illinois Supreme Court Case File, Illinois State Archives, Reply Brief of Appellant, 1, 5. See Stephen Robertson, "Signs, Mark, and Private Parts: Doctors, Legal Discourses, and Evidence of Rape in the United States, 1823–1930," *Journal of the History of Sexuality* 8 (1998): 345–88 for a discussion of the legal expectation and cultural belief that women, particularly adult women, should be able to defend their virtue by stopping men from completing acts of sexual intercourse.

91. *Cox v. People,* File No. 26145 (1884), Illinois Supreme Court Case File, Illinois State Archives, Appellee Brief 7.

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its height, burning up, destroying, and eradicating all the finer, nobler, purer instincts of the man," the lawyers wrote. Evidently, precise instructions in how to initiate the seduction of an unwilling female did not raise judicial ire as long as it was accompanied by strongly worded rebukes for rakes. Having no doubt caught the attention of their illustrious readers with this bit of melodrama, Elizabeth's counsel moved on to establish still more smutty details—"And as the demon passion received each breath of the fan, it seemed an incentive to more earnest pleading [from Elizabeth]." The attorneys, however, saved the best for last, and fashioned a climactic finale for the justices, full of salacious imagery and verbiage. "Under the pressure of being encircled in the arms of the villain, pulsing over with the very madness of his unhallowed passions, having hold of his flesh, the inordinate desires of his perverted nature flashing with lightning speed from every touched portion of his body, were instantaneously communicated to her . . . which finally led her to yield to his desires," they hyperbolized. The brief thus culminated on an explanatory note, perhaps titillating the high court justices in the process. It resolved why Elizabeth succumbed to the defendant's "lusts" in terms that nineteenth-century individuals recognized. In the lawyer's rendition of her sexual experience, Elizabeth herself lacked much agency either to accept or resist the defendant's advances. Still, cultural capital existed for those women able to don the mantle of female victimization. For the many nineteenth-century women who turned their out-of-wedlock sexual experiences into legal problems, these terms were unequivocally better than none at all.[92]

Conclusion

The sexual encounters recounted in Illinois' county courts in the second half of the nineteenth century vividly exemplify the fact that the Victorian idealization of female sexual reticence did not keep explicit sexual expression out of the public domain. The valorization of virginal young women, a central tenet of the nineteenth-century sexual ideology, increased women and their families' use of civil actions to mediate the consequences of out-of-wedlock intimacy, a phenomenon that guaranteed more rather than less dependence on public sexual conversations. Open sexual talk may have violated Victorian standards of social respectability, but ensuring out-of-wedlock intimacy incurred legal penalties meant that courts not only

92. *Allison v. People,* File No. 15212 (1867), Error to Woodfield—Brief of Defendants in Error 5–6.

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allowed such language, but, in effect, demanded it. In this way, newspapers' sensationalized reports of sexual trials might be masked as public service announcements, communities' prurient curiosity as episodes of chivalry, litigants' sexual storytelling as necessary elements of evidence gathering, and lawyers' bawdy humor as a particularly effective weapon within the legal arsenal.

As sites for obscenity production, as spaces where the processes of retelling and reimagining past sexual encounters gave these incidents new life, and as loci of local and state authority, courtrooms offered a curious blend of public amusement, oral erotica, and displays of public power at work.[93] Significantly, even as moral campaigns for sexual purity and against obscenity gained adherents, voyeuristic explorations of female sexual agency, male sexual aggrandizement, and bawdy humor flourished and commanded authority in an unlikely institutional setting: the local county courthouse. In an enigmatic twist of history, the very institutions that aimed to destroy nineteenth-century erotica thus produced a scurrilous sexual culture of their own making.

Most importantly, the courts' positions as regulatory bodies lent legitimacy, even respectability, to the contradictory explorations of female and male sexuality that flourished under its auspices. If seduction as a cultural concept was meant to discourage young women from coquettish kinds of behavior and to prevent men from preying upon young women, its applications within the nineteenth-century legal system do not seem to have had the desired outcomes. On the contrary, legal sexual regulation had a number of destabilizing effects. By authorizing men to boast of their sexual exploits, these suits gave conversations about naturally aggressive male sex drives fertile breeding grounds. Furthermore, civil sexual trials' very emphasis on the importance of female chastity encouraged the public to debate and to scrutinize female sexual desire, agency, and motives. The legal culture of sexuality thus used an odd medium to convey its impudent messages—seduction—a cultural concept perhaps most associated with the era's restrictive guidelines for female sexuality. These trials exposed and fueled bolder facets of feminine sexuality even as they popularized the more familiar archetype of sexual passivity and vulnerability.

93. See Grossberg, *A Judgment for Solomon,* especially pages 89–167, for a discussion of scandalous litigation as popular entertainment. See also Duggan, *Sapphic Slashers;* and Fox, *Trials of Intimacy*. Laura Edwards' *The People and Their Peace* sheds light on the informal workings of local law in the nineteenth-century South.

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