

# The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London

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**T**he *Proceedings of the Old Bailey*, published accounts of felony trials held at London's central criminal court, were a remarkable publishing phenomenon. First published in 1674, they quickly became a regular periodical, with editions published eight times a year following each session of the court. Despite the huge number of trial reports (some fifty thousand in the eighteenth century), the *Proceedings*, also known as the "Sessions Papers," have formed the basis of several important studies in social history, dating back to Dorothy George's seminal *London Life in the Eighteenth Century* (1925).<sup>1</sup> Using this source, along with manuscript judicial records, criminal biographies (including *Ordinary's Accounts*), polemical pamphlets such as Henry Fielding's *Enquiry into the Causes of the Late Increase of Robbers* (1751), and of course the satirical prints of William Hogarth, historians have constructed a picture of eighteenth-century London as a city overwhelmed by periodic crime waves that stimulated wide-ranging reforms of the policing and judicial system.<sup>2</sup> But how reliable are the *Proceedings*? Historians

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<sup>1</sup> Both because "Proceedings" is a short title of the actual publication and to avoid confusion with the manuscript sessions papers (depositions, examinations, etc.), this article uses the term "Proceedings" instead of "Sessions Papers," except when quoting from other sources. M. Dorothy George, *London Life in the Eighteenth Century* (1925; 2nd ed., London, 1966). In addition to the works cited below, some of the more recent studies that make substantial use of the *Proceedings* include Tony Henderson, *Disorderly Women in Eighteenth-Century London: Prostitution and Control in the Metropolis, 1730–1830* (London, 1999); Hans-Joachim Voth, *Time and Work in England, 1750–1830* (Oxford, 2000); and Dana Rabin, *Identity, Crime and Legal Responsibility in Eighteenth-Century England* (Houndmills, 2004).

<sup>2</sup> The literature on this subject is now enormous, but the most important works in this context are

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generally consider the *Proceedings* to present accurate, if often incomplete, accounts of courtroom proceedings.<sup>3</sup> Their growing use, prompted by their recent publication online, however, raises questions about their reliability and, by extension, the motivations for their original publication.<sup>4</sup>

Even in the 1780s, John Langbein reports, “when the sessions papers achieved their greatest detail, they were still omitting most of what was said at most of the trials they reported.”<sup>5</sup> The much shorter reports earlier in the century were even more abbreviated; events that took place at a session lasting between three and six days had to be compressed into short pamphlets of between eight and a few dozen pages. This was true even when a trial attracted considerable public attention. The trial of the poet and playwright Richard Savage for murder in 1727 lasted eight hours, but the account in the *Proceedings*, partly presented in the first person as verbatim testimony, is only 2,447 words, which could easily have been spoken in under an hour.<sup>6</sup> By the choice of what was included and what was omitted, the *Proceedings* could easily have presented a distorted view of events at the Old Bailey; they could also, of course, have been inaccurate in the events that they did report. But that is not the view of Langbein, the leading authority on Old Bailey trial reporting. After noting that “the greatest shortcoming of the sessions papers as historical sources is their tendency to compress the trials they report,” he goes on to say that “on the other hand, we need not worry about fabrication or invention of content.”<sup>7</sup>

This article will present a less sanguine view. Building on recent research on the value of the *Proceedings* as an historical source, including linguistic analysis that demonstrates the limitations of the shorthand system of note taking, it will be argued that, by their choice of what was included and what was left out, as well as by occasional distortions in what was reported, the *Proceedings* presented a partial account of crime and criminal justice to their readers.<sup>8</sup> This was first suggested some years ago by Ian Bell, who asserted, without providing much evidence,

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J. M. Beattie, *Crime and the Courts in England, 1660–1800* (Princeton, NJ, 1986), and *Policing and Punishment in London, 1660–1750: Urban Crime and the Limits of Terror* (Oxford, 2001); Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1991); Elaine A. Reynolds, *Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720–1830* (Stanford, CA, 1998); and John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford, 2003).

<sup>3</sup> For a recent study adopting this approach, see Deirdre Palk, *Gender, Crime and Judicial Discretion, 1780–1830* (Woodbridge, Suffolk, 2006).

<sup>4</sup> The Old Bailey Proceedings Online (hereafter OBP); <http://www.oldbaileyonline.org>. First launched in 2003 with the trials from 1714 to 1759, this Web site now includes the full run of published trials from 1674 to 1913.

<sup>5</sup> Langbein, *Adversary Criminal Trial*, 185.

<sup>6</sup> Samuel Johnson, *An Account of the Life of Mr Richard Savage* (London, 1744), 41; OBP (<http://www.oldbaileyonline.org>, consulted 27 October 2006), December 1717, Richard Savage, James Gregory, and William Merchant (t17271206-24).

<sup>7</sup> Langbein, *Adversary Criminal Trial*, 185, and “Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources,” *University of Chicago Law Review* 50, no. 1 (Winter 1983): 1–136, 25.

<sup>8</sup> Tim Hitchcock and Robert Shoemaker, “The Value of the Proceedings as a Historical Source,” OBP; Magnus Huber, “The Old Bailey Proceedings, 1674–1834: Evaluating and Annotating a Corpus of Eighteenth- and Nineteenth-Century Spoken English,” in *Annotating Variation and Change*, ed. Anneli Meurman-Solin and Arja Nurmi, eVARIENG: Studies in Variation, Contact and Change in English, vol. 1 (Helsinki, 2007), <http://www.helsinki.fi/varieng/journal/volumes/01>.

that reports in the *Proceedings* were “shaped, by selection, inclusion, exclusion, and emphasis” and “compose a particular version of the trials” compared to other versions “available in Augustan writing.”<sup>9</sup>

Some eighteenth-century Londoners also treated the *Proceedings* with skepticism. At a meeting of the Court of Common Council in November 1775, John Wilkes, at the conclusion of his term of office as lord mayor, complained bitterly of their inadequacy. According to the *Middlesex Journal*, he said “that the inaccurate manner in which the trials of the prisoners at the Old Bailey were delivered to the public, had been long and universally complained of; that the judges had often mentioned to him in his mayoralty that grievance; that the short-hand writer had hitherto been furnished with a power of publishing those trials without any control or revision; and that the learned and humane judge who tried the Perreaus had complained to him of the inexplicit manner in which those trials had been taken down, and that many parts of them were contrary to his own notes.”<sup>10</sup> Wilkes proposed, and the court agreed, to a change in the procedures by which the *Proceedings* were authorized: instead of being published under license of the lord mayor, they would henceforth be published under the authority of the recorder, the chief judge at the Old Bailey, and “authenticated under his name.”<sup>11</sup> As Simon Devereaux has demonstrated, this decision marked a significant escalation in the City of London’s efforts to regulate publication of the *Proceedings*, which continued three years later in 1778 with the condition imposed on the printer that the *Proceedings* should, in the words of the Committee for City Lands, “contain a true, fair, and perfect narrative of the whole evidence upon the trial of every prisoner, whether he or she shall be convicted or acquitted.” Almost immediately the length of the trial accounts increased dramatically, as the *Proceedings* provided, according to Devereaux, “longer, more detailed accounts of individual trials.”<sup>12</sup>

But what do these events tell us about the pre-1778 *Proceedings*? Were they as inaccurate and misleading as Wilkes complained? As Donna Andrew and Randall McGowen have shown, the 1775 forgery trials of Daniel and Robert Perreau and of Caroline Rudd were the subject of intense public interest, and arguments on both sides were caught up in contemporary controversies concerning government infringements on English liberties; it is not implausible that Wilkes’s complaints, which formed part of his campaign to ensure that the law was a publicly accessible instrument of impartial justice, were exaggerated for political effect.<sup>13</sup> But in fact Wilkes did have a point: given their relative brevity, the *Proceedings* were manifestly unable to provide complete transcripts of the trials they reported.

<sup>9</sup> Ian Bell, *Literature and Crime in Augustan England* (London, 1991), 73.

<sup>10</sup> *Middlesex Journal, and Evening Advertiser*, 16–18 November 1775.

<sup>11</sup> Journal of the Court of Common Council, vol. 66, fol., 271v (17 November 1775), London Metropolitan Archives (LMA).

<sup>12</sup> Journal of the Committee for City Lands, vol. 70, fol., 142v (13 November 1778), LMA; Simon Devereaux, “The Fall of the Sessions Paper: The Criminal Trial and the Popular Press in Late Eighteenth-Century London,” *Criminal Justice History* 18 (2002): 58, and “The City and the Sessions Paper: ‘Public Justice’ in London, 1770–1800,” *Journal of British Studies* 35, no. 4 (October 1996): 467–68; Langbein, *Adversary Criminal Trial*, 188.

<sup>13</sup> Donna Andrew and Randall McGowen, *The Perreaus and Mrs Rudd: Forgery and Betrayal in Eighteenth-Century London* (Berkeley, 2001), chap. 7; Devereaux, “The City and the Sessions Paper,” 485–88.

Citing Wilkes's intervention, in 1996 Simon Devereaux argued that, from the 1770s, the *Proceedings* sought to promote an image of "public justice" amenable to the City authorities.<sup>14</sup> The Wilkite concern to demonstrate that the courts protected citizens' rights was a new development in the late eighteenth century, but the concern to present a particular image of "public justice" was much older. Earlier in the century, the City exercised much less careful control over their publication. Nonetheless, trial reporting in the *Proceedings* was shaped to demonstrate that the courts were fully capable of dealing with the apparent threat posed by serious crime. Facilitated by the explosion of printed literature following the expiration of press licensing, the eighteenth century was a time of heightened public concern about crime; reports in the newspapers and criminal biographies, as well as the *Proceedings*, placed crime in the forefront of the public imagination. In this context the early *Proceedings* must be considered, in contrast to Wilkes's complaint, as an intervention in public debates about crime that was fundamentally sympathetic to the views of the City authorities.

Focusing on the period between the 1720s, the decade when the *Proceedings* first began to present trials as verbatim transcripts (rather than simply summarizing each trial), and 1778, the year the City imposed the requirement that the *Proceedings* provide a "true, fair, and perfect narrative," the evidence presented here is based both on the content of the *Proceedings* themselves and on a systematic comparison of trial accounts in the *Proceedings* with other reports of the same trials, in the rare cases where detailed alternative accounts are available.<sup>15</sup> Thirty trials, involving a wide range of crimes from theft and forgery to rape and murder, have been examined in detail, and these findings are supplemented by a comparison of reports in the early *Proceedings* with the often more detailed 1735 and 1742 editions of the *Select Trials* and occasional incidental references in other sources, particularly the Ordinary of Newgate's *Accounts*.<sup>16</sup> While we need to be attentive to the motivations that lay behind some of these alternative accounts, there is good reason to believe that many of them, particularly those in the *Select Trials*, were at least as, if not more, reliable than the *Proceedings*. Before considering what we can learn from these comparisons, we first need to consider the motivations of the shorthand writers and publishers who shaped the content of the *Proceedings*. And, having determined what image of criminal justice the selective accounts in the *Proceedings* presented to the public, we need to consider how readers responded to this publication in order to assess the impact of the *Proceedings* on public understandings of crime and criminal justice in eighteenth-century London.

<sup>14</sup> Devereaux, "The City and the Sessions Paper."

<sup>15</sup> A list of separately printed trial accounts is provided in *British Trials, 1660–1900: The Guide to the Microfiche Edition* (Cambridge, 1998). The OBP also provides evidence of "associated records" linked to the trials. All available additional trial accounts have been consulted.

<sup>16</sup> As James Oldham has demonstrated, newspapers also provide detailed accounts of some trials. However, it was only after 1775 that they stopped relying primarily on the *Proceedings* as the source of their reports (James Oldham, "Law Reporting in the London Newspapers, 1756–86," *American Journal of Legal History* 31, no. 3 [July 1987]: 177–206; Simon Devereaux, "From Sessions to Newspaper? Criminal Trial Reporting, the Nature of Crime, and the London Press, 1770–1800," *London Journal* 32, no. 1 [March 2007]: 3–6).



Although licensed by the City, the *Proceedings* were a commercial venture, published by some of the leading London printers.<sup>17</sup> The license was renewed annually, and the printer changed almost as regularly: between 1720 and 1778, the names of at least twenty-five different printers appear on the title pages. Typically, the *Proceedings* formed part of a printer's diverse portfolio of mainstream publications, which also included newspapers, magazines, sermons, and a variety of broadsides and pamphlets, including works by Jonathan Swift, Alexander Pope, and John Wilkes.<sup>18</sup> Judging by the printers' other publications (as well as their cost, discussed below), the *Proceedings* were intended for a literate middle- and upper-class newspaper-reading audience.

Printers relied on their copy from one or more note takers and shorthand writers who attended the trials at the Old Bailey. The inclusion of verbatim testimony suggests that some shorthand note taking was taking place as early as the 1720s, but little is known about the names and backgrounds of these writers before Thomas Gurney took over sometime in the 1740s. Gurney was appointed official shorthand writer for the court in 1748, and in 1750 he published an account of his system in *Brachygraphy: or, Short-Writing, Made Easy to the Meanest Capacity*, a remarkably successful text that remained in print for over a century. The book was frequently advertised in the back of the *Proceedings*, where Gurney as author was described as the "writer of these proceedings."<sup>19</sup> Using the *Proceedings* as an advertisement for his method, Gurney had a clear motive to provide accurate transcriptions.

It was the printers, however, who determined the final content, and in their need to sell copies, they were motivated by two, sometimes conflicting, concerns, giving the *Proceedings* what Michael Harris called a "split personality."<sup>20</sup> On the one hand, there was a clear intention to provide entertainment, evident both in the selection of content and in the advertisements for the *Proceedings* placed in other publications. The greater attention paid to murders, robberies, and thefts from the person (involving titillating details of prostitutes' interactions with their clients) was intended to make the *Proceedings* appeal to a wide audience.<sup>21</sup> Advertisements for the *Proceedings* called attention to their publication of the most "remarkable" trials. In March 1732, an advertisement in the sister publication, the *Ordinary's Account*, highlighted "the remarkable tryals of several street robbers (all young fellows) and three notorious housebreakers," as well as several murders, including "the tryal of Mr Atkinson for the murder of his mother, by flinging her

<sup>17</sup> Michael Harris, "Trials and Criminal Biographies: A Case Study in Distribution," in *Sale and Distribution of Books from 1700*, ed. Robin Myers and Michael Harris (Oxford, 1982), 10.

<sup>18</sup> The printers included Benjamin Motte, J. Humphreys, George James, J. Read, John Wilford, Thomas Cooper and his widow Mary, George Kearsley, John Wilkie, and Joseph Gurney. For information on all these printers, see Henry R. Plomer, *A Dictionary of Printers and Booksellers Who Were at Work in England, Scotland and Ireland from 1688 to 1725* (Oxford, 1922); and Henry R. Plomer, George H. Bushnell, and E. R. McC. Dix, *A Dictionary of the Printers and Booksellers Who Were at Work in England, Scotland and Ireland from 1726 to 1775* (Oxford, 1932).

<sup>19</sup> OBP, July 1749, advertisement (a17490705-1).

<sup>20</sup> Harris, "Trials and Criminal Biographies," 11–12.

<sup>21</sup> Beattie, *Policing and Punishment*, 374; Andrea McKenzie, "Lives of the Most Notorious Criminals: Popular Literature of Crime in England, 1675–1775" (PhD diss., University of Toronto, 1999), 236ff.

down the stairs” and “the trial of Robert Hallam, for the barbarous murder of his own wife, by flinging her out of the window, when big with child.”<sup>22</sup> Although, as reported below, the tone of reports of crimes involving sexual activity became more sober, such trials continued to be reported at length, and to include sexually explicit testimony, throughout this period. Even later in the century, advertisements for the *Proceedings* were still highlighting robberies, a gang of housebreakers, rape, murder, and an extortion case involving a threat to burn an estate.<sup>23</sup> But the *Proceedings* were not intended to be a mere scandal sheet. When a victim’s colloquial language was presented verbatim in 1727, the printer explained that this reportage was not included in order “to please the vulgar part of the town with buffoonry, this not being a paper of entertainment.”<sup>24</sup> The title page and layout of the *Proceedings* were intended to convey an image of authority and respectability, and the publisher periodically assured readers that the trial accounts were presented impartially and in as complete a form as possible.<sup>25</sup>

Overseeing the publisher was the lord mayor, who licensed the publication on an annual basis. The City’s control was exercised erratically, but there were sporadic efforts to ensure that the monopoly of publishing the *Proceedings* was maintained and that their content remained respectable.<sup>26</sup> When, in 1725, the *Proceedings* reported phonetically, for comic effect, the account an Irishman gave of his encounter with a prostitute, the printer and shorthand writer were summoned before the Court of Aldermen and forced to apologize for “the lewd and indecent manner of printing the last sessions paper.”<sup>27</sup> Although in subsequent years the accounts of sodomy and theft from the person cases were muted, this reprimand had only a limited impact.<sup>28</sup> Beyond decency, the City’s expectations concerning the content of the *Proceedings* were rarely spelled out before John Wilkes’s intervention in 1775. Since the recorder appears to have used the accounts of trials in the *Proceedings* when compiling his regular reports to the king on convicts who had been sentenced to death (which informed decisions concerning pardons), accuracy was clearly to be expected.<sup>29</sup> But beyond efforts to keep the cost down (and thereby ensure a wide audience), the City rarely formally intervened in the publication. Consequently, any censorship and reg-

<sup>22</sup> James Guthrie, *The Ordinary of Newgate, his Account of the Behaviour, Confession, and Dying Words of the Malefactors, who were Executed at Tyburn* (London, March 1732), 17.

<sup>23</sup> OBP, June 1778, advertisement (a17780603-1); *The Whole Proceedings of the King’s Commission of the Peace, Oyer and Terminer, and Gaol Delivery for the City of London . . . on Wednesday the 9th of December, 1778* (London, 1778), 40.

<sup>24</sup> OBP, July 1727, John Hutton (t17270705-14).

<sup>25</sup> OBP, December 1729, publisher’s announcement (f17291203-1); April 1742, Robert Rhodes (t17420428-33).

<sup>26</sup> OBP, June 1728, Francis Clifton (t17280605-57); *Repertories of the Court of Aldermen*, vol. 171, 10 February 1767, LMA.

<sup>27</sup> OBP, April 1725, Susan Grimes (t17250407-66); *Repertories*, vol. 129, 368, 376–77 (29 September and 7 October 1725), LMA; Harris, “Trials and Criminal Biographies,” 10.

<sup>28</sup> This conclusion is based on a comparison of trials reported in the *Select Trials* with accounts of the same trials in the *Proceedings*, where some of the more lurid details were omitted (*Select Trials for Murder, Robbery, &c. at the Sessions House in the Old-Bailey from 1720*, 4 vols. [London, 1742], vol. 2).

<sup>29</sup> Langbein, “Shaping the Eighteenth-Century Criminal Trial,” 17–18; Devereaux, “The City and the Sessions Paper,” 471ff.

ulation of the content of the *Proceedings* was essentially self-inflicted by the publisher. The fact that publishers had to renew their licenses annually suggests that they must have been conscious of the City's oversight, but the fact that it was frequently not renewed and another publisher was appointed instead suggests that City regulation was not very effective.

A more demanding master of the publishers was the paying readership, which needed to be sufficiently large to provide a return on the publisher's investment in purchasing his license from the lord mayor. The price and the advertisements contained in the *Proceedings* confirm that they were aimed at an essentially middle- and upper-class audience. In the 1720s each edition cost three or four pence, rising to six pence in the 1730s when the practice of dividing the account of each sessions into two parts further increased the cost for regular readers. Despite occasional temporary reductions imposed by the lord mayor (and efforts to prohibit the issuing of multiple parts), in the 1770s the price remained at six pence and the number of parts continued to grow, occasionally reaching as many as five for a single session.<sup>30</sup> These prices were roughly twice the cost of a daily or weekly newspaper. Since three pence represented a few hour's wages for a laborer, or the price of a few loaves of bread or quarts of beer, the *Proceedings* were not beyond the reach of the literate lower class, but their purchase would have required a significant sacrifice. The publisher's 1727 comment that the publication was not intended "to please the vulgar part of the town with buffoonry" suggests that he imagined a more respectable audience. The advertisements in the back of the *Proceedings* (which, with the exception of the ones for Gurney's manual for teaching yourself shorthand, disappear in the 1750s) suggest an audience of middle-class readers seeking to improve themselves. While the books advertised include the semipornographic *Onania; or, The Heinous Sin of Self Pollution* (price 2s), the overwhelming emphasis was on practical and spiritual improvement, including *A New Method of Studying History*, *The Singing Master's Guide to his Scholars* (2s 6d), *A Further Guide to Parish Clerks* (6d), and *The Negotiator's Magazine of Monies and Exchanges* (5s).<sup>31</sup>

The intended readership of the *Proceedings*, those whose purchases funded its publication, were London's property-owning classes—the men and women who were most likely to be the victims of the thefts dominating the Old Bailey's dockets. Thus, when the publisher justified the inclusion of the prosecutor's colloquial language in a 1727 trial, it was explained that "the reasons for writing this trial directly as it was spoke, is, that others may provide themselves with proper terms of speech before they appear at such a court of judicature"—potential prosecutors were warned that they should present their cases in respectable language.<sup>32</sup> It was the expectations of this imagined middle- and upper-class readership, together with those of the City authorities who kept an occasional eye on the content, that constitute the dominant imperatives that shaped the publishers' decisions about how to represent Old Bailey trials in the *Proceedings*.

<sup>30</sup> McKenzie, "Lives of the Most Notorious Criminals," 242–48.

<sup>31</sup> OBP, December 1729, advertisements (a17291203-1).

<sup>32</sup> OBP, July 1727, Hutton.



Only a small proportion of the courtroom testimony could actually be published. In the preface to the 1742 edition of a four-volume collection of *Select Trials*, it was explained that, although more substantial notes had been taken down in court, the constraints of space and time meant that the *Proceedings* published in earlier years had often been incomplete. Readers were told that, in this collection, “the most considerable part of the trials are immediately transcribed from original notes taken in court, and are now exhibited more fully and correctly than at their first appearance, when abridgements were frequently unavoidable, for want of room, and errors escaped unobserved, for want of leisure.”<sup>33</sup> But even after the length of the *Proceedings* was extended in 1729 to twenty-four pages (and later increased further), material still had to be left out. Occasionally, public interest in a trial was so intense that the publisher decided, with the approval of the lord mayor, to publish it “at large,” providing a full transcript in a separate publication. One such case was the trial of James Annesley, a claimant to a peerage, and Joseph Reading for the murder of Thomas Egglestone in 1742. The publisher’s justification for this separate publication provides clear insight into his normal working practices: “This method is taken to prevent any complaint which might have been made, in case so important a trial had been abstracted in such a manner as to have made it a part of the sessions paper.”<sup>34</sup> Normally, trials in the *Proceedings* were “abstracted,” which meant that the shorthand writer, knowing that not everything would be published, did not take down a full transcript of the evidence. When Thomas Gurney, the long-serving official shorthand writer, was asked at Elizabeth Canning’s perjury trial in 1754 to confirm the evidence she had given at a previous trial, he relied on his “minutes” to provide what he described as “the *substance* of . . . the evidence she gave in court.” As he later explained, his normal practice was not to write everything down: “It is my method, if a question brings out an imperfect answer, and is obliged to be asked over again, and the answer comes more strong, I take that down as the proper evidence, and neglect the other. . . . It is not to be expected I should write every unintelligible word that is said by the evidence.” Owing to the intense public interest in Canning’s trial, which demanded that every word was written down, the publisher was obliged to hire three shorthand writers (including Gurney) to transcribe the trial in order for it to be published in a separate 205-page book.<sup>35</sup>

As Gurney claimed, much of the material left out of the *Proceedings* was repetitive or insubstantial. When different witnesses testified to the same effect, this evidence was often either summarized or the repetition was simply omitted. Also frequently eliminated were the questions asked of witnesses, with the testimony given in responses simply woven into a single narrative. As the publisher explained in the September 1742 edition, when breaks were introduced in the prose where the questions occurred, the questions were still “omitted for brevity’s sake, the answers

<sup>33</sup> *Select Trials*, preface, i.

<sup>34</sup> OBP, July 1742, publisher’s note (o17420714-2).

<sup>35</sup> *The Trial of Elizabeth Canning, Spinster, for Wilful and Corrupt Perjury* (London, 1754), preface, 20, 104 (emphasis added). See also Gurney’s testimony about his note-taking methods in OBP, January 1758, Moses Henericus (t17580113-30), and May 1756, Charles Frederick Wirsanthall (t17560528-45).

denoting what they were.”<sup>36</sup> In subsequent years, reports included some, but not all, of the questions asked, with some of the testimony still reported in coherent paragraphs despite the fact that it was actually elicited by a series of questions.<sup>37</sup> Other trials were hastily summarized in just a few words, in what Langbein called “squib” reports, often because the case involved a petty theft or some other crime deemed to be of little interest to the readers.

These omissions might be deemed insignificant in terms of their impact on the ideological message of the *Proceedings*, but the consequent emphasis on testimony concerning more serious, often violent, crime did serve to emphasize the severity of the crime problem. Other omissions, such as the tendency of the *Proceedings* to provide fewer details of cases resulting in acquittals, served a more substantial ideological purpose. The report of a trial of William Hawke, popularly known as “The Flying Highwayman,” for highway robbery in 1774 contains nothing more than the charge against him and the word “acquitted.” Printed biographies of Hawke, however, provide evidence that a full trial took place, with testimony from the prosecutor and another witness, Hawke’s defiant defense, and the recorder’s summing up. The fact that these reports appear in two separate accounts, one more and one less sympathetic to Hawke, accords them a degree of veracity.<sup>38</sup> We do not know why the publisher omitted this evidence; perhaps he was unwilling to contribute to Hawke’s already substantial notoriety. In any case, this was part of a wider trend: on average, accounts of trials resulting in acquittals were shorter than those resulting in convictions. In a sample of 271 trials across the period, the median length of acquittals was 156.5 words, 40 percent fewer than the median length of convictions, which was 261 words.<sup>39</sup> By omitting many details of acquittals, the *Proceedings* focused attention on cases where defendants were convicted, thus conveying the message that criminality would be punished. However, as this evidence suggests, many trials resulting in acquittals were reported in some detail in the *Proceedings*, and indeed they needed to be if the *Proceedings* were to have any claim to comprehensiveness, since a substantial proportion—39 percent—of defendants between 1720 and 1778 were acquitted. Since another apparent aim of the *Proceedings* was to represent the court as an accessible and impartial source of justice, it needed to include accounts of both acquittals and convictions.

Even in trials that led to convictions, much of the witness evidence was summarized or omitted. By disproportionately omitting evidence for the defense, convictions were made to appear more justified than they had appeared in the courtroom. Because defendants at the Old Bailey were encouraged to stand trial even if they wanted to confess (so that the court could hear evidence that would help it assign an appropriate punishment), many defendants had very little to say in their defense. But even these short statements were sometimes left out of the *Proceedings*, probably because the publisher deemed them trivial or irrelevant.

<sup>36</sup> OBP, September 1742, Thomas Griffiths (t17420909-10).

<sup>37</sup> Compare OBP, December 1750, William Baker (t17501205-75) with *The Trial of William Baker, Sugar Baker*, 2nd ed. (London, 1751).

<sup>38</sup> *The Life of William Hawke, the Celebrated Highwayman*, 2nd ed. (London, 1774), 19; *A Genuine Account of the Life, Robberies, Trial and Execution of William Hawke* (London, 1774), 24–25.

<sup>39</sup> OBP, January sessions of 1720, 1730, 1740, 1750, 1760, and 1770. Acquittals owing to the fact that the prosecutor was not present or no evidence was given and trials where the defendant pleaded guilty are not included in these calculations.

Statements in the *Proceedings* that “the prisoner had nothing to say in his defense” were often inaccurate in the sense that we learn from other sources that, in one trial, the defendant told the court that “he had no witnesses today, expecting my trial not till Friday” and in another the defendants said “that they had no witnesses, and that the witnesses [against them] swore false.”<sup>40</sup> The publisher may have deemed such statements to be unimportant, but had they been published, they might have made the convictions look less reliable.

When the defense case was more substantial, reports were still often significantly abridged, much more so than was the case for the evidence for the prosecution. The account in the *Proceedings* of the trial of Catherine Hayes for murdering her husband with Thomas Billings and Thomas Wood in 1726 is 1,655 words, of which 1,593 were devoted to the prosecution. Whereas the testimony for the prosecution was presented as verbatim (though we can see from the *Select Trials* that some testimony was omitted), Hayes’s defense case was presented in the *Proceedings* very briefly in summary form, with some crucial testimony left out. According to the *Select Trials*, where her reported defense was almost twice as long as in the *Proceedings*, her testimony included this statement: “[My husband] and Billings had been playing at cards, and fell out about the game, and, I bidding Billings to tell the pips of the cards, my husband flew into a passion and beat me, which Billings very much resented, and from that time resolved to murder him; but I had no hand in it; for, when it was done, I was in the next room.” In contrast, the *Proceedings* omitted the provocation and reported this simply as “she knew there was a design against his life, and that she was in the next room when the murder was done, but said that she had no hand in it.”<sup>41</sup>

In summarizing defense testimony, the *Proceedings* occasionally explicitly adopted the point of view of the prosecution. According to the *Select Trials*, in defending himself in his trial for robbery in 1723, Humphrey Angier claimed he did not know Dyer, the alleged accomplice turned king’s evidence who testified against him, and accused Dyer of swearing only “for the sake of the reward.” Angier told Dyer: “You’ll swear anything, or else you’d never have sworn to this robbery, when you know in your conscience (if you have any) that neither you nor I could be guilty of it; for, at that time, we were both in Newgate together, upon suspicion of another robbery.” In summarizing these statements, the *Proceedings* only reported, in disparaging terms, that “the prisoner deny’d the fact, or that he had any acquaintance with the prosecutor at that time; but being noisy, and too outrageous, so far over shot himself, as strenuously to affirm, that he nor Dyer, the evidence, could not be in that robbery, because they were at that time both in custody, having been taken up on suspicion of another robbery.”<sup>42</sup> The *Proceedings* observed that Angier had been caught contradicting himself. In other cases, the *Proceedings* even more directly expressed the view of the court. A comment at the end of a trial for conspiracy to make a false charge of sodomy, questioning a defendant’s claim that the prosecutor had confessed he had committed sodomy with another man, “it appeared highly improbable, that any one in his senses should confess such things to strang-

<sup>40</sup> Langbein, “Shaping the Eighteenth-Century Criminal Trial,” 24.

<sup>41</sup> OBP, April 1726, Katharine Hays [Catherine Hayes] (t17260420-42); *Select Trials*, 3:14.

<sup>42</sup> OBP, August 1723, Humphrey Anger [Angier] (t17230828-69); *Select Trials*, 2:1–4.

ers,” appears in the *Proceedings* as a simple factual statement, but it was attributed to the judge in the *Select Trials*.<sup>43</sup>

Even after the *Proceedings* adopted a larger format and included more verbatim testimony in 1729, some key defense testimony was still omitted, particularly when it directly challenged the prosecution evidence. Isaac Broderick, a schoolteacher convicted in 1731 of sexually assaulting two of his male pupils, aged ten and eleven, on what he alleged was a malicious prosecution, complained forcefully of “the utmost partiality in the publication of the tryal” as it appeared in the *Proceedings*. He complained in his separately published *Appeal to the Public* that the trial report omitted his interjection that those who testified against him were perjured, the fact that he had offered to provide witnesses to that fact, and his insistence “that the whole [prosecution] was a plot of Mr W——, to gratify his own malicious temper, and raise a friend of his upon my ruin. . . . When I earnestly insisted, some creditable witnesses might be called to the proof, [the judge said] Mr W—— was entirely out of the case.” The *Proceedings* did state that Broderick had described the witnesses against him as “persons of so vile a character, that their good word was a scandal, and that the prosecution was malicious, being carried on by his enemies,” but it omitted to give these further details of his testimony.<sup>44</sup> Broderick was attempting to restore his battered reputation and may not be entirely credible, but similar evidence of a failure to report defense evidence that undermined prosecution cases can be found in other sources. Some of the defense testimony from the trial of two “cutters” (journeymen weavers who destroyed silk in master weavers’ looms as part of a labor dispute in 1769) was omitted from the *Proceedings*, effectively making the prosecution case appear stronger in the *Proceedings* than it did in court. Notes taken by prosecution lawyers at the trial of John Doyle and John Valline reveal that one witness testified that Mrs. Poor, whose house they had allegedly entered in order to carry out the attacks, had said that “she knew Doyle, but not [that] he was one of the cutters,” and another reported that she had said of the attacks “that she was not frightened, for the thing they were about would do her good. . . . She knew there were friends among them that would not hurt her.” While confirming that these attacks had taken place, this testimony presented them as less violent and threatening than the prosecution had argued, and it cast doubt on whether Doyle had actually participated. Since the two men were convicted and hanged, despite widespread public support for their cause, it is perhaps not surprising that the *Proceedings* presented them as more certainly guilty than had appeared in the courtroom.<sup>45</sup> Defense testimony was particularly likely to be omitted when the defendant acted defiantly and treated the court with contempt. According to the Ordinary of Newgate, when Patrick Dempsey was on trial for robbery in 1749, he acted in an “insolent and audacious” manner and “would have taken the whole of the robbery upon him, declaring Edward [Dempsey, his accomplice] not at all concerned.” But

<sup>43</sup> OBP, January 1725, Benjamin Goddard, Richard Rustead (t17250115-65); *Select Trials*, 2:181.

<sup>44</sup> Isaac Broderick, *An Appeal to the Public* ([London], 1731), 29–31, 40; OBP, May 1730, Isaac Broderick (t17300513-27).

<sup>45</sup> Lawyers’ notes (written on the back of the brief they prepared for the trials) concerning the testimony of defence witnesses Thomas Riley and Dennis Donovan, The National Archives: Public Record Office (TNA: PRO), TS 11/818/2696; OBP, October 1769, John D’Oyle [*sic*] and John Valline (t17691018-22).

the *Proceedings* fail to report any defense at all, simply concluding after the prosecution testimony with the words “Both guilty, death.”<sup>46</sup>

It could be argued that the publisher paid less attention to defendant testimony because defendants were not allowed to testify on oath (to spare them the incentive to commit perjury) and therefore their testimony was thought to be less reliable, but the case of the “cutters” suggests that the tendency to leave out substantial portions of defense testimony also applied to defense witnesses, who did testify on oath after 1702.<sup>47</sup> Character witnesses, a key part of the defense since the courts treated criminal trials as sentencing hearings as well as tribunals for determining guilt, were also frequently omitted or hastily summarized in the *Proceedings*. The report of Thomas Wright’s trial for sodomy includes the testimony of one male character witness, but it omits that of two women who, according to the *Select Trials*, deposed “that they lived in the same house with the prisoner; that his apartment was below, and theirs above; that indeed they had sometimes heard musick and merry-making; but knew nothing of any such practices as had been sworn against him, and that he behaved himself like a sober man, and was a very good churchman.”<sup>48</sup> This tendency to severely abridge character evidence continued later in the century: the full *Proceedings* report of the defense case in William Baker’s 1751 trial for forgery was that “there were 13 gentlemen of great character and honour, spoke well of him, as to his substance and honesty, till this affair broke out.” A separate published account gives the statements of each of the thirteen men.<sup>49</sup>

The cumulative effect of the frequent omission of all or part of the defense case in trial reports was to weaken that case in the eyes of readers of the *Proceedings*. Consequently, the case for the prosecution was made to look stronger, serving, in the process, to justify to the wider public the convictions and punishments meted out in the Old Bailey courtroom (and in cases of acquittals, ensuring that the defendant would remain under suspicion). The same reasoning no doubt explains why convicts’ speeches following convictions for capital offences rarely appear in the *Proceedings*. Convicts had the right to address the court before sentencing, but it is likely that the publisher did not wish to give additional publicity to the convict; nor did he necessarily want to show the court failing to respond to pleas for mercy. Some convicts used this opportunity to argue with the verdict. According to the *Ordinary’s Account* of John Hawkins’s trial for highway robbery, following his conviction, he “put on a deportment surprizingly odd and bold, arraigning the court and the jury alternately, and discovering (as he fancy’d) several irregular proceedings at his trial.”<sup>50</sup> Even when convicts were repentant, the speech was not reported. Following the conviction of the highwayman William Hawke in 1774, according to a published account of his life, “his general deportment was highly expressive of grief [sic], terror, and repentance. . . . He pleaded with

<sup>46</sup> OBP, February 1750, *Ordinary’s Account* (oa17500207), and December 1749, Edward Dempsey and Patrick Dempsey (t17491209-21); Andrea McKenzie, “From True Confessions to True Reporting? The Decline and Fall of the *Ordinary’s Account*,” *London Journal* 30, no. 1 (2005): 58–59.

<sup>47</sup> Langbein, *Adversary Criminal Trial*, 52. I am grateful to David Miers of the University of Cardiff for the point about defendant testimony.

<sup>48</sup> OBP, April 1726, Thomas Wright (t17260420-67); *Select Trials*, 2:367.

<sup>49</sup> OBP, December 1750, Baker; *Trial of William Baker*, 15–16.

<sup>50</sup> Thomas Purney, *The Ordinary of Newgate, His Account* (London, May 1722), 3–4.

great earnestness for mercy, urging the pitiable situation to which his catastrophe would reduce an amiable wife and two young innocents.”<sup>51</sup> Nonetheless, Hawke was sentenced to hang, which probably explains why the speech was not published.



If the omission of significant parts of the case for the defense and the limited reporting of acquittals in the *Proceedings* had the effect of validating guilty verdicts, the other significant type of trial evidence omitted, legal arguments, further served to make verdicts appear unproblematic. As John Langbein and others have demonstrated, lawyers began to appear in felony trials in the eighteenth century, first for the prosecution and, from the 1730s, for the defense, and their participation in a minority of trials led to a gradual but fundamental alteration in the way they were conducted, turning them from an “altercation” between the victim and the defendant to an “adversarial” contest between lawyers.<sup>52</sup> Readers of the *Proceedings*, however, encountered little evidence of this since opening statements by counsel, cross-examinations, and arguments with the judge were routinely omitted.<sup>53</sup> That the shorthand writer did not normally even take down counsel’s speeches is evident from the trial of Edward Clark, tried for murder in 1750. The fact that this killing resulted from a duel between two gentlemen meant that the case attracted considerable public attention, and the decision was taken to publish the trial “at large.” In this separately published pamphlet, the publisher explained that originally “it not being intended to print this trial so fully, we were so unfortunate as not to take the speeches of the gentlemen of counsel for the prisoner, at the time of the trial; but Mr Serjeant Hayward’s [one of the lawyers for the crown] happened to be taken in shorthand; he hath permitted it to be printed, and from his observations some part of their defense may be collected.”<sup>54</sup> As this last comment suggests, publishers appear to have believed they needed to obtain permission from counsel before publishing their speeches.<sup>55</sup>

Early in the period, even the very presence of counsel was often not reported: we only learn from the *Select Trials* that, at the trial of Catherine Hayes, “the council for the king (who by his majesty’s order carried on the prosecution) . . . opened the indictment.”<sup>56</sup> But even in 1750 reporting of legal arguments was heavily abridged. Although the account of William Baker’s forgery trial includes evidence that witnesses were questioned and cross-examined, who did the questioning is not specified, and there is only one brief reference to the presence of lawyers, a statement by “counsel for the crown” at the end of the trial: “Thus we think we have proved the forgery, and the publishing it.” In contrast, a separate

<sup>51</sup> *The Life, Trial, etc. of William Hawke, the Notorious Highwayman* (London, 1774), 23–24.

<sup>52</sup> Langbein, *Adversary Criminal Trial*; J. M. Beattie, “Scales of Justice: Defence Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries,” *Law and History Review* 9, no. 2 (Autumn 1991): 221–67; Stephen Landsman, “The Rise of the Contentious Spirit: Adversary Procedure in Eighteenth-Century England,” *Cornell Law Review* 75, no. 3 (March 1990): 498–609.

<sup>53</sup> Langbein, *Adversary Criminal Trial*, 185–87, and “Shaping the Eighteenth-Century Criminal Trial,” 21–26.

<sup>54</sup> *Trial of Capt. Edward Clark* (London, 1750), 18.

<sup>55</sup> See also OBP, July 1759, Samuel Scrimshaw and John Ross (t17590717-1).

<sup>56</sup> *Select Trials*, 3:13; OBP, April 1726, Hays [Hayes].

published account, published “by order of the Lord Mayor,” identifies the lawyers for both sides (and specifies when they asked questions) and includes long opening statements by counsel for the prosecution, a long speech from counsel for the defense concerning points of law, and the reply from the prosecution. Because Baker’s only testimony was to say, “I am a stranger to cases of this nature; I have acquainted my counsel with my case, and refer it to them,” these omissions, combined with the failure to report the testimony of his character witnesses, meant that the *Proceedings* essentially failed to report the entire defense case in this trial.<sup>57</sup> It is possible that the publisher omitted such detailed legal arguments simply because he thought readers would not be interested. Nonetheless, omissions like this were ideologically significant. The *Proceedings* represented justice as unproblematic, implying that the verdicts resulted directly from the evidence and were unaffected by legal arguments and technicalities; thus, they minimized any doubt that might be cast on trial outcomes.

The judge’s summing up at the conclusions of trials was also rarely reported in the *Proceedings*.<sup>58</sup> Such statements frequently repeated evidence already presented, so we can understand why publishers left them out. But judges also expressed views about the defendant’s guilt or innocence. It is possible that such comments were omitted because publishers thought that the permission of the judge was needed before his statements could be published and the haste with which the *Proceedings* were published made this difficult.<sup>59</sup> However, if the publishers had been determined to include these comments, they should have been able to make the necessary arrangements, were it not for the fact that their overriding concern appears to have been to present trials as simple confrontations between the victim and the accused and judges’ attempts to influence the jury undermined that story. Moreover, such judicial partisanship appeared to contradict the principle, established through hard struggle during the Restoration, of jury independence from interference by the judiciary.<sup>60</sup> Without resorting to coercion, eighteenth-century judges continued to give a strong steer to juries in some cases, but these interventions (whether successful or not) were not reported in the *Proceedings*. According to a report sympathetic to the defendant, the judge at Thomas Carr’s trial for robbery in 1737 treated him favorably, giving him a summing up which “ran very much in his favour.” When the jury nonetheless returned a guilty verdict, that judge was no longer present, and his replacement (who had heard the charge) “expostulated with the jury thereupon,” but the jury held its ground. The report of this trial in the *Proceedings* makes no mention of the judges’ interventions, and the resulting conviction appears to follow logically from the evidence presented. Carr was sentenced to death and executed, and the *Proceedings* served to justify that outcome.<sup>61</sup>

Even during the 1770s, when Joseph Gurney took over as reporter and the *Proceedings* started to include more of the judge’s comments, the summing up

<sup>57</sup> *The Trial of William Baker*, 13; OBP, December 1750, Baker.

<sup>58</sup> See also Langbein, “Shaping the Eighteenth-Century Criminal Trial,” 21–23.

<sup>59</sup> Langbein, *Adversary Criminal Trial*, 187.

<sup>60</sup> Langbein, *Adversary Criminal Trial*, 323–24; Thomas A. Green, *Verdict according to Conscience: Perspectives on the English Criminal Jury, 1200–1800* (Chicago, 1985), 236–49.

<sup>61</sup> *Some Observations on the Trial of Mr Thomas Carr* (London, 1737), 5–6; OBP, October 1737, Thomas Carr [Carr] and Elizabeth Adams (t17371012-3).

was rarely included.<sup>62</sup> Despite the very long report of William Dodd's trial for forgery in 1777, no doubt prompted by intense public interest in the case, there was no report of the summing up. In contrast, a separate account, published by one of Dodd's supporters, devoted ten pages to this speech. The judge's forthright view of Dodd's guilt prompted a complaint from the anonymous author, which perhaps explains why the *Proceedings* were so reluctant to publish judges' directions to the jury: "Judges should be more delicate in what they throw out on these occasions, [since] there are so few instances of a jury once in possession of a judge's opinion, returning a contrary verdict." Dodd was duly convicted and hanged, despite a huge public campaign for a pardon, and no judge would have wanted to be publicly accorded the responsibility for this execution.<sup>63</sup>

Just as inclusion of the participation of lawyers and the judge's summing up would have undermined the impression that verdicts had been arrived at in a straightforward manner, so too would the reporting of any information about how the jury arrived at its verdict: how long it took the jurors to reach it and whether they returned during their deliberations to ask any questions. According to an alternative account of the trial of John Hawkins and George Simpson for highway robbery in 1722, the jury was uncertain whether it could credit prosecution attempts to discredit a receipt by William Fuller that he produced as evidence for an alibi: "After staying out about an hour, the jury returned into court without agreeing on a verdict, saying they could not be convinced that Fuller's receipt was not genuine, merely on account of the different colours of the ink." In response, the court, taking the side of the prosecution, questioned "whether Fuller's single testimony ought to be of equal validity with that of all the opposing parties. Hereupon the jury went out of court, and on their return, gave a verdict of 'guilty' against both the prisoners." This exchange did not appear in the *Proceedings*, which concluded more definitively: "The prisoners insisted on their innocence; but the evidence being positive, and fortified by many concurrent circumstances, the jury found them both guilty of the indictment."<sup>64</sup> Since both were sentenced to death, the publisher chose to cover up the jury's difficulties in arriving at its verdict.

The overall impact of the omission from the *Proceedings* of the vast majority of evidence concerning the participation of lawyers and judges before 1778 was to simplify the trial stories by giving them coherent narratives and making the outcomes appear logical and justified. Since far more attention was paid to the 61 percent of trials that led to a full or partial conviction and reports of the case for the defense were severely pruned, the message of the *Proceedings* was clear: crime was a significant problem, but the courts did their best, while ensuring trials were conducted fairly, to punish the guilty. When a convicted murderer, Foster Snow, published an account of his trial in a newspaper in 1725 that differed from that provided in the *Proceedings*, the printer was summoned to the Old Bailey and censured. The court complained that the report in the *Post-Man* represented "his case very different from what it appear'd to be, upon the evidence given at his

<sup>62</sup> Langbein, *Adversary Criminal Trial*, 188.

<sup>63</sup> *A Full and Circumstantial Account of the Trial of the Rev. Doctor Dodd* (London, [1777]), 32–41, 55; OBP, February 1777, William Dodd (t17770219-1).

<sup>64</sup> *Tyburn's Worthies, or the Robberies and Enterprizes of John Hawkins and George Simpson* (London, [1722]), 23; *The Malefactor's Register*, 5 vols. (London, [1779]), 1:293; OBP, May 1722, John Hawkins and George Simpson (t17220510-3).

trial, thereby to extenuate his own guilt, and reflect upon the justice of the nation,” thereby directly undermining the purpose of the *Proceedings*.<sup>65</sup> The printer’s use (from the 1730s) of cross-referencing to earlier trials to indicate when defendants or their witnesses had previously appeared at the Old Bailey contributed to this image of criminal guilt by suggesting that such people were members of a criminal fraternity that needed to be brought to justice. Evidence of previous charges could not be mentioned in court, but, by including it in the *Proceedings*, the publisher made defendants appear more culpable than they had appeared to the courtroom audience.<sup>66</sup> It must be noted, however, that not all omissions from the *Proceedings* had the same ideological effect: the systematic failure to document the role of judges and counsel sometimes had the effect of making justice look more problematic by not, for example, publicizing efforts that were made to ensure a fair trial. In the murder trial of Elizabeth Brownrigg, convicted of the horrific mistreatment of a young female servant, both the judge and prosecution counsel informed the jury that, in reaching their decision, they should ignore the immense public hostility to Brownrigg, but these speeches were not included in the *Proceedings*.<sup>67</sup> Nonetheless, the overwhelming weight of the selective reporting in the *Proceedings* served to justify the guilty verdicts they reported.



This was how crime and criminal justice were represented, but what did readers actually conclude from reading the *Proceedings*? Historians have become increasingly aware in recent years that the impact of printed literature was not solely determined by textual content but was also influenced by the sociocultural context in which a book was read and the highly variable individual responses of the readers themselves. While some valuable research on this topic has been completed, this is a topic for which the available sources outside the text are extremely limited.<sup>68</sup> Only scattered incidental references can be located to help us identify the readership of the *Proceedings* and determine its responses, but this evidence strongly suggests that at least some readers were aware of the limitations of its reporting and the ideological messages it contained.

Although the target audience of the *Proceedings* was the property-owning middle

<sup>65</sup> OBP, October 1725, Foster Snow (t17251013-25), and December 1725 (o17251208-1).

<sup>66</sup> Langbein, *Adversary Criminal Trial*, 143–44, 190–96. For an example of this practice, see the footnotes to the testimony of Gilbert Campbell and Julian Brown in OBP, July 1735, Thomas Gray alias MacCray alias MacCreagh (t17350702-22).

<sup>67</sup> Joseph Moore, *The Ordinary of Newgate’s Account of the Behaviour, Confession and Dying Words of Elizabeth Brownrigg* (London, 1767), 6; OBP, September 1767, James Brownrigg, Elizabeth his wife, and John their son (t17670909-1).

<sup>68</sup> James Raven, “New Reading Histories, Print Culture and the Identification of Change: The Case of Eighteenth-Century England,” *Social History* 23, no. 3 (October 1998): 268–87; Ian Jackson, “Approaches to the History of Readers and Reading in Eighteenth-Century Britain,” *Historical Journal* 47, no. 4 (December 2004): 1041–54. For an analysis of the readers of erotica, see Karen Harvey, *Reading Sex in the Eighteenth Century* (Cambridge, 2004), chap. 1. For the varied reading practices adopted by individual readers, see John Brewer, “Reconstructing the Reader: Prescriptions, Texts, and Strategies in Anna Larpent’s Reading,” in *The Practice and Representation of Reading in England*, ed. James Raven, Helen Small, and Naomi Tadmor (Cambridge, 1996), 226–45; and Robert DeMaria Jr., *Samuel Johnson and the Life of Reading* (Baltimore, 1997).

and upper classes, the *Proceedings* were also read (or heard) by lower-class Londoners, including those accused of crimes. When conducting his defense when on trial for highway robbery in 1723, William Duce, whose education was described as “very mean,” attempted to discredit prosecution evidence from his alleged accomplice, John Dyer, by saying, “it’s well known that he has been an evidence before—here’s the sessions paper that proves it.”<sup>69</sup> At a 1759 trial for street robbery, Mary Brown, a defense witness, referred to having heard “the sessions paper read” in the presence of Mary Hawkins, the wife of a coalheaver, in the context of a discussion with some women in a pub about having been pursued by the “thief-takers.”<sup>70</sup> John Graves, an accomplice to a robbery and a glazier and friend of John Viner, an apprentice to a copper plate music printer, was talking with his friends while playing at skittles in a pub one day in 1774 when the conversation turned to the robbery of a carpenter, for which the culprit had been hanged. Graves said, “I should like to read the sessions paper about it.” Viner replied, “if we would go to his master he would lend it us for nothing.”<sup>71</sup>

Other incidental references, particularly from the end of our period, suggest a more respectable readership. In a trial from 1742, a laundress referred to the *Proceedings* as something gentlemen, or the acquaintances of gentlemen, read. She had taken in a gentleman’s linen sheet to wash, and it was stolen. At the trial, she was asked to identify the owner of the sheet, and she replied, “I do not know whether it is proper to mention whose sheet it is. I was afraid of offending the gentleman that owns it, by having his name put in the sessions paper. He is out of town.”<sup>72</sup> Like newspapers, the *Proceedings* were read in coffee houses by their predominantly middle- and upper-class patrons. In July 1772, Captain Robert Jones was convicted of committing sodomy with a thirteen-year-old boy. According to the memoirist William Hickey, soon after the *Proceedings* were published, “a gentleman who was perusing it in a public coffee room expressed his astonishment and his disgust thereat to another person who sat near, but was wholly unknown to him.” The gentleman’s complaint was that he believed one of the prosecution witnesses had committed perjury. When news of this reached the duke of Richmond, he “sent for the trial” to find out more.<sup>73</sup>

As these reports of readings suggest, many readers treated the accounts of trials in the *Proceedings* as they were intended to be read: as accurate and authoritative. Elizabeth Canning’s successful prosecution of two gypsies for theft after they allegedly kidnapped her in 1753 was immensely controversial and led to the publication of several pamphlets expressing contradictory views concerning the truth of Canning’s story.<sup>74</sup> But, despite investigating every aspect of the case in detail and frequently alleging that their opponents introduced “falsities,” the report of

<sup>69</sup> *Select Trials for Murders, Robberies, Rapes . . . at the Sessions-House in the Old-Bailey*, 2 vols. (London, 1734–35), 1:341.

<sup>70</sup> OBP, January 1759, Sarah Young alias Cayton (t17590117-10).

<sup>71</sup> OBP, September 1774, William Norbury and John Viner (t17740907-1).

<sup>72</sup> OBP, September 1742, Mary Crosby (t17420909-17).

<sup>73</sup> Alfred Spencer, ed., *Memoirs of William Hickey*, 4 vols. (London, 1913–25), 1:313–14; OBP, July 1772, Robert Jones (t17720715-22).

<sup>74</sup> Judith Moore, *The Appearance of Truth: The Story of Elizabeth Canning and Eighteenth-Century Narrative* (Newark, 1994), chap. 4.

the trial in the *Proceedings* was treated by every author as reliable.<sup>75</sup> Since the case had attracted so much attention, it is likely that the publisher devoted extra resources to ensuring the account was complete (though it still summarized some of the evidence and omitted the judge's summing up); at almost sixteen columns of text, the report is far longer than that of most trials. But, when Canning was tried for perjury the following year, the publisher adopted a different tactic: a summary report was provided in the *Proceedings*, together with a promise that a separate pamphlet would be published to provide the trial "at large," "faithfully transcribed," and checked by three shorthand writers. This 205-page pamphlet was not published for several months, and in the mean time, as debate raged between Canning's supporters and critics over the merits of her conviction, readers sharply criticized the initial report of the trial in the *Proceedings*. According to one anonymous author, "it may be asked, whether the publication of [the trial] in the broken mangled and imperfect manner in which it is begun, and will likely be continued, is not a suppression, and therefore a perversion of the evidence?"<sup>76</sup>

The *Proceedings* were not perceived as infallible. Many Londoners read the *Proceedings* carefully and were not reluctant to complain about errors and omissions. A published letter commenting on the murder trial of John Stanley in 1723 noted that vital evidence for both the prosecution and the defense had been "left out of the sessions paper."<sup>77</sup> A trial omitted in 1738 was inserted in the next edition, and the publisher hastened to assure readers that it had not been left out "by design, or with any sinister view whatsoever."<sup>78</sup> As this implies, some readers thought the choices about omitted material *were* shaped by sinister motives. Isaac Broderick certainly thought that the omissions and misrepresentations in the report of his trial for attempted sodomy were made deliberately in order to protect a prominent prosecution witness (a certain "Mr W——") who had perjured himself, and he suggested that the shorthand writer had been bribed: "He gets his bread, it seems, by such practices."<sup>79</sup> Other readers were less cynical but still cautious. An anonymous pamphlet about a murder case published in 1761 compared the defense testimony given at the coroner's inquest with that presented at the Old Bailey. While both published accounts are assumed to be accurate, the author does treat the *Proceedings* with some caution. In noting that one witness was not called to testify at the Old Bailey, the qualifier is added, "at least it does not appear that she was so called upon."<sup>80</sup>

Even as reports in the *Proceedings* lengthened as the publisher sought to meet increasingly demanding reader expectations, there were still complaints about omitted material. While the *Gentleman's Magazine* sometimes treated the *Proceedings* as authoritative, it published at least two complaints about inadequate

<sup>75</sup> See, e.g., *The Arguments on Both Sides the Question in the Intricate Affair of Elizabeth Canning* ([London], 1753).

<sup>76</sup> *A Collection of Several Papers Relating to Elizabeth Canning* (London, 1754), 3; OBP, April 1754, Elizabeth Canning (t17540424-60); *Trial of Elizabeth Canning*.

<sup>77</sup> *The Life of Mr John Stanley* (London, 1723), vi.

<sup>78</sup> OBP, October 1738, Thomas Crosswhite (o17381011-1). See also the note to OBP, February 1742, Robert Rhodes (t17420428-33).

<sup>79</sup> Broderick, *Appeal to the Public*, 30.

<sup>80</sup> *A Short View of the Defence, etc. Relative to the Supposed Murder of Miss Bell at Haddock's Bagnio* [London, 1761], 2.

reporting in the 1760s. In the first, a sixteen-column report of a forgery trial in the *Proceedings* was condemned as “a very imperfect account” because a key legal point was inadequately explained, and, in the second, the magazine complained that the lengthy account of a trial for clipping coins in the *Proceedings* failed to report fully the defense case: “upon what they built [the] defense does not appear.”<sup>81</sup> Readers were thus aware of the tendency toward selective reporting in the *Proceedings*. Two years later, public interest in the 1771 trial of the murderers of Daniel Clarke, an informer who was killed in a horrific outburst of mob violence, led the publisher to provide a full, forty-page-long transcript in the *Proceedings*. As he explained, the fact that one of the men convicted of the murder had protested his innocence to his death “has occasioned several letters to the publisher hereof, desiring the trial may be printed without any abridgement, that the public may be able to form a proper judgement.”<sup>82</sup> Yet the uncompromising demands of speed and economy meant that, even when full transcripts were provided, the publisher found it difficult to achieve the standards of accuracy expected by readers. Following the change in the procedures by which the *Proceedings* were authorized by the City in 1775, reader complaints persisted. After the publication of the trial of Margaret Rudd later that year, the *Gentlemen’s Magazine* complained that “as the sessions paper is now placed upon a more respectable footing than formerly . . . it is certainly much improved, but not yet purged of all its usual inaccuracies.” This article went on to identify a minor inconsistency in the report of Rudd’s trial, which actually may have been a discrepancy in the testimony given rather than in how it was reported.<sup>83</sup>

Not all readers, however, thought that accuracy was the most important quality to be achieved in the *Proceedings*. Some readers sought entertainment: early in the century, the Swiss visitor B at Louis de Muralt described the *Proceedings* as “in the opinion of many people one of the most diverting things a man can read in London.”<sup>84</sup> Others treated reading as an improving and moral activity, and some thought that the *Proceedings* could be used to teach potential offenders the consequences of vice.<sup>85</sup> Samuel Richardson wrote, in his *Apprentice’s Vade Mecum* in 1734, that young men could “find every month recorded in the sessions paper” evidence of “the fatal consequences” of drunkenness.<sup>86</sup> Given that almost two-fifths of those tried at the Old Bailey in the eighteenth century were acquitted, it is significant that he was so confident that readers would obtain a positive moral message from the *Proceedings*. But that is how they were often viewed: a biographer of the robber William Cox in 1773 observed that, in reading the *Proceedings*, it was remarkable to discover “the number of criminals and the variety of felonies and offences with which they are charged . . . of which most of them are convicted.” This was not necessarily the conclusion observers who attended trials in

<sup>81</sup> *Gentleman’s Magazine*, vol. 35 (1765), 475; vol. 36 (1766), 82; vol. 37 (1767), 515.

<sup>82</sup> OBP, July 1771, Henry Stroud, Robert Cambell, Anstis Horsford (t17710703-59).

<sup>83</sup> *Gentleman’s Magazine*, 45 (1775), 605. For similar complaints, see also *Public Advertiser*, 21 January 1778, 2.

<sup>84</sup> [B at-Louis de Muralt], *Letters Describing the Character and Customs of the English and French Nations . . . Translated from the French* (London, 1726), 72.

<sup>85</sup> Jackson, “Approaches to the History of Readers and Reading,” 1053.

<sup>86</sup> [Samuel Richardson], *The Apprentice’s Vade Mecum: Or, Young Man’s Pocket-Companion*, ed. Alan D. McKillop (London, 1734; Augustan Reprint Society, vols. 169–70, Los Angeles, 1975), 9, 33.

the Old Bailey courtroom reached: another biographer of Cox made the opposite observation, noting, “Let the reader, who is still more merciful than prudent, attend the Old Bailey only for a few successive sessions. . . . Let him see the same felons acquitted of one, two, or three charges—in nearly every instance, with an almost certainty, to return to the commission of the crimes previously charged on them.”<sup>87</sup> Whereas the courtroom observer worried that the guilty were frequently acquitted, the reader of the *Proceedings*, with its selective reporting, saw a positive moral lesson in the fact that they were so often convicted.

While some thought that the *Proceedings* could be used to demonstrate that crime did not pay or to encourage the victims of crime to initiate prosecutions, it is clear that the *Proceedings* could be read in a number of different ways. In 1787, and no doubt earlier, there was concern that criminals reading the *Proceedings* might learn not only techniques for committing offenses but also tricks and alibis that would allow them to avoid conviction should they be put on trial.<sup>88</sup> As we have seen, the readership of the *Proceedings* included those accused of crime, who were occasionally able to cite it in their own defense. Read against the grain, other readers could identify with the first-person testimonies provided of defendants. Because every trial has two sides and the *Proceedings* had to provide both where possible in order to demonstrate that there had been a fair trial, there were often at least two stories competing for the readers’ attention, and so the readers could choose to identify with the defendant rather than the prosecution. As Hal Gladfelder has argued, printed trial accounts possessed a “resistance to closure,” which allowed the points of view of defendants to be inconclusively juxtaposed with those of their accusers.<sup>89</sup>

It is also important to note that the *Proceedings* were not read in isolation. As part of the huge expansion of printed literature about crime dating from the late seventeenth century, they were consumed alongside newspaper reports, criminal biographies, ballads, and a variety of polemical and fictional works.<sup>90</sup> Just as modern critics have demonstrated that the satirical prints of William Hogarth contain multiple messages, historians have begun to identify the diverse ways in which crime and justice were represented in these other genres.<sup>91</sup> Through selective reporting of the most threatening crimes, for example, newspapers so successfully stimulated fears of crime that they effectively created “moral panics,” but through their reports of policing, convictions, and punishments, the papers also at times offered their readers some reassurance that the problem was under control.<sup>92</sup> How-

<sup>87</sup> *A Genuine Account of the Life, Robberies, Trial and Execution of William Cox* (London, 1773), 22; *The Genuine Life of William Cox* (London, 1773), 2.

<sup>88</sup> Devereaux, “The City and the Sessions Paper,” 490–93.

<sup>89</sup> Hal Gladfelder, *Criminality and Narrative in Eighteenth-Century England* (Baltimore, 2001), 71.

<sup>90</sup> Andrea McKenzie, “Making Crime Pay: Motives, Marketing Strategies, and the Printed Literature of Crime in England, 1670–1770,” in *Criminal Justice in the Old World and the New: Essays in Honour of J.M. Beattie*, ed. Greg T. Smith, Allyson N. May, and Simon Devereaux (Toronto, 1998), 267.

<sup>91</sup> Jennifer Uglow, *Hogarth: A Life and a World* (London, 1997); Mark Hallett, *The Spectacle of Difference: Graphic Satire in the Age of Hogarth* (London, 1999).

<sup>92</sup> Nicholas Rogers, “Confronting the Crime Wave: The Debate over Social Reform and Regulation, 1749–53,” in *Stilling the Grumbling Hive: The Response to Social and Economic Problems in England, 1689–1750*, ed. Lee Davison, Tim Hitchcock, Tim Keirn, and Robert B. Shoemaker (Stroud, 1992), 77–81; Peter King, “Newspaper Reporting, Prosecution Practice and Perceptions of Urban Crime: The Colchester Crime Wave of 1765,” *Continuity and Change* 2, no. 3 (1987): 423–54, and “Newspaper

ever, stories of criminal lives, which combined moralizing with entertainment, often presented more sympathetic accounts of criminals and sometimes allowed these criminals to tell their own stories. In contrast to Lincoln Faller's argument that the *Ordinary's Accounts* effectively reinforced the status quo by allowing respectable society to come to terms with its most threatening criminals, recent research has emphasized the "certain freedom of expression" that criminal biographies gave to convicted felons who, by shaping their life stories and by "dying game," often subverted the expected post-trial script of confession and repentance.<sup>93</sup> In the 1770s, however, the same decade in which the City increased its control over the *Proceedings* and readership began to decline, this golden age of writing about crime came to an end. As respectable society lost interest in the criminal experiences of individual members of the lower classes, the *Ordinary's Accounts* ceased publication, criminal biographies were less frequently published, and newspaper coverage of crimes was largely restricted to those committed by apparently respectable men and women.<sup>94</sup> The period between the 1720s and the 1770s thus constitutes an important and distinct period in the history of crime literature in which there was a wide readership not only of polemical complaints and journalistic reports of repeated crime waves but also of more sympathetic accounts found in criminal biographies and other sources. Confronted with these competing images of crime and aware that trial reports were selective and not necessarily accurate, readers of the *Proceedings* were left to draw their own conclusions.<sup>95</sup>



In the first century of their publication, the *Proceedings of the Old Bailey* presented a selective account of crime and criminal justice to their readers. Although the publishers never explicitly stated their intentions, it is clear that, in selecting and shaping material for publication, they sought to portray the judicial process as simple and straightforward and to depict criminals as more often than not receiving their just deserts. This conclusion fits less well with John Langbein's presumption that there were no ulterior motives in the selections made by the

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Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London," *Continuity and Change* 22, no. 1 (May 2007): 73–112; Esther Snell, "Discourses of Criminality in the Eighteenth-Century Press: The Presentation of Crime in the *Kentish Post*, 1717–68," *Continuity and Change* 22, no. 1 (May 2007): 13–47.

<sup>93</sup> Lincoln B. Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge, 1981); McKenzie, "Making Crime Pay," 266; Andrea McKenzie, "Martyrs in Low Life? Dying 'Game' in Augustan England," *Journal of British Studies* 42, no. 2 (April 2003): 167–205. See also Peter Linebaugh, "The Ordinary of Newgate and His Account," in *Crime in England, 1550–1800*, ed. J. S. Cockburn (London, 1977), 246–69; Philip Rawlings, *Drunks, Whores and Idle Apprentices: Criminal Biographies of the Eighteenth Century* (London, 1992); Andrea McKenzie, "God's Tribunal: Guilt, Innocence and Execution in England, 1675–1775," *Cultural and Social History* 3, no. 2 (April 2006): 1–24, and *Tyburn's Martyrs: Execution in England, 1675–1775* (London, 2007); Robert B. Shoemaker, "The Street Robber and the Gentleman Highwayman: Changing Representations and Perceptions of Robbery in London, 1690–1800," *Cultural and Social History* 3, no. 4 (October 2006): 381–405.

<sup>94</sup> Devereaux, "The Fall of the Sessions Paper"; McKenzie, "The Decline and Fall of the *Ordinary's Account*"; Shoemaker, "The Street Robber and the Gentleman Highwayman," 402–3; Devereaux, "From Sessions to Newspaper?" 11–12.

<sup>95</sup> Lincoln B. Faller, *Crime and Defoe: A New Kind of Writing* (Cambridge, 1993), 26–27.

publisher than with Ian Bell's observation that the "virtually uncritical version of courtroom procedure" presented in the *Proceedings* "offer[s] a partial and broadly supportive view of how the Augustan courts operated."<sup>96</sup> Despite the City's apparent failure to monitor the *Proceedings* closely, it thus achieved its goal of ensuring respectability. While confirming that crime was a major social problem, the *Proceedings* demonstrated that the courts were capable of responding to this threat. Although this message, which readers also encountered in some respects in contemporary newspaper reporting, may have suited their predominantly middle- and upper-class readership, we cannot presume that all readers ingested this message uncritically. Indeed, many readers would have been aware of competing publications that provided alternative accounts of trials and of the occasional published complaints that what was published in the *Proceedings* was not just incomplete but also inaccurate. Readers were also aware of the limitations of eighteenth-century justice, notably the occasionally corrupt activities of both trading justices and thief-takers, and of the vast and varied body of literature about crime published at the time. In this context, it is likely that at least some Londoners read the *Proceedings* skeptically, as a deliberate intervention, on the side of the authorities and the property-owning classes, in the century-long debate over how to respond to the apparently ever-rising tide of criminality in London. If historians adopt the same approach, we may find our assessment of the extent of the crime problem, and of the ability of the courts to respond to it, to be in need of some revision.

<sup>96</sup> Bell, *Literature and Crime in Augustan England*, 73.