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"The second barrel is nearly always fatal" : rhetoric in the three trials of Oscar Wilde

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ABSTRACT

"THE SECOND BARREL IS NEARLY ALWAYS FATAL": RHETORIC IN THE THREE TRIALS OF OSCAR WILDE

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This dissertation examines the rhetoric of Oscar Wilde's three trials (one libel trial and two criminal trials) that eventually led to his conviction for gross indecency under Section 11 of the Criminal Law Amendment Act 1885 and his subsequent imprisonment for two years hard labor. This study considers Wilde's trials as examples of legal proceedings that through their popularity resonated with a particular public consciousness at the end of the nineteenth century and whose resonance is still felt today. While book-length studies of the cultural and social history of Wilde's trials have been available for several decades, and shorter studies of the libel trial have been published more recently, no such study of the rhetoric of the three trials has yet appeared. Accordingly, the present study is an attempt to fill in some gaps in the scholarship on Wilde's trials, namely, close readings of the legal arguments made in the trials and descriptive analyses of the rhetoric of those arguments. My purpose is to examine the rhetoric of all three trials, specifically legal rhetoric, addressed to the three primary audiences of the proceedings: the judges, the juries, and the audiences inside the courtroom.

My analysis seeks responses to the following questions: Most generally, in what ways can the principles of classical rhetoric (and its contemporary manifestations) be used to understand the formation and maintenance of the law? What can a rhetorical analysis of the trials tell us about the relationship between law and society in the latter third of the nineteenth century?

What can a close analysis of the rhetoric of the trials tell us about the nature of the legal discourse in the period, including the ethos of both legal and cultural authority, and the argumentative strategies and rhetorical techniques they valued? What particular crisis moments (*kairos*) are apparent in and addressed through the rhetorical appeals in the trials? To what extent did the participants (litigants, counsels, judges, and general public) apprehend those crisis moments and tailor their rhetorical strategies to address them? How are those specifically legal moments indicative of a more socially systematic *kairos* in the 1890s, the working out of which was accomplished through the means of the trials? And what can such an analysis add to our historical characterizations of Oscar Wilde, the prosecution and defense attorneys, the judges, and the witnesses as representative audiences in late-nineteenth-century British society?

This approach will not recapitulate general views of the trials—indeed, at times it will critique these views—nor will it address more broadly cultural issues such as "structural oppositions between 'heterosexual' and 'homosexual'" at the end of the century, or why Oscar Wilde embodied something threatening and outrageous to late-Victorian society. Instead, I would like to use some major concepts of classical and contemporary rhetorical analysis to compare differing versions of significant aspects of the trials, such as opening and closing arguments, witness testimony, and witness examination, to elucidate features of legal discourse at the end of the nineteenth century, and to explore in the context of one of the most sensationalized trials of the late nineteenth century the nature and scope of the persuasiveness of popular trials.

In so doing, this study will argue that the rhetoricity of legal arguments reveals a tension between the purported fixity and certainty of the law and contingencies (individual trials such as Wilde's) that at once confirm and reinforce the law as well as question and subvert the law. The

most significant aspect of this tension, in turn, is that it results in a crucial, productive oscillation between the law as a foundational, normative concept in democratic societies and rhetoric as the means by which that foundation is established, critiqued, and modified. Put differently, Wilde's trials offer a glimpse into the unsettling awareness that the law is rhetorically constructed and provisional, in contrast to an institution that is presented and venerated as a bedrock of society.

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DEDICATION

This dissertation is dedicated to my parents, Richard Gustav Neumann and Mary Lou Neumann (nee Cartwright); to my siblings, Sue Ellen, Cindy, and Douglas; and to my children, Lisel Ariel Neumann and Christian Cartwright Neumann.

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CHAPTER 1

INTRODUCTION

In his introduction to the collection of essays entitled *Popular Trials: Rhetoric, Mass Media, and the Law*, Robert Hariman remarks on the powerful social and rhetorical forces manifested in the spectacle of famous trials:

> [P]opular trials have provided the impetus and the forum for major public debates, they have set some of the conditions of belief for those debates, and they have conferred powerful legitimacy upon particular political ideas. Yet, despite the high drama of each trial and its ability to stimulate volumes of commentary in popular, legal, and scholarly texts long after its time, popular trials have received little attention as a class of persuasive events. This inattention may stem from an understandable skepticism about the mass media's contribution to public life, or from a less defensible belief in the autonomy of The Law from more unruly social influences, but it is not warranted by the historical record. From the trial of Socrates to the dozens of proceedings reported in the contemporary press, the popular trial has been active as a rhetorical form, a social practice, and symptom of historical change. (1)

The wide scope of Hariman's examples notwithstanding (from Socrates to O. J. Simpson), his point is an important one: there is a largely unexamined interface between the spectacle of public legal proceedings and the power of such proceedings to influence public affairs. For Hariman this interface is rhetoric.

In the mid-1890s, the three trials of Oscar Wilde[1] combined to create just such a spectacle. The sensationalism surrounding the trials reverberated longitudinally throughout

[1] In order, the first trial was a criminal libel suit based on the Libel Act 1843 and filed by Wilde's solicitors against John Sholto Douglas, ninth Marquess of Queensberry. The prosecution was withdrawn by Wilde's solicitors before a verdict was rendered. The second trial, based on Section 11 of the Criminal Law Amendment Act 1885, was a prosecution of Wilde and Alfred Taylor by the Crown on charges of acts of gross indecency. The charges against Wilde and Alfred Taylor alleged conspiracy to commit acts of gross indecency as well as the commission of

society; attracted close attention from the popular press; and commanded attention from attorneys, politicians, and cultural critics. Sir Travers Humphreys, P. C., son of Wilde's solicitor, observed that "[f]rom the point of view of the man in the street, the first of these trials undoubtedly exhibited all the features of a *cause celebre*. . . . Small wonder then that all classes of society clamoured for admission to the court . . . [and] [t]hose who obtained admission certainly had their fill of sensation. . . . ("Foreword," Hyde, *The Three Trials*, 1).[2] Moreover, in the last thirty years studies in the life of Wilde have detailed the extent to which the courtroom proceedings themselves commanded close attention from the popular press. Major dailies, such as the *London Times*, the *Daily Telegraph*, the *Evening News*, and others, and illustrated papers, such as *Police News* and the *Illustrated Police Budget*, provided the general public with ongoing coverage of the trials, reporting on the evidence presented at trial (sometimes verbatim accounts of testimony and sometimes summary reports) and featuring illustrated characterizations of the prominent persons involved in the trials, specifically Wilde himself.[3] These journalistic accounts were a popular cultural rhetoric that transcribed, translated, and extended for the public the specialized rhetoric of the courtroom.[4] Moreover, the law itself was not isolated from or

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acts of gross indecency, and amounted to a combined total of 28 counts against each defendant. The defendants were tried together in the second trial. The second trial ended with the jury being unable to reach a verdict on the charges against Wilde and Taylor. The third trial was a reduction of the second trial and a prosecution of Wilde and Taylor (again under Section 11 of the Criminal Law Amendment Act 1885), who were then tried separately, on 11 charges each of acts of gross indecency (conspiracy charges were dropped).

[2] The jury for the first trial (the libel trial against Lord Queensberry) included eight gentlemen, a stockbroker, a butcher, a bootmaker, and a bank messenger, a point that in its ordinariness attests to the popular reach of the trial.

[3] For extended discussions of the journalism regarding the trials, see Cohen, Cook, Foldy, and Ellmann.

[4] For example, Cohen discusses at length the newspaper depictions of the physical appearances of the defendants, particularly Wilde, which established the bodies of the defendants ("the male

uninterested in the effects of the trials. In large part because of the harshness of the sentence Wilde received upon being found guilty in the third trial (the maximum sentence of two years' hard labor), the Criminal Law Amendment Act 1885, under which he was convicted, was amended again in 1898 in response to public criticism.

In the roughly four decades following the trials, the only purportedly comprehensive accounts of the proceedings were published as books in two series on popular trials. In 1912 and under the pseudonym of Stuart Mason, Christopher Millard published *Oscar Wilde: Three Times Tried* in the *Great Trials of the Nineteenth Century* series; in 1948 (republished 1962), H. Montgomery Hyde published *The Three Trials of Oscar Wilde* in the *Great British Trials* series. Merlin Holland (Christopher Merlin Vyvyan Holland), Wilde's only grandson, has added greatly to these accounts with his publication of *The Real Trial of Oscar Wilde*, which covers the first of Wilde's trials, the libel trial initiated by Wilde against John Sholto Douglas, the ninth Marquess of Queensberry (also referred to as "Lord Queensberry").[5] This history presages Hariman's remarks that such trials provide the necessary conditions for discourse and debate about foundational cultural norms and public policy. In the context of the socio-political and cultural

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body") "as a descriptive trope that personalize[d] the criminal proceedings" (190). Personalizing the proceedings in this way helped individual members of the general public to visualize and imagine the socio-cultural abstractions alluded to in the proceedings, such as the inexcusable transgressions of a moral society represented by Wilde and Taylor (one of the arguments used by the counsel for the Queen), and the assault on persons of learning and high social society, personified by the defendants Wilde and Taylor, by criminals and social pariahs, personified by the witnesses for the plaintiff, who were accused by the defense counsel of being blackmailers.

[5] Christopher Merlin Vyvyan Holland (b. 1945) is the son of Wilde's son Vyvyan Holland (nee Wilde). Wilde's other son (also with Constance) was Cyril. Wilde's wife, Constance, changed her surname to a former family name, Holland, after Wilde had been convicted. Her maiden surname was Lloyd, but to distance herself, her children (Cyril and Vyvyan) and her parents from the scandal—her father was a prominent Irish barrister—she chose a family name that was less immediately recognizable.

circumstances that coalesced around Oscar Wilde's trials, those trials seem to confirm Hariman's point that popular legal trials are "persuasive events" that both condition and determine certain social values.

Since the 1990s, notable examinations of the public reception of the trials have helped audiences of Wilde's work understand the complex social history in which the trials took place, and how those conditions prescribed and reinforced social and moral values, especially in a time of cultural transition. These studies place the trials within the larger cultural history of the 1890s, a history that was ruthlessly uncertain in the sense that, as Karl Beckson observes, "[c]ultural trends in the final decades of the century were thus moving in two simultaneously antithetical directions: declining Victorianism . . . and rising Modernism" (*London in the 1890s* xiv). For Beckson, "the legendary decade of the 1890s [is] more a symbol than a mere ten years of the calendar, for an entire age was simultaneously coming to an end as another was in the process of formation" (xvii). In *The Trials of Oscar Wilde: Deviance, Morality, and Late-Victorian Society*, Michael Foldy echoes Beckson's sentiment in the case of Wilde's legal trials when Foldy explains that his intention was to "represent the trials within the context of the different forces and trends that were moving British politics and society . . . . " (xi). Cultural histories of the trials (or "micro-histories," as Foldy terms his study)[6] have added significantly to the understanding of the volatile, uncertain nature of the 1890s—the midpoint of the period (1880-1914) that Raymond Williams labeled "a kind of interregnum," or period in which the most notable artists

[6] Foldy defines a "micro-history" as historiography that "examine[s] the complexity of relatively small-scale or 'minor' historical events. The many facets of the small event serve as different lenses onto the larger social and cultural processes which envelop it and of which it is a part" (xi).

and thinkers (Pater, Wilde, Shaw, T. E. Hulme, and others) represented "a working-out, rather, of unfinished lines; a tentative redirection" (Williams 161-62).

Hyde's *The Three Trials of Oscar Wilde* has become the de facto definitive text on the trials primarily because it remains the only text to address the courtroom proceedings of all three trials. As both Cohen (in *Talk on the Wilde Side*) and Foldy observe, H. Montgomery Hyde seemed to have set the tone and direction for critical readings of the trials. Yet, a great portion of Hyde's reporting of the trials, especially the two criminal trials, is taken from Christopher Millard's (under the pseudonym of Stuart Mason) eyewitness notes of the trials. Additionally, in *Talk on the Wilde Side* Ed Cohen has candidly recounted his futile attempts to locate the full transcripts of all three of the trials (4), a problem that remains to this day for the two criminal trials.[7] In the case of the libel trial, this problem seems to have been surmounted with Merlin Holland's publication of a full transcription from the shorthand notes recorded at the trial.[8] So, we now have an opportunity to compare three versions of the libel trial (Mason's, Hyde's, and Holland's). Unfortunately, though, there are no accounts of the two criminal trials that are as accurate as Holland's transcript of the libel trial (the first trial). For the two criminal trials, the available sources remain Mason's and Hyde's.

Cultural histories that attempt to examine closely Wilde's trials also must address two important situations: the problem of available archival material from the trials themselves and the apparent consensus on how to accommodate this lack of direct evidence. As noted above, the only book-length accounts of the three trials are Stuart Mason (Christopher Millard's) *Oscar*

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[7] The Office of Public Records blocks access to the two the court-recorded transcripts of the criminal trials.

[8] See Holland, *The Real Trial of Oscar Wilde*, xxxix-xlii.

Wilde: Three Times Tried (1912) and H. Montgomery Hyde's *The Three Trials of Oscar Wilde* (1948). Prior to Mason (Millard), Charles Carrington published privately in Paris "an abridged report of a portion of Wilde's trials" (1905-06) that was purportedly taken from the shorthand reports of the two criminal trials, but has been mostly discredited since its publication.[9] In the case of the libel trial against Lord Queensberry, the problem of archival material has been addressed in large measure by the publication of Merlin Holland's *The Real Trial of Oscar Wilde* (2003), which is a full transcript of the first trial (and which I discuss at length in this study). Nonetheless, this is really only a start, and the problem remains for the two criminal trials. What is needed is the establishment of a reliable text or a consensus text (or portions thereof) that is available for credible analysis. Nonetheless, just as previous research and studies have used the only texts available for all of the trials, notwithstanding the associated questions about reliability, this study will use what is available to take a different approach, one that is based on identifying the rhetoric used both inside and outside of the courtroom in all three of the trials.

Accordingly, the present study is an attempt to fill in some gaps in the scholarship on Wilde's trials, namely, close readings of the legal arguments made in the trials and descriptive analyses of the rhetoric of those arguments. My purpose is to examine the rhetoric of the trials, specifically legal rhetoric, addressed to the three primary audiences of the proceedings: the judges, the juries, and the audiences inside the courtroom.[10] My analysis seeks responses to the

[9] The reference to Carrington's monograph is in the "Note" on the back of the title page of Mason's *Oscar Wilde: Three Times Tried*. Mason goes on to judge the monograph "untrustworthy and misleading." Cohen notes that Carrington's "report" is derived from "compilations and/or abstractions from the newspaper clippings on the trials" (215, n.2).

[10] The audience inside the courtroom is a fluid one in the sense that in important ways, which will be examined later, that audience represents an interface, a liminal space, between the courtroom and the society outside the courtroom. That space, represented by the physical

following questions: Most generally, in what ways can the principles of classical rhetoric (and its contemporary manifestations) be used to understand the formation and maintenance of the law? What can a rhetorical analysis of the trials tell us about the relationship between law and society in the latter third of the nineteenth century? What can a close analysis of the rhetoric of the trials tell us about the nature of the legal discourse in the period, including the ethos of both legal and cultural authority, and the argumentative strategies and rhetorical techniques that were valued? What particular crisis moments (*kairos*) are apparent in and addressed through the rhetorical appeals in the trials? To what extent did the participants (litigants, counsels, judges, and general public) apprehend those crisis moments and tailor their rhetorical strategies to address them? How are those specifically legal moments indicative of a more socially systematic *kairos* in the 1890s, the working out of which was accomplished through the means of the trials? And what can such an analysis add to our historical characterizations of Oscar Wilde, Lord Queensberry, the attorneys, the judges, and the witnesses as representative audiences in late-nineteenth-century British society?

This approach will not recapitulate general views of the trials—indeed, at times it will critique these views—nor will it address more broadly cultural issues such as "structural oppositions between 'heterosexual' and 'homosexual'" at the end of the century (Cohen 6), or why Oscar Wilde embodied something threatening and outrageous to late-Victorian society. Instead, I would like to use some major concepts of classical and contemporary rhetorical analysis to compare differing versions of significant aspects of the trials, such as opening and

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boundaries of the Old Bailey and the conceptual boundaries separating different audiences and their respective expectations, is integral to the means by which popular trials engage public interest and policy, social values, and the like.

closing arguments, witness testimony, and witness examination, to elucidate features of legal discourse at the end of the nineteenth century; and to explore in the context of the most sensationalized trials of the late-nineteenth century the nature and scope of the persuasiveness of popular trials.

The present study is organized as follows: In Chapter Two I offer a theoretical and rhetorical basis upon which to understand the nature of legal discourse in general and at the end of the nineteenth century in particular. The rhetoric of the law is a fundamental, indispensable part of the normative nature of the law. Legal discourse is not only an authorized discourse, but also the discourse of public policy and social construction; it is not only a direct instrument of state power, but also discourse that creates and maintains social cohesiveness. In this chapter I will theorize the place of gross indecency laws of the period because by definition and because of context they play a fundamental role in this normative process. Additionally, I will identify the concepts of classical rhetoric that are relevant to the analysis of legal discourse.

In Chapter Three I confront the difficult question of determining which version(s) of the trial transcripts are useful for analysis. In the case of the two criminal trials, the situation of the transcripts represents an unusual, though by no means original, example of widely accepted texts for which there is no direct ancestor.[11] This is even more interesting given that the full textual lineage would be little more than a century old, that is, if such lineage were available. Establishing a reliable text with which to work, then, must be an eclectic effort. Yet, this is difficult and somewhat unconventional, because it means building a text based on a consensus of

[11] Dr. Nicole Clifton (Northern Illinois University) drew my attention to a similar situation with regards to the work of Christine de Pisan, the late-fourteenth-century Christian humanist, whose work was widely discussed and analyzed without reference to a reliable manuscript (personal interview, 03 Feb 2005).

circumstantial evidence, much like a trial in which physical evidence is missing. Still, the task is necessary in order to provide for ongoing analysis arguably stable portions of text. The situation is notably different for the libel trial because of the recent publication of Merlin Holland's transcripts of those proceedings. Nonetheless, a critical comparative analysis of the editions of that trial has not yet been undertaken; that comparison will be found in Chapter Three. Additionally, in Chapter Three I will undertake a rhetorical analysis of the arguments made during the libel trial.

In Chapters Four and Five, I will continue the rhetorical analysis of the trials by focusing on the rhetoric in the two criminal trials (trials two and three) that followed the libel trial. I will devote one chapter each to the two criminal trials. In each chapter, I will discuss the context for the rhetorical perspectives and strategies that are noteworthy in each trial, and provide evidence of the ways that rhetorical strategies were deployed in each trial. I have chosen to study certain rhetorical strategies and devices for the ways that they both contributed to the outcomes of the trials, and have contributed to subsequent analyses of the social and cultural importance of the trials.

CHAPTER 2

NORMATIVE LAW, THE RHETORIC OF VALUES, AND OSCAR WILDE'S TRIALS

So-called "popular trials," such as the three trials involving Oscar Wilde in the 1890s, are a synecdoche for highly developed legal systems in a way that lesser-known trials are not. Because the public has ready access to such trials through multiple media,[1] trials such as Wilde's become emblematic of the ideologies, histories, values, and the like that undergird the day-to-day manifestations of the law itself. The myriad other legal proceedings that are the daily business of complex legal systems (those that are not "popular") tend to be visible only to the individuals or groups who are personally involved. So, as synecdoche popular trials highlight tensions between a much larger variety of contexts that involve and define societies, communities, and individuals in relation to the law. The contexts range from those involving national (even international), state, and municipal entities as well as those involving much smaller entities and even specific individuals. The tensions that are highlighted include those between individual interests, local community interests, and the codified law of a recognized State.

Accordingly, to provide background for the analysis of Wilde's three trials in Chapters Three-Five, I would like to explore several general concepts that will help contextualize popular trials such as Wilde's as synecdoche for the ongoing, daily formation of normative law in developed legal systems. These concepts include the value-based worldviews that construct legal

[1] The primary medium used for popularizing Wilde's trials was printed reports in various types of press publications, and these reports were sometimes accompanied by drawings of persons involved in the trials, although the drawings sometimes appeared independently. Today, of course, the media for popularizing legal proceedings include a mixture of recorded and live reporting, from print and online press publications, to television dramatizations and social media.

normativity; the recognition of certain trials as worthy of broad-scope popular attention; the roles played in such trials by classical rhetorical principles and argumentative strategies (for instance, the appeals used, the values expressed, and the occasions invoked); and the ways that popular trials become exemplars of how rhetoric constructs, modifies, and preserves normative law. In Chapters Three-Five, then, close analysis of Wilde's three trials will show how these general concepts of legal rhetoric in turn are manifested themselves in more situated and fluid debates regarding judicial and political processes, public and private values, conventional and subversive individualism, and the like.

Rhetoric and the Construction of Normative Law

For disparate audiences with often divergent interests, popular trials portray and enact both competing and consonant worldviews, and demonstrate how those worldviews apply on a micro- (individual or group) or macro-social level. Moreover, each of these worldviews aspires to what Robert Cover refers to as a *nomos*, a "normative universe" (12) or "integrated world of obligation and reality from which the rest of the world is perceived" (31), and they are grounded in interests and values perceived as germane to the workings of a society ordered by laws, even if within that society a particular group's worldview suggests revolution or dissolution as the most just outcome.[2] This suggests that the worldviews exercise an imperative on individuals and groups in society because of the dual roles individuals and groups play as both active participants

[2] Particularly among religious sects and denominations, this revolution also has taken the familiar form of self-imposed segregation from the larger society. Groups such as the Shakers and infamous groups such as those in Jonestown, South Africa, relied on an ideology and belief of such self-imposed segregation to use canon law essentially to legislate themselves out of existence (see Chesebro and McMahan).

and attentive audiences: individuals and groups express their own views publicly, and witness others doing the same. Because of this "publicity," individuals and groups take responsibility for and are held accountable for their views in relation to the laws that order that society. Also, the relationship is a dynamic, fluid one because the communication among and within individuals and groups always occurs in a liminal space between introspection (self-reflection) and extrospection (group reflection). In this sense members of a society structured by law oscillate between a view of the law as foundational, objective, and impersonal, and a view of the law as responsive to individual selfhood, self-determination, and collective subjectivity. In the former view, the law exists as something abstract, eternal, almost supernatural; in the latter view, the law is relative, temporal, fully humanized.

In democratic societies the law is both historically fixed and responsive to current events (which, of course, then become part of history). Through participation in a democratic process, individuals and groups are empowered to study and debate the history of their own law (as well as other societies' legal histories), and to use various mechanisms (executive, legislative, judicial) to modify the law according to contemporary circumstances, such as shifts in social, cultural, economic, political, and religious values. Such is the case with English common law, which governed Oscar Wilde's trials, and which is based both on legislative statute, known as an "Act" that is proposed and ratified by Parliament, and legal precedent, or *stare decisis*. The former represents a somewhat more stable form of the law than the latter: a statute is intended to persist intact across time until it is modified legislatively; and even though legal precedence (through *stare decisis*) is meant to establish consistency and cohesiveness among judicial decisions, it nonetheless is more interpretive because it enables individual judges to render

decisions in current cases that can either confirm or reject the precedence based in prior ones cases, or even chart a course somewhere in between. In practice, then, each case is one in which competing conceptions of the law always are orchestrated and argued-out at the levels of ideology, politics, and culture, and they construct and are constructed by contemporaneous worldviews that include many variations on that theme.

Accordingly, histories of jurisprudence inevitably deal with the tensions between the status of the law and the enforcement of the law in people's daily lives, that is, between the law as such and the practical effects of the law. Manifested within this tension is what Robert Cover identifies as a "state of affairs that is simple and very disturbing: there is a radical dichotomy between the social organization of law as power and the organization of law as meaning" (18). Legal theorists such as Cover posit a powerful "*nomos*," or normative aspect of the law that is negotiated within all self-determined communities:

> The great legal civilizations have, therefore, been marked by more than technical virtuosity in their treatment of practical affairs, by more than elegance or rhetorical power in the composition of their texts, by more, even, than genius in the invention of new forms for new problems. A great legal civilization is marked by the richness of its *nomos* in which it is located and which it helps to constitute. The varied and complex materials of the *nomos* establish paradigms for dedication, acquiescence, contradiction, and resistance. These materials present not only bodies or rules of doctrine to be understood, but also worlds to be inhabited. To inhabit a *nomos* is to know how to *live* in it. (6)

In this description of normativity, the law is a "bridge" that spans the gulf between observable reality on one side and our sense of what might lie on the other:

> . . . . Law may be viewed as a system of tension or a bridge linking a concept of reality to an imagined alternative—that is, to a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative. . . .
>
> A *nomos* is a present world constituted by a system of tension between reality and vision. (9)

Cover's emphasis on the narratological nature of the law allows him to correlate law to *nomos* in order to contradict the idea that the law is socially and politically constructed. The former argument presumes agreement among members of all legal societies about stable, foundational features of the law, even though those features might be said to be prior to the law and might remain in a state of flux. For instance, Cover makes the following statement about the essential nature of both the law and normativity:

> . . . . Any *nomos* must be paideic to the extent that it contains within it the commonalities of meaning that make continued normative activity possible. Law must be meaningful in the sense that it permits those who live together to express themselves with it and with respect to it. It must both ground predictable behavior and provide meaning for behavior that departs from the ordinary.
>
> Yet from the mundane flow of our real commonalities, we may purport to distill some purer essence of unity, to create in our imaginations a *nomos* completely transparent—built from crystals completely pure. In this transparent *nomos*, that which must be done, the meaning of that which must be done, and the sources of common commitment to the doing of it stand bare, in need of no explication, no interpretation—obvious at once and to all. As long as it stands revealed, the dazzling unity of legal meaning can harbor no mere interpretation. The shared sense of a transparent normative order corresponds to the ideal type of the paideic *nomos*. (14)

This ideal state of affairs is the law as representing stable, unchangeable meaning. As Cover observes, though, such a strict sense of stability is undermined by various narratives that construct various meanings; in other words, both meanings and the narratives that generate them are always contested between the multiple narrative traditions that make up complex legal societies.

Histories of normatization, such as Coover's and Jurgen Habermas's, focus on particular foundational events and entities: Judeo-Christian law for Coover and Western democracy for Habermas, both of which represent the "unfinished project" of modernity (Best and Kellner 273). The most sustained of these histories is Habermas's attempt to reconcile Enlightenment

individualism, capitalism, and Western democracy. In *Between Facts and Norms*, Habermas attempts to make space for concepts such as "social constructions," "'rightness,'" and "good reasons" as a basis for assessing legal adjudications (226-27). Yet, these foundations are metonymic; they reify abstractions of law, democracy, and the civil order. As such, they present fixed, stabilized concepts that provide an objective focal point for subsequent historiography. While those reified concepts typically neglect the rhetorical nature of normativity, they are nonetheless common elements in a wide variety of theories regarding the foundations of legal societies.

In *The Law of Peoples*, for instance, the philosopher John Rawls suggests a similar emphasis on an intuitive sense of what is good and just, and on how that sense is both communicated successfully in a society and serves to validate a communal notion of the law as in instrument of justice for society. Rawls develops his theory in the context of what he terms "well-ordered peoples" (63). In general, such peoples are those who inhabit modern industrialized societies and are characterized by social, political, religious, secular, and economic relationships that are both hierarchical and consultative. Hierarchy acknowledges levels of power between groups, while consultation suggests that the levels of power are dynamic and negotiable. Members of such societies, which Rawls terms "decent hierarchical societies," instantiate themselves in various ways, but they all share a common form: "All these [decent hierarchical] societies, however, are what I call *associationist* in form: that is, the members of these societies are viewed in public life as members of different groups, and each group is represented in the legal system by a body in a decent consultation hierarchy" (64; italics in original). The latter aspect of the associationist form has two crucial parts: the consultation hierarchy and the legal

system that necessitates that hierarchy. The legal system is based on the belief that "the law is indeed guided by a common good idea of justice" (66). The "common good" in this case is that which addresses "the important interest of all members of the people" (71). This interest is the "common aim" that a society strives to achieve for all its members (71). Accordingly, if the legal system is to be considered authentic and just in and of itself, then administration of that system by judges and other participants must maintain belief in the "common good idea of justice" (66). The role of the consultation within a hierarchical structure is to establish and maintain a set of procedures whereby group representatives can "look after" society's idea of justice. In other words, the goal of the consultative hierarchy is to implement and monitor the law.

In democratic societies, rhetoric is central to the open, dramatic display of tensions within the law because rhetoric formalizes the law as a consultation hierarchy and in so doing provides the means by which individuals and groups seek autonomy under the law. Put differently, rhetoric argues the law into existence, and that existence is codified in the law. In turn, the arguments in codified law can be studied, affirmed, criticized, and recontextualized. The origin and history of the law details consensus as much as contention, and suggests alternate sets of circumstances and principles within which a different sort of law might be beneficial in place of instead of the current codified law. These alternative circumstances, then, which are themselves engendered by the current codified law, invite interpretation and elicit persuasion. In this, the hermeneutic impulse (interpretation) is as necessary and as strong as the assertive impulse (persuasion); one does not exist without the other. Indeed, the necessity of interpretation (and even of historicization) is as crucial to the effectiveness of the law in general as is the enactment and enforcement of any particular statute.

Law as a Rhetoric of Values

As these theories suggest, in complex social systems the law is fundamental to the promulgation and sustaining of value systems. Everything from the basic welfare and safety of members of a society, to the promotion of their individual and cultural identities (and much more, of course) is accomplished through the law. In the case of Wilde's libel trial, for instance, a major point of contention was what types of relationships between older adult men and younger adult men (such as Wilde and the younger men with whom he associated, and Queensberry and his adult children) should be socially acceptable (that is, valued) and which should not. Additionally, codified law as recorded in legal documents (statutes, precedents, verdicts, even trial proceedings) is the materiality of these value systems, a materiality that is intended to represent stability and endurance across time. Importantly, though, although every society tends to rely on a conception of the law as representative of the enduring quality of its own deeply held values, these individual axiological systems are themselves rhetorical, not universal or transcendent. As manifested through the law, these value systems suggest that notions of legality and illegality are rarely, if ever, consonant and certain, but instead are always contentious and contingent, and that this relationship is played out on the level of competing and consensual value systems that operate both vertically (hierarchically) and horizontally (consensually) within society. Moreover, the conditions that make those systems contingent are the very contradictions (competing contexts, circumstances, and claims, and the like) that are provisionally reconciled by formal legal adjudication.

As we shall see through an analysis of Wilde's trials, these values systems and the law that evinces them are also based in the rhetoric of inclusion and exclusion: the rhetoric of the

boundaries between legality and illegality, and the rhetoric of those who live at the margin of those boundaries.[3] Further, this rhetoric of inclusion/exclusion highlights the materiality of the law: for instance, the young men with whom Wilde was accused of committing acts of gross indecency were referred to as "renters"; and in all three of the cases Wilde was characterized as someone who used his celebrity and financial capital to coerce those young men, presented in court as men with little education and little-to-no financial means, into criminal activity. Ironically, though, a point that I will make in the analysis of the two criminal trials is that Section 11 of the Criminal Law Amendment Act 1885 opened the door to the increased use of blackmail by such young men as a viable livelihood. In this sense each legal case represents a new context, a new site, in which the rhetoric of values as a stabilizing social construct is repeatedly contested and subverted.

What Makes a Trial Popular?

Undoubtedly, everyone has a sense of which trials are more "popular" than others. While local and syndicated newspapers devote column inches and television devotes programming space (and even channeling, as in the case of Court TV) to all sorts of arrests, criminal prosecutions, and the like, the level of media attention that coalesces around certain criminal prosecutions is, in a strict definition of the term, extraordinary. This volume of coverage sets certain trials apart from others; hence, it is one characteristic of what I am calling (following Hariman) "popular" trials. Additionally, the momentum of this coverage propels such trials into a realm that extends beyond the ordinary and into the literary. For instance, in a study of *The*

[3] See also Hernando de Soto's discussion of extralegal communities in developing countries in *The Mystery of Capital*, Basic Books, 2000).

New York Times' coverage of mass murder-suicides, Chesebro and McMahan demonstrate how journalistic accounts of three such tragedies "[cast] the mass murder-suicide as a special kind of drama," ultimately constructing for a national audience a normative vision of the events (407). Even though ordinary television programming that portrays actual courtroom proceedings, as well the supplementary journalism that comments on those proceedings, seeks to sensationalize every case that it selects for airing, those prosecutions that we are here considering popular and sensationalistic are ones whose interest traverses generic distinctions, and whose impact permeates the conceptual and physical boundaries of the courtroom. As a result these trials garner much greater appeal across a much larger audience spectrum than others. Further, like the caricatures of the nineteenth-century or like the hyperstylized (and hypersexualized) depictions of men and women in celebrity magazines in the current century, popular trials accentuate and dramatize not only the participants in the drama, but the audiences themselves. In current popular trials just as in Wilde's trials, audiences inside and outside the courtroom "gaze" at the proceedings through textual accounts as well as through visual ones and draw conclusions accordingly. However improvisational or unreliable these conclusions might be, they reflect an additional, considerably fluid *nomos* that while at some steps removed from the actual legal proceedings nonetheless contributes significantly to how those proceedings are interpreted, assimilated, and repeated.

There are three indispensable elements of the display enacted by popular trials. The first is the context in which the trials themselves take place. In its most immediate and familiar form, its physical form, this is the courtroom. Yet, as will be discussed below, the courtroom itself is a dynamic context, more page than pillar, inasmuch as everything from juridical procedures to

legal justifications are the products of transcription, and to varying extents subject to critique and modification. Second, in at least the last two centuries popular trials have engaged the world both outside the courtroom and codified law as a means of critique that is external to the established legal system. (For instance, H. Montgomery Hyde's account of Wilde's trials also appeared in the popular series of publications titled *Great British Trials*.) In various cases journalism, popular media, and popular opinion have been invited, rejected, and assimilated into not only courtroom proceedings, but also into the legislative process and the supreme levels of the legal system that balance that process. Third, and most importantly, all of this has taken place in a more or less structured sphere of visual and textual communication and communicative action. That structured sphere is rhetoric. In legal proceedings courtroom procedures and established law structure specific rhetorical decisions, such as the type and shape of arguments.

What we are calling popular trials, then, corresponds to particular argumentative categories that are similar to what Alexander Welsh refers to as "strong representations." Welsh offers the notion of "strong representations" as a counterbalance to the perception that courtroom discourse is strictly forensic and focused on historical "facts." These representations are narratives, and they are illustrated by trial transcripts. While Welsh is primarily concerned with "strong representations" in literature, his observations concerning the nature of argument in such representations are applicable to actual trials.[4] For instance, all trials and the transcripts that document them recount actual experiences in the form of testimony, or forensic analysis, and this testimony is to varying extents equated with actual experience. The level of veracity and credibility depend upon the contexts in which the testimony is generated. Testimony can have

[4] Welsh grounds his study with a brief examination of two "notorious" poisoning trials (18-30).

credibility based on cross-examination, on precedence or case law, on the basis of procedure, and so on. (The credible corroboration of witness testimony, for instance, will become a point of emphasis in the subsequent discussion of Wilde's criminal trials.) Further, credibility is determined by several groups of participants involved in the trial. These groups include those obligated by the judicial proceedings, such as jurists, attorneys, and juries. Behind these groups are the legislators and legislative histories, and the statutory system itself. And outside of the proceedings are members of the society that encompasses the trial proceedings. Just as importantly, though, and as Welsh notes, this testimony (these representations) is meant to be subordinate to the purpose of the trials, namely, a verdict. This verdict is meant to be meaningful to all of the groups involved with the proceedings:

> In other words, the representation is conclusive: if it purports to review all the facts, that is because, in the opinion of the person making the representation, the facts when considered rightly all point in one direction. If someone should tell the story of an entire life, for example, it would not be a representation in this sense unless the life came to some deserved or undeserved conclusion; the particulars would have to amount to something. (9)

Beyond its basic purpose, the representation typically depends upon agonistic, even eristic ("explicit adversary position"), argument and advocacy (9). For instance, attorneys provide an authorized context for their clients who provide representations of and for themselves, and those representations are managed by the attorneys into arguments that are consonant with applicable law and appropriate to particular courtroom procedures. In this sense, for attorneys a case is a metonymy: the management of the law (an abstraction) is accomplished through the translation and reduction of the abstraction to the management of physical representations of the law (depositions and recorded testimony).

Also, with popular or sensationalized trials, this highly structured and dynamic context of representations is crucial because it uncovers the multiplicity of audiences, purposes, and argumentative contests that the trial itself inaugurates. This multiplicity is not easily categorized or explained beyond simply labeling it as a multiplicity, but it is capable of being described by rhetorical processes. This is so because rhetoric always has taken intention and certainty as well as multiplicity and indeterminacy as foundational principles. Communicative action is a complex matrix of rhetorical strategies within which rhetors attempt to identify and predict the sympathies and motivations of an audience, and to align their (the rhetors) means of argument. Because of the nature of the law, which structures societies in general and impacts the daily lives of individuals in particular, multiplicity and the rhetorical strategies that are employed to acknowledge and constrain that multiplicity are highlighted in legal proceedings in ways that can be quite illuminating. For instance, expert testimony in a criminal trial, such as that of forensic specialists, typically is presented by attorneys as scientific; the experts analyze the evidence in order to establish what the attorneys intend the jury to understand as indisputable "facts." Yet, as the evidence and analysis (the expert testimony) get increasingly technical, and as additional experts are introduced who offer both supporting and competing analyses—which, in turn, are then used by the attorneys to posit to a jury alternative explanations (all argumentative strategies in themselves)—the establishment of fact gives way to the development of interpretations of multiple "facts" and to their relative prominence in regard to the culminating point of the proceedings—deliberations and a verdict.

Legal Argument as a Dialectic of Contention and Consensus

This display, then, includes elaborating openly and dramatically the relevant issues and their resolution, or what I will call the dialectic of contention and consensus. The vehicle of that resolution is rhetoric, the counterpart of dialectic. That contention and consensus are dialectical is clear: the Socratic method of division and definition, such as illustrated in the *Phaedrus*, are well-known features of the dialectical process. Just as importantly, though, classical rhetoricians before and after Aristotle acknowledged that knowledge inherent in a subject (art or science) and the reasoned pursuit of that knowledge were inseparable from the ability to communicate that knowledge persuasively. Simply put, there is no knowledge without communication.

Accordingly, in *On Rhetoric* Aristotle elaborates the relationship of dialectic and rhetoric by suggesting that rhetoric is a way of perceiving the persuasive elements of any knowledge that needs to be communicated. Dialectic and rhetoric are indispensable both to the development and dissemination of knowledge:

> The result [of the use of the three types of appeals—ethos, pathos, and logos] is that rhetoric is a certain kind of offshoot [*paraphues*] of dialectic and of ethical studies (which it is just to call politics). (Thus, too, rhetoric dresses itself up in the form of politics, as do those who pretend to a knowledge of it, sometimes through lack of education, sometimes through boastfulness and other human causes.) Rhetoric is partly dialectic [*morion ti*], and resembles it, as we said at the outset, but they are distinct abilities of supplying words. (Kennedy, Aristotle *On Rhetoric*, 1991, 36-39)

Importantly, too, Kennedy notes that Aristotle is careful not to include rhetoric as a species of dialectic because there are elements of rhetoric that are not germane to dialectic, specifically the appeals to ethos and pathos (appeals to character and emotion, respectively). Similarly, Aristotle would not accept dialectic as a species of rhetoric for several important reasons, among them being that he privileged philosophy as a more “celebrated” human activity than rhetoric, and that

as part of a process dialectic (reasoning) would come before rhetorical activity because dialectic deals with universals, whereas rhetoric deals with particulars (communication) (39n.). On the one hand, excluding appeals to ethos and pathos from dialectic is likely a reactionary strategy in response to the practice of pre-Socratic rhetoricians (Kennedy specifically mentions Isocrates), many of whom were discredited by philosophers because they were accused of "[dressing] up" their discourse in order to hide the shallowness of the arguments. On the other hand, Aristotle's unwillingness to subsume rhetoric wholly within dialectic suggests his awareness that rhetoric is fundamental both to the development and dissemination of knowledge, as was noted before, and that knowledge, while having a general character, is also always situational, contextual, and contingent. So, while Aristotle is comfortable with the priority of dialectic, he is also unwilling to deny the indispensability of rhetoric to epistemology.

So, the dialectic of contention and consensus that results in juridical resolution figures into the society that moves forward through rhetoric, not in spite of it. Society either assimilates the resolution, is radically transformed by it, undergoes subtle alterations in its ethos, or some combination of all three. Categorizing popular trials in this way is thus historiographical: interpretation of the outcomes is made on the basis of rhetorical evidence, the repository of which is both material (trial transcripts; television, newspaper, and periodical accounts; books and documentaries) and epistemological (the evidence of constructed knowledge). This epistemology is (perhaps unexpectedly) inherently particularized and changeable because of rhetoric, meaning that the knowledge produced and expressed is always based on provision and potential, always grounded in context, circumstance, and contingency.

Kairos and Law

Some basic contextualization was necessary because the rhetoricity of the law in general and how that rhetoricity was manifested in Oscar Wilde's trials is apparent not only in the trials themselves but also in their critical history. I have been suggesting that rhetorical analysis is an especially applicable approach because, as outlined above, on the one side predominant theories of the law must inevitably account for the basic rhetorical nature of the law—even the most skeptical theorists cannot dismiss the rhetoric of legal discourse as mere cynicism and ornamentation—and on the other side this basic nature opens up the possibility of a radical critique of ideological approaches to legal theory. Such critiques argue that both the law generally and the particular legal procedures (such as trials) that follow from it are not transcendent, universal, and atemporal. Instead, institutions of the law (constitutions, statutes, enforcement and adjudication mechanisms, and so on) are not distinct from, but are indeed identical to, the rhetoric that is used to communicate of law. From this perspective the law and its applications are conditional, contextual, and existential, and rhetoric provides the terminology and critical framework for analyzing individual instances of the application of the law, the practice that instantiates the theory.

In just such a fashion, the present study is confined to the analysis of legal rhetoric in three particular instances, Wilde's libel trial and his two criminal trials. To that end, I suggest that two rhetorical principles in particular, those of *kairos* and ethos, can be used to continue such a critique of the general rhetoric of indecency law in the 1890s in England, and used to analyze those three trials as instances of specific legal discourse that constructed and maintained the law. *Kairos* is a measure of rhetorical time; ethos is a measure of character. The concept of

rhetorical time has developed alongside that of chronological measure, and it allows us to examine irruptions in time in a larger sense, such as crucial moments in history. Similarly, ethos can address an individual's private and public character as well as the character of larger units of measure, such as peoples and societies, and even the character of an abstract entity such as the law. A short review of the concept of *kairos* follows, but I will leave a full analysis of both *kairos* and ethos to the discussions of the individual trials themselves.

The physical, ethical, and humanist dimensions of *kairos* characterize the reevaluation of the history of rhetoric that has been building over the last thirty years or so (Sipiora, "Introduction," 3-6). For instance, while *kairos* has been broadly (and typically) defined as opportunity, right timing, occasion, and circumstance, recent theorists of rhetoric have speculated on Rostagni's relation of *kairos* to "*harmonia*," which is capable of reconciling opposing *logoi* (Rostagni 37; Carter 106); on the ethical aspects of *kairos*, which are characterized by judiciousness, proportion, and "right measure" (Kinneavy 61-62); on *kairos* as a crisis moment that is generative, physical, lyrical, and tragic (Furlani 219-21; Bitzer 301); and on the implications of the relation of abstract "temporal reckoning" (or *chronos*) to the notion of immediate time or the kairotic moment (Enos 80; John E. Smith 47-80); and even on the physical connotations of *kairos* as "bodily materiality" (Rickert 77-78). As these investigations suggest, the concept of *kairos* comprehends not only the situational aspects of rhetoric, but also its general rules (Kinneavy and Eskin 134), and in this way *kairos* becomes an operative, if not necessary, aspect of all logical, ethical, and pathetic argument.

Moreover, reconsiderations of *kairos* have tended to "begin at the beginning," and to reevaluate the history of *kairos* and the way that history has been conceived. These

investigations have found that *kairos* was a fundamental part of rhetorical education and that a focus on *kairos* pre-dates even Gorgias's treatment of the term (Rostagni 32). While no Sophistic or Socratic treatise addresses solely the concept of *kairos*,[5] the major philosophical and programmatic works of classical rhetoric are suffused with a rich understanding of *kairos* not simply as opportunity, but also as timeliness, crisis, fitness, vitality, judiciousness, decorum, ethicity, contextuality, and much else (Sipiora, "Introduction," 1-3). Additionally, the history of *kairos* seems to be grounded in its role in understanding of how to live well (Rostagni 28; Sipiora 11). Wisdom, the traditional art of living well, is in large part a measure of how well one is able to decipher the kairotic dimensions of *chronos* and temporality. An important component of this art is necessity, for wisdom is both a temporal (time-bound) imperative and a primary element of humanistic education; as Janet Atwill remarks, "'[k]nowing how' and 'knowing when' are at the heart of *kairos*" (59). Understandably, then, twentieth-century scholarship in the history of rhetoric has re-established the classical conception of *kairos* as a site of considerable fluidity and importance.

Yet, although a broad framework has developed for understanding the history of the concept of *kairos*, little attention has been paid to the invocation of *kairos* in the context of legal rhetoric or its applications in the nineteenth century. As Whately, Campbell, Newman, Arnold, Pater, Wilde, and others turned their attention to classical themes, it was inevitable that they should encounter both *chronos* and *kairos* as principles for organizing their history and their present as well as opportunities to renew and revitalize a modern understanding and practice of

[5] Kennedy notes that while exposition of a concept of *kairos* is attributable to Gorgias, Dionysius of Halicarnassus remarks that no orator or philosopher, "not even Gorgias of Leontini" had succeeded in defining *kairos* (35).

rhetoric. Within this historical context, questions can be raised as to how those treatments address what we've been calling the "popular"; what the individual and group interests were that were being theorized by those people; in what ways those interests affected common culture; and the points at which those interests were consonant with or antagonistic to the logic of the law. Similarly, an expanded discussion of legal discourse will help us assess the persuasiveness of the legal arguments presented at Wilde's trials, and help us understand the complex interrelations between those specific, juridical arguments, arguments through which they reverberated in the larger social contexts, and the historiography of Wilde's life and career.

CHAPTER 3

THE LIBEL TRIAL: *REGINA (ON THE PROSECUTION OF OSCAR WILDE) V. JOHN DOUGLAS (MARQUESS OF QUEENSBERRY)*, 03-05 APRIL 1895

An examination of the rhetoric of Oscar Wilde's trials should begin with three groups of participants: the litigants, their counsels, and the witnesses called to testify. These three groups provide the most literal record of the emotional, ethical, and logical appeals used to persuade the judge and jury. Similarly, the physical record, a record which includes both textual and visual evidence, provokes questions regarding the importance of particular opportunities for assertion and counterassertion that bear upon *kairos* in such proceedings. Still, there are two other, more abstract and diverse entities that need to be considered. One is the general populace, the audience outside the courtroom and trial, members of which participated in the trials vicariously and liminally, drawn into the proceedings through both formal and informal means. The formal means were primarily journalism of various sorts, published illustrations of the trials, and the like; the informal were primarily hearsay, gossip, innuendo, and such that were engendered by published and non-published accounts of the trials. The second entity that needs to be considered is the legal system itself, including not only the institution of the law (such as the libel statute), but also the enactment and enforcement of the law, namely, the prosecution and defense, and the judge and jury.

Accordingly, this chapter will begin with a concise summary of the circumstances that led up to the first of Wilde's court appearances, his libel suit against the Marquess of

Queensberry, and a summary of the trial itself. A rhetorical analysis of the trial itself will follow, with specific attention to the litigants and their counsels, and to witness testimony. Finally, the ethos of late-Victorian society as it was manifested in popular reaction to and reception of the trial will be considered.

Introduction

The history of Oscar Wilde's relationship with Lord Alfred Bruce Douglas, commonly referred to as "Bosie" Douglas, is somewhat common knowledge, even to the extent that it is part of a sensationalistic account of Wilde's life in the public's imagination[1]. Further, the particulars and actual character of that relationship are not in dispute here. Suffice it to say that the relationship was passionate and often turbulent. That turbulence was compounded, even encouraged, by Bosie's father, John Sholto Douglas, a Scottish noble and the ninth Marquess of Queensberry, who was a brash, impetuous man—as Hyde describes him, the Marquess was "arrogant, vain, conceited and ill-tempered," and as "objectionable" in his public life as he was in his private life (*Three Times Tried* 21). Nonetheless, he was as wealthy and influential[2] as he was rough around the edges.

He spent his adolescent years in naval training and matriculated Magdalene College, Cambridge, in 1864, but left after two years without graduating (Davis, *Oxford*

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[1] The nickname "Bosie" is a version of the affectionate name "Boysie," a term meaning "little boy," by which his mother Sybil referred to him from the time he was young (Murray 12).

[2] Queensberry's lineage dates to the 8th century; as Murray states, "The family into which Lord Alfred Douglas was born was one of the noblest houses in Scotland. They had a colourful history and had once possessed great lands, wealth and influence" (5).

Dictionary of National Biography, 693-94). Physically, he was of above average stature and in good condition, as would befit a sportsman who loved horses, hunting, and boxing. He was reportedly accomplished at the steeplechase; he became a Master of Foxhounds at both Dumfriesshire and Worcester; and he was famous in the world of amateur prize fighting as both a fighter and for drafting the Queensberry Rules, a set of rules intended to mitigate the brutality of the sport (Hyde 21, Murray 10-11, Sloan 58). He married Sybil Montgomery on 26 Feb 1886. After only a year or so of marriage to Sibyl Montgomery, though, their domestic life together, which included two children by then, became strained, and Queensberry began to focus his attention on these interests in horses, hounds, and extramarital affairs. Although he and Sybil eventually had four children[3], his devotions to his sporting activities and residing mostly in London largely replaced filial relations. In his *Autobiography* Bosie remarks that he his father was away from the family for long periods at a time and that it was left to his mother to raise the family (2-3). Queensberry and Sybil divorced in 1887, and in 1893 he married Ethel Weedon. In the spring of 1894, after only four months of marriage, the marriage was annulled at Weedon's request on the grounds that Queensberry could not consummate the marriage on the basis of Queensberry's "frigidity and impotence, but also of 'malformation of the parts of generation of the said Respondent" (Davis, *Oxford Dictionary of National Biography*, 695).

[3] The four children were Francis Archibald (1867-94), Percy Sholto Douglas (1868-1920), Alfred Bruce Douglas (1870-1945), and George Sholto (1872-1932) (*Oxford Dictionary of National Biography* 693).

The Marquess felt scandalized by Bosie's and Wilde's relationship for at least three reasons, reasons that concentrate Queensberry's personal predilections and his family. First, as suggested before, Queensberry was a rugged individualist with an overweaning sense of self-worth and self-importance. Also, he was part of a political and social reform movement that had begun in the middle of the century (Sloan 48-53). He was a rather overenergetic and inept radical atheist who had made somewhat of a spectacle of himself when as a Scottish peer in the House of Lords he refused to take his oath of office, which meant swearing allegiance to God and Queen, because he claimed that the oath was "Christian tomfoolery" (Hyde 21, Murray 8). This notoriety followed him when he attempted to disrupt a performance of then-poet laureate Alfred, Lord Tennyson's play *The Promise of May*, to which atheists and political radicals such as Queensberry objected because it depicted them unfavorably.[4] Thus, the prevailing religious, cultural, and socio-political conditions of society were much in the activist mind of the Marquess as a very complicated sense of his personal and professional, and private and public ethos. Second, and perhaps following from this complex sense of place in society and politics, the Marquess felt personally embarrassed and shamed by rumors of homosexuality connected to his family, including both of his sons. Third, and perhaps even closer to the bone, was the reality that his eldest son, Viscount Drumlanrig,[5] died in

[4] The irony of these theatrics, along with those of the opening of *The Importance of Being Earnest* and the courtroom performances, is quite interesting.

[5] James I of England bestowed upon the 9th Baron of Drumlanrig the Duke of Queensberry, Viscount Drumlanrig and Lord Douglas of Hawick and Tibbers. Subsequently, Viscount Drumlanrig became the informal title by which the eldest son of the Duke of Queensberry was known. Lord Douglas was often the title used for the second son (Murray 5-6).

a shooting accident that was suspected by prominent officials and others close to the Marquess's family to be a suicide under a cloud of suspicion about a homosexual relationship between Drumlanrig and the then Foreign Secretary Lord Rosebery, who was to become Prime Minister (Holland xix). Along with that of his son Bosie, this last situation seems to generalize much of Queensberry's motivations, for it comprehends his family history as well as his personal disposition. For instance, the barony seemed to have had a difficult past, a past that may have found its way into the actions of the Marquess and his family, so much so that Hyde observes that "indeed, to judge from his recorded actions and utterances, he [Queensberry] may be taken to have been mentally unbalanced" (21). Further, Murray writes that the history of the house of Douglas had in its lineage an heir, James, who was said to have been born "an idiot," and who in 1707 in Holyrood Palace in Edinburgh reportedly committed an act of murder and cannibalism (6).[6] Also, Murray observes "[t]he title Viscount Drumlanrig is reputed by some family members and many others to carry a curse, even for those who do not use it"; and that among a string of earlier untimely and ignoble deaths is the fact that on 06 August 1858 the 8th Marquess of Queensberry (Archibald William Douglas, Viscount Drumlanrig, and John Sholto Douglas's brother) was killed while hunting by the "'accidental explosion of his gun,'" a tragedy about which the newspapers and popular opinion speculated was not accident, but suicide (6).

[6] When James's father, the 2nd Duke of Queensberrry died, his title and his estate when to James's younger brother, who then became the 3rd Duke of Queensberry. James died when he was 17, and thereafter the numbering of the Queensberrys' titles was used to increment forward each title.

It is not surprising, then, that the communication between Wilde and Queensberry was similarly unpredictable. They had met on two occasions during lunch at the Café Royale. On both occasions Wilde and Bosie were having lunch and encountered Queensberry, and invited him to join them. The first meeting was in November of 1892, and reports of the luncheon agree on two outcomes: one that Wilde and Queensberry parted amicably, even with a sense of mutual respect and admiration, as though the impressions each had of the other through hearsay had been proven wrong through a chance encounter in person. Queensberry wrote to Bosie that he had been impressed by and was respectful of Wilde's intellect and manners. H. Montgomery Hyde reports that Wilde engaged in a serious and good-natured discussion about Christianity and atheism as well as a discussion of boxing, the Queensberry Rules of which Wilde had heard (Hyde 22). (Wilde had been an amateur athlete at Trinity and was of a physical stature that an amateur boxer such as Queensberry might respect.) Two days later Queensberry responded to the meeting with uncharacteristic humility. He wrote to Bosie that he was taken with Wilde's charm and cleverness, and that he took back all the corrosive comments he had made about him (Holland xviii; Hyde 22). During the first months of 1893, though, Queensberry recovered his animus toward Wilde and his relationship with Bosie, and threatened once again reprisals, specifically eliminating Bosie's allowance, if Bosie continued to associate with Wilde.

The tide seemed to turn again in March of 1894 at a second chance meeting with Wilde and Bosie at lunch at the Café Royal. While the meeting was not as lively as the first, it was cordial (Holland xviii). The moderation in Queensberry's overall attitude to

Wilde and Bosie was largely due to the rumors that had begun circulating in 1893 that Drumlanrig was involved in a homosexual affair with Lord Rosebery (Holland xviii). Additionally, Wilde had been in correspondence with the second Lady Queensberry, who like her predecessor was mentally, if not physically, abused by her husband, and Wilde had convinced her to send Bosie to Egypt in order to spur him into some direction in his life (Holland xviii). It seems a reasonable speculation to surmise that in these few months Wilde's interposition with the second Lady Queensberry, combined with the Marquess's sense of self and his outrage at the scandal-plagued trajectory of his public reputation, renewed his vehemence against the ongoing association between Bosie and Wilde. (The Marquess's marital difficulties with his second wife and that led to the annulment of their marriage were discussed above.) Then, on 18 October 1894, Francis Archibald Queensberry (Lord Drumlanrig), Queensberry's eldest son and heir, was fatally wounded in what was reported as a shooting accident.

The full weight of this anxiety played itself out in a kind of cat-of-mouse game that featured numerous letters threatening Bosie with familial excommunication, and both Bosie and Wilde with public scandal and even physical harm (Hyde 23). The Marquess also kept surveillance over his son (and Wilde), a practice that later prove very useful to Queensberry's solicitors (Hyde 23). For his part, Bosie seemed to welcome the taunts and the angry attention, even jeering at the seeming shamelessness of his father's actions (Hyde 23). And for his part Wilde seemed for several months to have been tiring of the situation in which he found himself. He had been writing *The Importance of Being Earnest*, and it was soon to be in production (1984-85); he was making a nice living, even

though he was living up to his income; his celebrity and his credibility were established; he was as popular and as influential as he'd hoped to be. Yet, all the while Queensberry dogged and threatened both Wilde and Bosie. Bosie ignored the letters; he returned them unopened. But, even as he was away from London and writing in supposed solitude, Wilde was forced to endure personal confrontations with the Marquess. Wilde finished *The Importance of Being Earnest*, and left for Algiers with Bosie while the play was in rehearsal. The Marquess chose the premier of the play (14 February 1895) as the occasion on which to renew his harassment of Wilde. He promised to disrupt the premier by throwing rotten fruit and vegetable at the stage. The disruption was preempted by police outside the theater, though, and the opening night was a great success. The Marquess persisted, though, and his actions became intolerable to Wilde when on 18 February 1895 he left at the Albermarle Club the calling card that was to become the basis of Wilde's libel action against Queensberry. On Queensberry's personalized card was written "For Oscar Wilde posing somdomite [sic]."

For the present study, the aspects that are important to take away from this short summary of the events leading up to the libel trial (a summary that we would consider the rhetorical context) are the two fundamental principles of *kairos*, timeliness and circumstance, and their connection with action. In contrast to chronological time (see "Introduction"), *kairos* centers on something like "Now is the time; the time is now," with the implicit motivation to action in that statement. As a scholar of Hellenism and as a playwright, Wilde would have, I suggest, an almost intuitive sense of this definition of time. As I will argue later, it is this studied intuition that adds validity and ethic both to

Wilde's actions and his understanding of those actions as he reflected on his life in *De Profundis*. It is this connection with action that Matthew Arnold notes in his "Preface to the First Edition of *Poems* (1853)" a connection with which Wilde would have been sympathetic. It is the inextricable connection between all awareness of chronological time and what Hellenism understood as action based in time. Arnold grounds the Hellenistic argument in the physical, the bodily connection of idea and execution:

> The date of an action, then, signifies nothing: the action itself, its selection and constitution, this is what is all important. This the Greeks understood far more clearly than we do. The radical difference between their poetical theory and ours consists, as it appears to me, in this: that, with them, the poetical character of the action in itself, and the conduct of it, was the first consideration; with us, attention is fixed mainly on the value of the separate thoughts and images which occur in the treatment of an action. They regarded the whole; we regard the parts. With them, the action predominated over the expression of it; with us, the expression predominates over the action. . . . How different a way of thinking from this is ours! We can hardly at the present day understand what Menander meant when he told a man who inquired as to the progress of his comedy that he had finished it, not having yet written a single line, because he had constructed the action in his mind. (5-7)

In *De Profundis* Wilde suggests this identity of moment, action, and art, the Hellenistic conception of art as life that Arnold remarks. Wilde observes that he "stood in symbolic relations to the art and culture of [his] age," and that such a relationship is usually "discerned, if discerned at all, by the historian, or the critic, long after both the man and his age have passed away." But with Wilde "it was different"; he understood the relationship between moment and action implicitly. He wrote:

> I made art a philosophy and philosophy an art. . . . I took the drama, the most objective form known to art, and made it as personal a mode of expression as the lyric or the sonnet. . . . I treated Art as the supreme reality, and life as a mere mode of fiction: I awoke the imagination of my century so that it created myth and legend around me: I summed up all systems in a phrase and all existence in an epigram. (*De* Profundis, *Collected Works*, 45-46)

The Enlightenment concept of chronos introduced into this ontology a rupture, a birfurcation in the notion of time unified with action, and, of corollaries of this unity, notions of prudent and timely actions, as well as imprudent actions, or those that skew effective action. While opportunity and timeliness (*kairos*) were primary determinants of judgment, *kairos* was never unitary. Quite the contrary, *kairos* was a fluid concept that resisted systematization. Consequently, the actions and judgments of individuals were assessed according to a complex, fluid scale of variables that were both analytical and historical, and directive and instructive. For Hellenism, the power of *kairos* as a rhetorical-philosophical principle was that one could interrogate and learn from past judgments, decisions, and actions, as well as practice techniques for according oneself to that understanding.

Wilde understood this, too, and understood how post-Enlightenment consciousness was insufficient to explain his actions because of separations and disconnections between moment and action:

> Morality does not help me. I am a born antinomian. I am one of those who are made for exceptions, not laws. But while I see that there is nothing wrong in what one does, I see that there is something wrong in what one becomes. It is well to have learned that.
>
> Religion does not help me. The faith that others give to what is unseen, I give to what I can touch, and look at. My Gods dwell in temples made with hands, and within the circle of actual experience is my creed made perfect and complete. . . . But whether it be faith or agnosticism, it must be nothing external to me. Its symbols must be of my own creating. Only that is spiritual which makes its own form. If I may not find its secret within myself, I shall never find it. If I have not got it already, it will never come to me.
>
> Reason does not help me. It tells me that the laws under which I am convicted are wrong and unjust laws, and the system under which I have suffered a wrong and unjust system. But, somehow, I have got to make both of these things just and right to me. And exactly as in Art one is only concerned with what a

> particular thing is at a particular moment to oneself, so it is also in the ethical evolution of one's character. (*De Profundis*, *Complete Works*, 165)

Wilde "got it," though, in his conception of the identity of moment and action as the identity of life and art. Wilde's word for this realization is "Humility":

> It [Humility] is the last thing left in me, and the best: the ultimate discovery at which I have arrived: the starting point for a fresh development. It has come to me right out of myself, so I know that it has come at the proper time. It could have not come before, nor later. Had anyone told me of it, I would have rejected it. Had it been brought to me, I would have refused it. As I found it, I want to keep it. I must do so. It is the one thing that has in it the elements of life, of a new life, a *Vita Nuova* for me. (*De Profundis*, *Collected Works*, 48-49)

What is startling about these passages from *De Profundis* is, on the one hand, just as much the evidence they provide for Wilde's manifestation of the Hellenistic identity of life to art that is based in *kairos* (the moment, the opportune) and action, and on the other hand, as it is the thorough grounding in an individual's ethos ("the ethical evolution of one's character") based on an awareness of moments of opportunity. That "Humility" should be the result is in Wilde's case the profoundest tragedy, but, ironically, the clearest evidence of the nature of *kairos*.

The circumstances outlined above—and there are certainly many more details; only a summary of the context was intended—congealed to form what theologians who write about *kairos*, such as Niebuhr, designate a crisis moment. Again, the sense of that moment is not chronological; it is not fixed in a physical sense. Instead, it is a point or (series of points), a crisis point (or related crises), created by and recognized by the participants as a confluence of intersecting conditions, recognitions, judgments, actions, and justifications. It is a point of potential, recognized as such by the participants, that in retrospect is the culmination of numerous circumstances. For instance, Bosie Douglas

perceived an opportunity to use his relationship with Oscar Wilde as a means of acting against his father; Queensberry perceived the opening of *The Importance of Being Earnest* as an opportunity strike out publicly against Wilde as a means of exerting his will over his son; Wilde perceived in the card left for him by Queensberry the opportunity to protect Bosie and to respond both to the personal boorishness of Queensberry, and to Queensberry as an emblem of a kind of distasteful social and aesthetic ethos. The prudence of all of these actions is what is under examination here.

Before looking into the particulars of the libel trial itself, though, there are two men whose involvement with the events leading up to the libel trial needs to be summarized. These men are Bosie Douglas and Robbie Ross. The constant presence of these two is like a set of bookends for the entire scope of Wilde's legal affairs, affairs that dominated his life from 1894 to his death in 1900. Once again, a full account of these men is not intended. The summaries will focus primarily on actions that bear directly on the instigation of libel proceedings against Lord Queensberry.

Bosie Douglas had left Oxford in without taking a degree, and his life was rather unfocused, his future uncertain. He had a wide circle of relationships within the gay community; Wilde was the most prominent of these. The notoriety surrounding this relationship was what so embarrassed and offended Bosie's father. (This, as noted above, along with the rumors regarding his eldest son's, Lord Drumlanrig's, relationship with Lord Rosebery.) Wilde's letters suggest a level of personal and professional fatigue that motivated Wilde to turn to Robbie Ross for advice and counsel. (Robbie Ross, a Canadian, had been a long-time friend and confidante of Wilde.)

The Rhetoric of the Libel Trial, 03-05 April 1895

For those authors writing about the libel trial in retrospect, it seems irresistible to describe it as anything but theatrical drama. For instance, Merlin Holland, Oscar Wilde's grandson, who has provided the most accurate version of the trial transcripts, claims that Wilde ended his testimony by "playing to the gallery, treating the Court like a theatre. . . ." (*Real Trial* xxix). Yet, there is no evidence that Wilde himself in retrospect saw the situation in this way. On the contrary, as discussed briefly above, he reviewed the events of his life as a series of circumstances and choices that determined his actions. He felt himself a part of the moment, responding to arguments and opportunities—much different from a playwright determining the actions of his characters. Nonetheless, the reasons why commentators on the trials would characterize them as theatre are both various and understandable. We expect personal, even public, drama in any famous literary life and particularly in the lives of those artists who spend considerable effort constructing for the public their own images as artists. Artists such as Andy Warhol, Normal Mailer, and Truman Capote in the last half of the twentieth century, and Oscar Wilde and Bernard Shaw in the late-Victorian period, cultivated an elaborate artistic and literary ethos. As a dramatist Wilde might have had an even keener sense of how to do so and of why doing so would both enhance his celebrity and increase his profits. What is an interesting point of study, though, is the extent to which Wilde was able to construct and maintain his own ethos, both before his public trials, but mainly in the midst of those proceedings, in intersection with the constructed ethos of those directly involved with his future.

The Marquess of Queensberry was arrested at Carter's hotel at 9 a.m. on Saturday, 02 March 1895. The previous day (Friday, 01 March 1895) a warrant for the Marquess's arrest had been sworn by the magistrate Robert Milnes Newton on the basis of the accusation and evidence presented by Wilde's solicitor, Charles Humphreys. On the morning of the arrest, the case for taking the matter to trial was presented before the magistrate (Newton) at the courts in Great Marlborough Street. Charles Humphreys argued the case for Wilde; Sir George Lewis argued the case for the Marquess of Queensberry. (Subsequently, Lewis reassigned the instructions; see below.) Charles Humphreys alleged that the Marquess had committed egregious libel against his client's (Wilde's) character and public reputation. Humphreys presented the following evidence: the personal calling card on which the Marquess's name was pre-printed and on which the alleged libel was handwritten ("For Oscar Wilde posing somdomite [sic]"); and the testimony of two men, Sidney Wright, the hall porter at the Albermarle Club (of which Wilde and his wife Constance were members) and the person to whom the Marquess had given the calling card; and Thomas Greet, detective inspector of police, and the officer who arrested the Marquess. Wright testified that he had received the card with the libel written on it. Greet testified that he had encountered the Marquess at Carter's hotel, had presented him with the warrant, and had arrested him.

Wilde and Queensberry, their solicitors (Humphreys and Lewis, respectively), and Detective Inspector Thomas Greet appeared before the magistrate (Newton) on 09 March 1895, and their depositions were signed and entered into the court record. Sir George Lewis attempted at first to have the hearing postponed on the basis of insufficient time

for the defense to collect evidence. The magistrate rejected this plea on the grounds that sufficient evidence, namely, the calling card, was available already. This evidence was confirmed by the depositions of the two witnesses. Also, in a remark that would become a shadowy backdrop for Wilde's two subsequent criminal trials, Lewis hinted at evidence and circumstances that would shed much light on the present situation: "Let me say one word, sir, I venture to say that when the circumstances of this case are more fully known, you will find that Lord Queensberry acted as he did under feelings of great indignation--" (Holland 5). On Wilde's behalf, Charles Humphreys suggested that additional accusations were available to Wilde in the form of letters that would establish further libels beyond the calling card presented as evidence.

After retiring to chambers with the counsels for a short discussion, the magistrate halted these lines of argument somewhat abruptly, most likely for two reasons. First, all that was required of Lewis was the claim that he would provide a defense against the charges. Second, as a practical matter, the purpose of the hearing was not to argue the case or to present a plea of justification; instead, the purpose was only to determine if there was a case to which a jury could render a verdict (Holland18-21). Newton committed Queensberry to trial at the next sessions of the Central Criminal Court and adjourned the proceedings (Holland 22).

The accusation of libel and defense of justification was based on the Libel Act 1843 (Rev. 1892), which focused on two categories of libelous publication, false libel and malicious libel. Further, the Act provided for these categories in instances that might be considered either corporate libel or personal libel. The former is described as libel "in any

public newspaper or other periodical publication"; the latter as "[f]alse defamatory libel" published by "any person," and "[m]alicious defamatory libel" published by "any person." On the one hand, the emphasis in the statute seems to be a liberal response intended to protect the growing popular press from prosecution. For the press inadvertent defamation was protected by a simple apology, even the offer of an apology: either upon notice of the accusation or "at the earliest opportunity afterwards," the defendant in a libel case could mitigate the consequences of an alleged libel either by offering a direct apology, such as an immediate public retraction or correction as would be possible in a daily publication, or even by evidence and promise of an apology, such as the intention to provide an apology that would be included with a subsequent issue of a publication, if such a publication were published at intervals. If such an apology were published, and if no malicious intent were established, then appropriate punishment would be the public retraction and apology, along with a monetary judgment.

As regards personal libel, the Libel Act seems to enhance the protection of public figures by adding the motivations of both false and malicious libelous accusations (Mitchell 28-29). Preemption of prosecution for personal libel is mostly the same as with the corporate libel: A public apology could be offered that would prevent further litigation. In 1894, as Queensberry's attacks on both Wilde's and Bosie's characters were escalating, Humphreys (Wilde's solicitor) wrote to Queensberry to demand an apology to prevent further action. Queensberry rejected this offer, and Wilde decided not to pursue it. (Reference letter to Bosie in early 1894). Apologies of this sort were not meant to establish the innocence of the libel, but to mitigate damages, which could include a fine,

and imprisonment for two years (false libel) and one year (malicious libel). Also, defense against libelous accusations, especially against personal libel, was based on the Libel Act's provision of justification for the public libel, and it was this plea that Queensberry was to enter in his defense. The plea of justification was valid upon demonstrating that he accusation was true, that it was made in the public interest, and that there were "particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published" (*Libel Act 1843,* Sec 6).

Queensberry's plea of justification was successful, and it was on the basis of the "particular fact or facts by reason whereof it was for the public benefit" that formed the basis of the criminal charges against Wilde. Moreover, it is the irony of this justification that traverses the public and private ethos of the litigants in the libel case. Establishing the justification for Queensberry's personal attack on Wilde—the "fact or facts" about Wilde's character—became more than a dispute between individuals in which one would prevail and the matter ended. Once Queensberry was acquitted, nothing more was available to him or to Wilde. But, the establishment of the justification—the "fact or facts" that were introduced in the case—revealed legal, social, and cultural implications that the Crown felt compelled not to ignore. Put differently, in Wilde's case the "public benefit" seemed best served not by a single, culminating resolution (the acquittal of the Marquess), but by pursuing a criminal prosecution of the plaintiff.

Opening Statement for the Prosecution: Wednesday, 03 April 1895[7]

Judge

- Honable Mr. Justice Henn Collins

Counsel for the Prosecution (Wilde)

- Sir Edward Clarke, O.C., M.P, lead counsel
- Mr. Charles Willie Matthews, junior counsel
- Mr. Travers Humphreys, junior counsel

Counsel for the Defense (Queensberry)

- Mr. Edward O. Carson, Q.C., lead counsel
- Mr. Charles Frederick Gill, junior counsel
- Mr. Arthur Gill, junior counsel

The libel trial began on Wednesday, 03 April 1895, and with it began not only the theatrics of a popular trial, but also the very complicated and situated interactions between the participants in the trial(s), and the socio-political spheres and disciplinary conventions those participants represented. For instance, one level on which these different representations existed was that of professional ethos. There appears to have been widespread interest about the case among all barristers, so much so that it became something of a special event for them: everyone who was without a case wanted to be at

[7] Unless otherwise noted, all direct quotations are taken from Holland's *The Real Trial of Oscar Wilde*. Additional references will be noted in those cases where the published accounts of the trial differ significantly, or where information is provided that would gloss the analysis of the rhetoric.

the trial, and everyone who could be there took the opportunity rather seriously. The 03 April 1895 edition of the *Westminster Gazette* reported:

> . . . . [T]he barristers came first. They wore their wigs and gowns without exception, partly as a tribute to the importance of the occasion, partly perhaps to secure themselves against the inconvenient possibility of being denied admittance. They came not [as] single spies, but whole battalions. And, so far as they were permitted, they took possession of every seat which seemed capable of accommodating their persons. They sat in the barristers' seats; they sat in the solicitors' seats; they sat in the witnesses' seats; they sat in the ushers' seats; and, excepting the Bench, they sat in all the other seats which they could capture. And when those seats were all used up, they stood, a serried mass of voluble, grey-wigged, black-gowned humanity, in the gangways and approaches of the court. The only serious rivals to the barristers were the reporters. . . . (Holland, *The Real Trial of Oscar Wilde*, xxvi-xxvii).

The crowd having assembled, the Clerk of Arraigns read the indictment. In *Three Times Tried*, H. Montgomery Hyde records two counts against the defendant (Queensberry), the second of which is a near copy of the first. Interestingly, though, the first count is considerably more judgmental against Wilde, the plaintiff. Both counts include the charge of false and malicious libel based on the publication of the calling card on 18 February 1895, with the intent of causing Wilde to endure public scandal and disgrace. As reported by Hyde, though, the first count of the indictment describes the behavior upon which Wilde was being libeled as "the habit of committing the abominable crime of buggery with mankind," while the second count omits such language (107-08). Holland's transcript of the trial does not include the Clerk's reading of the indictment.[8]

Sir Edward Clarke opened the case for Wilde by focusing generally on the libel itself, and by concentrating on the statute governing the offense. Clarke noted that the

[8] Leslie J. Moran provides a very interesting and useful analysis of the major transcriptions of the trials (Millard's [1912,], Hyde's [1948, 1962], and Holland's [2003]) and the epistemological difficulties inherent in the accounts upon which those transcriptions were based and in the editorial interventions of each of those authors.

accusation written on the calling card accused Wilde of the "gravest of offenses"; that it would materially affect Wilde's "reputation" and "position"; and that it contained no suggestion of any truth to the accusation (because the card only stated that Wilde was "posing"). Clarke continued by outlining what he expected the defense counsel to contend, namely, that what was stated on the card was true and that the accusation was made for the public benefit, both necessary reasons for a plea of justification. Further, Clarke notified the jury that the defense intended to introduce in the proceedings witnesses who would testify that they were solicited by Wilde to engage with him in the "indecent practices" and the "gravest of offenses" (Hyde, *The Three Trials of Oscar Wilde*, 108-09; Holland, *The Real Trial of Oscar Wilde*, 26-27). Clarke's opening statement would seem to be evidence of, if not tacit acknowledgement of, the predicament into which Wilde and his counsel had gotten themselves by pursuing the libel prosecution. That is to say, Clarke seemed to describe a trick bag into which Queensberry, by way of the phrasing (rhetorical positioning) on his calling card had caught Wilde: either Wilde was only "posing" as a homosexual, not a practicing one, in which case the libel could be more easily justified and Queensberry more easily acquitted; or, Wilde was not "posing," but was indeed a practicing homosexual, in which case the chances were very high that subsequent criminal charges would ensue.

At the close of this summary Clarke offered a general comment on the character of witnesses who would be called to testify as to the truthfulness of the claim that Wilde had "solicited the commission of the offense" (sodomy), although the defense never claimed that he was guilty of such practices. Ending in this way the summary of the

questions before the jury was a deft rhetorical strategy for Clarke because it established a backdrop, a context, for the primary appeal that he would use in his opening argument, namely, the appeal to the dubious credibility of the defense testimony and the ethic of his client (Wilde). So, for instance, Clarke alerts the jury that "It is for those who have taken the very grave responsibility of putting into the plea those allegations to satisfy you if they can, by credible witnesses whose evidence you will consider worthy of consideration and entitled to belief that those charges are true" (Holland, *The Real Trial of Oscar Wilde*, 28).[9] In *Three Times Tried*, Hyde records an additional comment on the credibility of the witness testimony, specifically, that the testimony likely is of questionable character because the witnesses might be protecting themselves from prosecution: "I can understand how it is that these statements have been put in the form in which they are found, for these people, who may be called upon to sustain these charges, are people who will necessarily have to admit in cross-examination that they themselves are guilty of the gravest offenses" (109).

Against this backdrop Clarke delivered an epideictic discourse on his client's character. This description of Wilde's ethos characterized him as admirable, sympathetic, and successful, an esteemed public figure from a distinguished family. Clarke offered Wilde as the son of "a very distinguished Irishman, a surgeon and oculist, who did great

[9] Hyde: "It is for those who have taken the responsibility of putting into the plea those serious allegations to satisfy you, gentlemen, if they can, by credible witnesses, or evidence which they think worthy of consideration and entitled to belief, that these allegations are true" (*The Three Trials of Oscar Wilde*, 109).

public service as chairman of a Census Commission in Ireland" (Holland 28).[10]. Further, Wilde is presented as a student of the first rate and an obedient son, who excelled at Trinity College before acceding to his father's desire that he attend Oxford: "He went in the first instance to Trinity College, Dublin and at Trinity College, Dublin greatly distinguished himself—greatly distinguished himself for classical knowledge and earned some conspicuous rewards which are given to students at that brilliant university—and so distinguished himself there that his father wished him to go to Oxford and he passed to Magdalen College, Oxford" (28). Clarke noted that his "brilliant career" at Oxford, which included winning in 1868 the renowned Newdigate Prize for his poem "Ravenna," "was indicative of his future course and future reputation" (28). Clarke followed the summary of Wilde's upbringing and career with a statement about Wilde's professional accomplishments, which, he inferred, were of a piece with his academic and which led him to become "a very public person indeed,"[11] whose art "commended itself greatly to many of those of the foremost minds and most cultivated people of our time" (Holland 28-29). Counsel concluded his celebration of his client's ethos by noting his marriage to Constance Lloyd, which resulted also in the birth of their two children.

What is "conspicuous" in this characterization is the repetition of the themes of Wilde as "greatly distinguished" throughout both his personal and public lives, and as pursuing a life marked by consistency and stability. It was strategic for Clarke to

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[10] Clarke's reference is to Wilde's father, Sir William Robert Wills Wilde (1815-76), who was a prominent ear and eye physician in Dublin (see McGeachie, *Oxford Dictionary of National Biography*).

[11] Hyde: "Many years ago he became a very prominent personality. . . ." (*The Three Trials of Oscar Wilde*, 110).

characterize Wilde in this way for several reasons. Beginning with his personal ethos, Wilde's noble lineage and genteel breeding would elicit respect. Likewise, that Wilde took that breeding seriously and made of himself a diligent and accomplished scholar and writer would suggest that he was true to his promise, trustworthy, and sincere. Further, such a personal record and reputation as a respectable and obedient individual would imply that he would undoubtedly be wise enough to steer clear of illegal behavior and unsavory persons. This personal ethos, then, provided the foundation for his public ethos, and it is here where Clarke speaks directly to the libel accusation. He needed to show that actual harm had been done to Wilde's reputation, that any reasonable person would judge it an abomination to cause to be published such an attack as Queensberry's against the name of a public person whose character was consistent from his earliest days and that throughout his life had guided him to ever-greater accomplishments. Additionally, there was the need to establish tenor of maliciousness on the part of the defendant. Clarke understood that for the defense to prevail it would have to demonstrate the truth of the alleged libel, which would largely entail convincing the jury that Wilde was not what Queensberry's card made Wilde out to be, a man "posing" as a homosexual. This would seem to leave Clarke with one of two arguments: either that Wilde was homosexual, so he was not actually "posing"; or that Wilde was neither homosexual nor "posing" as one. The two options represented a serious predicament for Clarke (and for Wilde) because they both involved the question of homosexual behavior, either artificial (as part of a constructed public persona) or actual, and Clarke had recognized this when he had advised Wilde not to pursue the libel action. If Clarke based a defense on the first option

(not “posing”) he would have assuredly won the case against Queensberry, at which point Wilde would be immediately charged with gross indecency. If he based his case on a renunciation of Queensberry’s statement, then surely the defense would introduce evidence of homosexuality as part of its case. The defense would leave it to the jury to decide whether such evidence demonstrated a purposeful artifice (“posing”), which would mean proving Queensberry’s accusation and finding him not guilty. But the evidence would still be out there, and it would be left to the Crown to determine whether or not there were sufficient grounds upon which to charge Wilde with gross indecency.

Having established his line of argument based on his client’s credible ethos, Clarke responded in his opening remarks to the specifics of the situation, including Wilde’s friendship with Bosie Douglas and subsequent meetings with Lord Queensberry; and through his friendship with Bosie Wilde’s involvement with the witnesses who were to appear for the defense. In this part of his speech, Clarke alerted the jury to what evidence is “of some importance” and what evidence is “of no importance” (Holland 31). Using a subtle rhetorical strategy, Clarke described for the jury how Mr. Wood, Mr. Allen, and Mr. Cliburn, witnesses for the defense, came to possess four letters from Wilde to Bosie Douglas and that were the basis of a blackmail attempt. The letters were found by the witnesses in the pockets of clothes belonging to Bosie and that he had given to the men. The men, all of whom were in somewhat desperate financial situations, felt that the letters expressed a physical relationship between Wilde and Bosie, and that given

such Wilde would pay to have them returned so that they would not be made public.[12] In explaining how the three came to possess the letters, Clarke again juxtaposed his client's character and theirs: Clarke noted that Wilde himself was unaware whether or not the letters were in the pockets of clothes given to the men by Bosie, an act of kindness on the part of one of his (Wilde's) closest friends, or "whether Wood had stolen them" (Holland 31). And when Wood attempted to blackmail Wilde on the basis of the letters, Clarke recounted for the jury that "[Wood] represented himself as being in some distress and trouble and wanting to go to America. . . ," at which point Wilde gave Wood some money for passage and received in return "three somewhat ordinary letters" from Wilde to Bosie. Clarke added: "I do not think any importance attaches to those letters because you will see that, as is generally the case where people think that they have got letters which are of some importance, the letters which are of no importance are given up and the letter which is supposed to be of importance is retained" (Holland 31). On the surface Clarke's added opinion was a clever set up for the next step in the chronology of events, a witty play on themes, as Clarke reminded the jury that during that time *A Woman of No Importance* was in rehearsal. On a deeper level, the idea of "importance"—what and who are important and not important, what and who are important enough to be worthy of protection from malicious libel—was crucial for Clarke's argument.

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[12] In his "Foreword" to Hyde's *The Three Trials of Oscar Wilde*, Travers Humphreys remarks that Section 11 of the Criminal Law Amendment Act 1895, which added private indecency (not just public indecency) to the statue, was referred to by some in the legal profession as "The Blackmailer's Charter" (6). See also Laurence Senelick's analysis of the history and culture of blackmail in late-nineteenth-century Europe ("Wilde and the Subculture of Homosexual Blackmail").

What was always at stake was the "importance" of his client's honor and reputation. For instance, when Clarke read from the letter that Mr. Allen had tried to use to blackmail Wilde (the letter that was not returned by Wood with the other three), Clarke admitted to the jury that the language was uncommon, but nothing more or less than would be expected of a literary artist: "Now, gentlemen, the words of that letter appear extravagant to those who are in the habit of writing commercial correspondence or those ordinary letters which the necessities of life force upon one every day. . . ," but it is instead a letter written by "an artist and a poet" and is meant as "an expression of a poetical feeling [having] no relation whatever to the hateful suggestions—hateful to him [Wilde] as to all of you [the jury]—which are made with regard to him in the plea in this case" (Holland 34). Accounts of the trial record that in this instance (as in others) Clarke's remarks elicited laughter from the crowd and from Wilde himself, suggesting both the tone of Clarke's voice but also a generalized public attitude that was not always positive toward the separation of social classes. Obviously, Clarke was playing to the crowd; yet, given the makeup of the jury (see "Introduction"), one might reasonably expect that such a distinction between the successful artist and the "ordinary" letter writer might have been interpreted as a subtle disparagement of the common person. In this light Clarke's remarks can be understood as a strategy to collapse distinctions between Wilde as a celebrated public figure and the average citizen, members of the jury, and the courtroom audience.

A report of Wilde's efforts to protect his honor and reputation concluded Clarke's opening speech, and Clarke juxtaposed those efforts with the uncontrolled and

unrepentant character of Queensberry. Clarke described Queensberry's disruption of Tennyson's play *The Promise of May* (see above) and informed the jury that the spectacle had become "a matter of public dramatic history" of which the managers of St. James's Theatre were well aware, importantly suggesting that it was a personal predilection of Queensberry's, if not a fundamental character flaw, to create such irrational disturbances in regards to public figures. Clarke noted the seriousness of such a disturbance at the opening night of any play and how that disturbance had the potential to "seriously affect Mr Oscar Wilde's character and must seriously affect the prospects of the theatre and the play" (Holland 36). "Precautions were taken," though, so that Queensberry was refused admission when he appeared at the theater with a "large bouquet made of vegetables" (Holland 36). The audience laughed at the apparent absurdity of the Queensberry's display, and Clarke seized the opportunity to characterize for the jury Queensberry as rash, indecorous, and malicious:

> I can hardly complain seriously as I feel at this moment the importance of the matter with which we are dealing that the mention of the circumstance should have moved others to laughter, but gentlemen, it is by no means unimportant when you will have to consider in this case, as you will have to consider, the way in which Lord Queensberry, if he had any reason whatever for attacking the character of Mr Oscar Wilde, departed from the course which any gentleman would have taken in such circumstances, and condescended to such a pantomimic expedient as that to which I have just referred. Whether Lord Queensberry is at all time responsible for his actions is a matter upon which you, I think, may possibly have your doubts at some time before this case ends. . . . (Holland 37)

Additionally, Clarke reminded the jury that Wilde previously had been frustrated with Queensberry enough to contemplate legal action and had asked his solicitor to send a letter to Queensberry to demand apology for his actions, which Queensberry refused,

suggesting that this sort of aberrant, goading behavior on Queensberry's part was characteristic and intentional.

Clarke ended his speech by addressing somewhat cursorily two of Wilde's works that would be introduced by the defense, *The Picture of Dorian Gray* and "Phrases and Philosophies for the Use of the Young," the latter of which appeared in the inaugural issue (vol. 1, no. 1) of *The Chameleon*, a literary magazine for the gay community and that published only one issue (Beckson, *Aesthetes and Decadents of the 1890s*, vii-viii). Clarke defended "Phrases" on the basis that its epigrams were consistent with Wilde's "brilliancy," that they were "wisdom in a witty form," and could not by a reasonable person be considered "in the most remote degree. . . hostile to the moral character" (Holland 40). Clarke informs the jury that Wilde allowed his name to be used in the inaugural edition out of a generosity of spirit: Wilde was aware that his name would attract buyers. Yet, he was not aware of the contents of the magazine, Clarke contended, and that when he became aware of them, specifically the piece titled "The Priest and the Acolyte," Wilde expressed his dissatisfaction and regret with regards to the literary and moral merits of the publication (Clarke: "not worthy to be published, not proper to be published" [Holland 41]), and insisted that any available copies be withdrawn from sale.

Likewise, Clarke turned the upcoming attack on *The Picture of Dorian Gray* into a statement on both the lack of preparation on the part of the defense counsel and on Wilde's artistic skill and moral rectitude. He argued that the accusation about the book as evidence of his client's indecent and immoral intentions rested solely on the grounds that Wilde's name was on the title page. Moreover, the book had been popular for several

years, and, Clarke not so gently suggested, if one (such as Queensberry's defense counsel) were to take the time to read and understand the story, one would discover that Dorian's character is condemned. Further, an attentive, sensitive reader would have to acknowledge that, like any writer, Wilde did "[nothing] more than describe as a novelist may or dramatist may—nay, must—describe the passions and the vices of life if he desires to produce any work of art which, while idealising reality, may be artistic in the sense of harmony and beauty and truth" (Holland 43).

Testimony for the Prosecution, 03 April 1895, Examination and Cross-Examination

On the first day of the trial, witness testimony for the prosecution (Wilde) and cross-examination of the witnesses by Queensberry's defense counsel (Edward Carson) followed the prosecution's opening statement. The witness testimony consisted of testimony by Sidney Wright, hall porter of the Albermarle Club (examined by Willie Matthews), and Oscar Wilde, examined by Sir Edward Clarke and cross-examined by Edward Carson. Sidney Wright's testimony was needed to establish the basic evidence of the alleged libel, namely, that Wright had received and could identify the card left for Wilde by Queensberry. Clarke's examination of Wilde was intended to reinforce the argument Clarke made in his opening speech. Accordingly, there is little to add regarding Wilde's corroboration of the events as outlined by Clarke except to observe it is clear that when Wilde was called as witness the audience seemed to have been expecting something of a performance, and Wilde was willing to oblige. Clarke, for his part, provided adequate space for Wilde to steal the show, as it were, and in person in front of the jury and assembled onlookers to embody exactly the kind of consistent ethos that

Clarke had described. While Wilde was something more than confident in his responses; the court reporter's notes record laughter from the audience on numerous occasions. And on most of these occasions the audience laughs at responses to questions from Clarke that allow Wilde an opportunity to display his character, his acute intellect, his urbane and extravagant wit, against the characters of the witnesses for the defense: the blackmailers, who were not intellectually, socially, or ethically up to the task; Queensberry, who was too blinded by rage to act civilly; and even to those readers of literature who would think closely about *The Picture of Dorian Gray*.

The importance of Wilde's evidence of himself cannot be separated from its relation to his cross-examination by Edward Carson. Carson had been a classmate of Wilde's at Trinity College, and so was rather acquainted with Wilde's temperament. Further, Carson needed to argue justification of Queensberry's alleged defamation, which meant that the defamation was published to the public benefit. Hence, Carson seemed prepared from the very start of his cross-examination both for a cross-examination of Clarke's argument, which meant refocusing the locus of control in the courtroom from Wilde himself to what the accusation he was prosecuting said about himself, and on justifying for the jury the implication of the accusation for the public good, but not the substance of the action implied. In other words, Carson did not need to show that Wilde had engaged in illegal indecent activities; instead, he needed only to persuade the jury that the accusation that Wilde was acting ("posing") as though he was one who committed illegal indecent activities (sodomy) was true, and that the accusation by

Queensberry was made in the public interest, a “pose” of which Queensberry believed the public needed to be aware.

One aspect of Carson’s strategy was to personify the seriousness of the law against Wilde’s enactment of the seriousness of art. For this, the defense was more specific than the prosecution; whereas Clarke relied on summaries of Wilde’s background and generalizations of his character, Carson chose to focus on specifics. Similarly, whereas Clarke encouraged Wilde to display for the jury (and courtroom audience) the range of his artistic imagination, and asked the jury to infer his client’s honor and respectability from there, Carson took a more objective approach, choosing to focus on close textual analysis of published works, while asking always about the extent of connection between what was written and the writer’s life.

This strategy had several trajectories. For one, while Clarke’s argument was epideictic (praising Wilde’s character) and agonistic (contesting the character of the defendant and defense witnesses), Carson’s argument became increasingly forensic (close analysis of specific Wilde texts) and eristic (challenging the plaintiff and combating his responses). In addition, Wilde’s own arguments and attitude shifted from the former to the latter: he became defensive and accusative. For instance, while the audience laughed at Wilde’s aphorisms in “Phrases and Philosophies for the Use of the Young” as they were read by Carson, and at Wilde’s quips regarding their interpretation, Wilde often betrayed his perturbation at Carson’s direct, even brusque, questioning. Indeed, at one especially tense point in the afternoon cross-examination, Wilde attacked Carson’s verbal style as he read aloud one of Wilde’s letter: “Literature depends upon how it is read, Mr.

Carson. . . . Then, don't read it to me." Carson took up the challenge, objecting sarcastically that Wilde "assails" him for his reading style. Such was the tension at this point that Sir Edward Clarke felt it necessary to intervene to quell the argument by asking his client, "Kindly do not find fault with my learned friend's reading again. It disturbs the proceedings" (Holland 106). These exchanges begin to draw into sharp relief a context that juxtaposed the law and art, control and independence, stability and instability.

Similarly, at the beginning of his cross-examination, Carson challenged the veracity of Wilde's testimony that he was 39 years old, a point upon which one would expect no need for doubt, duplicity, or obfuscation, no need for pretending ("posing"). Carson asked Wilde to confirm his birth date, to which answer Carson responded that the date given "makes you somewhere over forty" (Holland 64).[13] The purpose of this opening gambit was fourfold, two of which were practical for the moment and two of which were more general seeds of doubt planted for the jury's deliberations. First, it alerted the jury to an immediate inconsistency in Wilde's testimony about himself, a cornerstone of the prosecution's argument. Second, it allowed a point on which Carson could affirm his control over the questioning. This control manifested itself in posing questions and insisting upon answers that required a "yes" or "no" response with little-to-no elaboration. Third, it provided a reason to establish Bosie Douglas's age as nearly 20 years younger than Wilde, a fact that speaks to the issue of the public benefit of

[13] It appears that Wilde was well known for this evasion regarding his age. Further, he might have inherited it from his mother, Jane Fransesca Agnes Wilde (pseudonym "Speranza" [1821-96]), who claimed publicly that her birth date was unknown. Joy Melville notes that, indeed, information about her youth is not available (Melville, "Wilde, Jane Francesca Agnes, Lady Wilde [pseudo. Speranza] (1821-1896)." *Oxford Dictionary of National Biography*. Vol. 58. 905).

Queensberry's alleged libel. Carson would later urge the jury to consider that it was important to society for parents and other adults to act as suitable role models for children and younger adults. Fourth, it gave context to evidence regarding the extent to which an artist's work reflects that artist's life. We should remember that the case centered explicitly on Wilde "posing" as somewhat he was not. Carson hoped to establish for the jury a relationship between testimony based on a factual conflict (Wilde's age and Bosie's age, and the actual difference in their ages), and how such conflict, even misrepresentation, needed to be sorted out by jury in regards to more abstract distinctions related to life as an artist.

All of these aspects are evident in Carson's cross-examination of Wilde during the first day of the trial. Throughout the day the questioning was pointed and graphic, and Carson pressed the details for their full effect:

> Carson: Now, I must ask you this: did you arrange several evenings to meet [Alfred] Wood at the corner of Tite Street when the house [Wilde's house] was empty in this way? [Occupied by only a caretaker].
> Wilde: No, certainly not.
> Carson: Did he go in with you to Tite Street?
> Wilde: No.
> Carson: Did you ever have any immoral practices with Wood?
> Wilde: Never in my life.
> Carson: Did you ever open his trousers?
> Wilde: Oh, no!
> Carson: Put your hand on his person?
> Wilde: Never.
> Carson: Did you ever put your own person between his legs?
> Wilde: Never.
> Carson: You say that?
> Wilde: Yes.
> Carson: I say to you that several nights in Tite Street you did that.
> Wilde: I say it is entirely—absolutely untrue. (Holland 117-18).

Early in his cross-examination, Carson also wanted to focus testimony on the connection that he perceived between Wilde's contributions to *The Chameleon* and to the published versions of *The Picture of Dorian Gray*. In contrast to Clarke's treatment of these publications, though, Carson intended a close reading of certain passages with the intention of interrogating Wilde as to his personal investment in the activities described or implied in those passages. Put bluntly, Carson inquired repeatedly whether or not Wilde subscribed to the philosophies and lifestyles apparently expressed in those texts, and even if he had personal experiences with those lifestyles. For instance, Carson inquired as to whether or not Wilde considered "The Priest and the Acolyte" "blasphemous." (This was the story upon which Wilde had demanded that sales of *The Chameleon* cease.) Initially, Wilde sidestepped the question, claiming that he found that the end of the story "violated every artistic canon of beauty." Carson pressed, though, and even after Wilde responded that "Yes," he found it blasphemous, Carson perceived in the discussion of literary texts an opportunity to sharpen the point of attack to the very question of the justification of the libel accusation:

> Carson: Did you think it ["The Priest and the Acolyte"] blasphemous?
> Wilde: How do you mean? I thought it wrong, utterly. Let me say so.
> Carson: Did you think it blasphemous, sir?
> Wilde: Yes.
> Carson: I want to see what position you pose in.
> Wilde: Now, that is not the way to talk to me—"to pose as". I am not posing as anything.
> Carson: Yes; I beg your pardon. I want to see exactly what is the position you take up in reference to this line of publication, and I want to know, sir, do you consider that story was blasphemous? (Holland 70)

Carson correlation of posing with positioning ("I want to see what position you pose in") seems an extremely deft rhetorical strategy because of its multiple explicit and implicit

resonances. Explicitly, it refers to Queensberry's accusation that Wilde was "posing." Implicitly, the strategy attempts to connect what one believes in and values (the individual, personal positions one takes in life) with what one presents oneself as in public (how those personal positions are manifested in public behavior). Another implication, one with which the audience might understand even more readily, is that for Wilde all action is just acting in a strictly theatrical sense.

Carson also spent considerable time on the question of why Wilde, a person of considerable reputation and social status, would deign to keep company with young men who were clerks, office boys, and uneducated others who ranged in age from 18-20 (Holland 70-93). Carson's intention was to show "familiarity" with these young men, which, in turn, would call into question Wilde's motivation behind these friendships: Was it just the aesthetic appreciation of youth; or was it either the actual corruption of the men through indecent behavior or posturing at such corruption ("posing")?

On the second day of the trial, 04 April 1895, Carson continued with the theme of familiarity and drew into the examination Alfred Taylor, the person whose rooms were places where Wilde was introduced to many of the young men with whom he became familiar. (Subsequently, Alfred Taylor would be charged alongside Wilde in the two criminal trials.) Once again, the questioning became very pointed. In questioning Wilde whether or not he was "on familiar terms" with Walter Grainger, a servant to Bosie Douglas at Oxford, the questions are direct and disarming, and Carson acknowledges the general embarrassment at necessity of such evidence:

> Carson: Did you ever kiss him [Walter Grainger]?
> Wilde: Oh, no, never in my life; he was a particularly plain boy.

> Carson: He was what?
> Wilde: I said I thought him unfortunately—his appearance was so very unfortunately—very ugly—I mean—I pitied him for it.
> . . . .
> Carson: Didn't you give me the reason that you never kissed him that he was too ugly?
> . . . .
> Wilde: No, I said the question seemed to me like—your asking me whether I ever had him to dinner, and then whether I had kissed him—seemed to me an intentional insult on your part, which I have been going through the whole of the morning.
> . . . .
> Carson: Why did you mention the ugliness? I have to ask you these questions.
> . . . .
> Wilde: For that reason. If you asked me if I had ever kissed a doorpost, I should say, "No! Ridiculous! I shouldn't like to kiss a doorpost." Am I to be cross-examined on why I shouldn't like to kiss a doorpost? The questions are grotesque.
> . . . .
> Wilde: Yes, you stung me by an insolent question; you make me irritable.
> Carson: Did you say the boy was ugly, because I stung you by an insolent question?
> Wilde: Pardon me, you sting me, insult me, and try to unnerve me in every way. At times one says things flippantly when one should speak more seriously, I admit that, I admit that—I cannot help it. That is what you are doing to me. (Holland 207-09)

What Carson was doing was recasting Wilde's ethos against Carson's own, which, he asserted, was a personification of the ethos of the law ("I have to ask these questions"). The ethos of the witness's answers is improvisation ("flippancy"), interpretation, even, at times, entertainment; the ethos of the law is literalness, corroboration, and, at all times, sobriety.

Not surprisingly, though, Sir Edward Clarke's re-examination of Wilde attempted to re-establish Wilde's ethos as one whose generosity toward the young men whom he met was based in his nature, and made possible by his financial and artistic success. In particular, Clarke introduced letters from Edward Shelley that plead for Wilde's assistance based on his own desire to be an artist, and on the poor state of his physical

health and financial prospects (Holland 233-36). Additionally, Clarke questioned Wilde regarding William Grainger, and this time it was Clarke who wanted only "yes" or "no" answers: "Clarke: Will you answer this 'yes' or 'no'; was he [Grainger] to your knowledge in ill health during part of that time [as a servant of Wilde's at his house in Goring]? Wilde: Yes" (Holland 242).

When Carson gave the opening speech for the defense on that Thursday afternoon, his goal was to outline the plea for justification. To do so, he predictably relied almost solely on an argument about character (ethos), primarily Wilde as an embodiment of the ethos of a world governed by art, and Queensberry as embodiment of the ethos of a society ordered by law. This argument between art and the law is scattered throughout Carson's speech, and it often includes distinctions between social and economic classes. Further, the contrasts between Wilde and Queensberry, the embodiments of the contrasting ethical claims, personalize and sharpen the distinctions between two men who exemplify differing conceptions of masculinity in the late nineteenth century.

In his remarks Carson hinted that members of higher social and economic status condescend to those of lower status. For instance, Carson accused Wilde of presenting his literary work as something that "really could be only understood by the artist and he [Wilde] was indifferent to what the ordinary individual thought of them or how the ordinary individual might be influenced by them" (Holland 253). That Wilde's work was "only in the language of an artist for artists," though, Carson argued, was in stark contrast to his actions with the young men who are of a much lower class than he: ". . . but when you come to confront him with these curious associates of a man of high art, his case is

no longer that he is dealing in regions of art, which no on can understand but himself and the artistic, but his case is that he has such a magnanimous, such a noble, such a democratic soul that he draws no social distinctions. . . (Holland 254). Similarly, Carson argues, Wilde's ethic makes no distinctions between what is good or bad for society, except in cases of self-interest. So, the logic of that self-interested ethic would suggest that one could contribute to a magazine such as *The Chameleon* without expecting to be associated with the ideas expressed in that magazine (Holland 255). Any distinctions, Carson maintained, were those that were disconnected from everyday life; they introduced into daily life an artificial separation, or at least one that should be seen as such. Carson's argument attempts to highlight inconsistencies in Wilde's ethos and ethics that would echo the basic factual inconsistencies in Wilde's testimony about his age.

Carson's argument with regard to Queensberry is that Queensberry exemplified a much different kind of man from Wilde: Queensberry was one who cared for the welfare of his son with a kind of fervor that made one think he saw in the care of his son's future the care and stability of his country and his times. Carson admitted that his client's actions were premeditated and single-minded: "He has done what he did premeditatedly and he was determined, at all risks and at all hazards, to try and save his son" (Holland 249). It was for his son's sake that Queensberry did what he could whenever he could "to bring about at once such an enquiry as would lead at all events to the acts and doings of Mr Wilde being made public" (Holland 249). It is this emphasis on the intentionally public nature of Queensberry's actions, based as Carson claims in the duty and responsibilities of fatherhood, that justifies Queensberry's plea by expanding the

implications of the argument beyond the personal and outward to the social. The argument does not claim indecent acts by Wilde; instead, it infers that such indecency is spreading throughout all levels of society and argues that it is not only justifiable, but laudable, that someone (Queensberry) had melded the personal and social ethic in order to make public notification of it.

As had been his strategy throughout the defense of his client, Carson's speech inverts Sir Edward Clarke's attempt to portray the consistency, stability, and integrity of Wilde's character. Carson certainly focuses on these same characteristics, but his argument is that they are to be found not in Wilde, but in Queensberry as representative of a society nurtured, ordered, sustained, and protected by the law. Although a literary success, Wilde himself, Carson suggested, was self-centered, capricious, non-committal, and detached. If this private ethos were a model for society, this suggests, such as society in turn would become one that was unstable, uncertain, perilously groundless. The argument for Queensberry's ethic is for citizens who are responsible in both their personal belief and public behavior, and who conduct their own behaviors in concord with those of their neighbors. This ethic of responsibility would be to themselves, their families, their occupations, their culture, their politics—to society as a whole. Moreover, the law was there to enable this ethic, and to enforce and protect it when it attacked.

Such was the argument in Wilde's libel case, and on Friday morning, 05 April 1895, the jury found that both parts of the plea of justification had been proved by Carson. Lord Queensberry was found not guilty and discharged, and Oscar Wilde was charged with the costs of Queensberry's defense.

CHAPTER 4

THE FIRST CRIMINAL TRIAL: *REGINA V. OSCAR WILDE AND ALFRED TAYLOR*, 26 April-01 MAY, 1895

Introduction

In this chapter I will argue that *kairos* as both opportunity and prudence was a determining force in the decision by Wilde and his counsel to withdraw the libel prosecution, and the subsequent decision by the Crown to proceed to a criminal trial on indecency charges against both Oscar Wilde and Alfred Taylor. My contention is that in a specific chronological space, the space of roughly 24 hours, Wilde's attorneys and those representing the Crown perceived a kairotic moment characterized by individual and social crises, and recognized as well the opportunity to respond to those crises within the context of the law. Responding to this moment, the respective counsels acted in ways that would minimize legal exposure for Wilde as part of his defense, or maximize legal advantage in the prosecution of him and his co-defendant, Alfred Taylor.[1] Further, I will suggest that most critics interpreting the trials have engaged in a version of historicist criticism that has downplayed or even neglected the importance of the arguments and rhetorical strategies used in the courtroom, an emphasis that I would like to restore.

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[1] Based on evidence produced during the libel trial, a case against Alfred Taylor was joined with that against Wilde, both being accused of committing acts of gross indecency, solicitation to commit acts of gross indecency, and conspiracy to procure others for committing acts of gross indecency. Taylor secured his own defense counsel.

Accordingly, in what follows I will consider first the role of *kairos* in the transition from the libel trial to the first criminal trial. Evidence of the urgency of the decision to withdraw the libel prosecution as well as the urgency to proceed to criminal proceedings will show that all of the attorneys were working on more than mere hunches; instead, they had a full grasp of the opportunities that the moment provided. Following that I will examine typical critical interpretations of the two criminal trials to establish a general historicist tendency among critics to focus on the trials as literature and dramatic performance rather than as legal predicaments and rhetorical situations. Finally, within this context I will examine the rhetorical strategies used by the prosecution and the defense in the first criminal trial, which ended without a verdict but laid the groundwork for the second criminal trial.

Kairos and Counselors

The prosecution's withdrawal of the libel suit and Lord Queensberry's subsequent acquittal on the third day of the trial, 05 April 1895, was a kairotic moment for both Wilde's counsel and the Crown. On that Friday morning, in a hastily arranged, but prudently considered, conference between Wilde and his attorneys (Sir Edward Clarke, Mr. Charles Matthews, and Mr. Travers Humphries), Wilde was advised by Clarke and consented to the argument that the circumstances of the prosecution and the opportunity to prevail were at the time not in his favor. The meeting took place just before Wilde was about to enter the courtroom at the Old Bailey. In a special supplement published on 13 April 1895 in *The Illustrated Police Budget*, the reporter describes the surprise and suddenness of this conference on Friday morning, 05 April:

> [Oscar Wilde's] brougham pulled up opposite to the private entrance to the criminal court, a gateway leading the Old Newgate Prison Yard, and an entrance through which prisoners are taken. Mr. Wilde at that time could not have realized the adage that his last entrance to the Old Bailey as a free man, considering the doorway by which he went in—of coming events casting their shadow before them. Mr. Wilde did not enter the court in which the trial was taking place. He was, however, about to do so when he was met by his solicitor who conducted him to a private room in the building. A conference was held in that room—a conference that will become almost an historical on. . . The result of the discussion was seen some twenty minutes later by Sir Edward Clarke publicly withdrawing from the case. (Goodman 81)

Court was already in session, and Wilde and his counsel conferred as Queensberry's defense counsel, Mr. Edward Carson, Q.C., M.P., was presenting his opening remarks to the court. Among other points in those remarks, Carson announced that he planned to place in the witness box various young men with criminal backgrounds and with whom Wilde had associated. Carson implied further that Lord Queensberry himself might be called to testify (Hyde, *The Three Trials*, 55; Hyde, *Oscar Wilde*, 284). Evidently, Sir Edward Clarke was already aware of the likelihood of all of this testimony and recognized the dangerous territory that his client was about to enter as well as the disaster it portended for Wilde. To this point it should be added that in a letter to Wilde dated 28 February 1895, from Mr. C(harles). O(ctavius). Humphreys, of the law firm C. O. Humphreys, Son, & Kershaw, Humphreys declined to accept the case because he thought that a prosecution of Queensberry was imprudent and untimely:

> Dear Sir
>
> *In re The Marquis of Queensberry*
>
> We regret that we are unable to carry out your instructions to prosecute the Marquis of Queensberry for his threats and insulting conduct towards you on the 14th instant at the St James's Theatre inasmuch as upon investigating the case we have met with every obstruction from Mr George Alexander, the manager, and his staff at the theatre, who decline to give us any statements or render any assistance to you in your desire to prosecute Lord Queensberry and without whose evidence and assistance we cannot advise you to venture upon a prosecution. . . .

> Had Lord Queensberry been permitted to carry out his threats you would have had ample ground for instituting a prosecution against him, but the only consolation we can offer to you now is that such a persistent persecutor as Lord Queensberry will probably give you another opportunity sooner or later of seeking the protection of the Law, in which event we shall be happy to render you every assistance in our power to bring him to justice. . . . (*Complete Letters* 634-35)

According to Hyde, Clarke's main argument was that acceding to Queensberry's justification defense based on the use of the term "posing" would certainly result in the jury determining Queensberry not guilty, but that the verdict would also diminish the chances that the Crown would seek to prosecute further any claims implied by Queensberry's calling card, witness testimony, and other evidence produced by the defense (such as Wilde's writings) that would in turn make Wilde himself the subject of criminal prosecution (Hyde, *The Three Trials*, 55-57). Hyde quotes from Sir Clarke's unpublished recollections of the trial that he (Clarke) "told him [Wilde] that it was almost impossible in view of all of the circumstances to induce a jury to convict of a criminal offense a father who was endeavoring to save his son from what he believed to be an evil companionship" (Hyde, *The Three Trials*, 56). Hyde also notes that Clarke expressed his belief that Wilde, too, would recognize the moment and likewise seize the opportunity to distance himself from the whole business: "I hoped and expected that he would take the opportunity of escaping from the country, and I believe that he would have found no difficulty in doing so" (*The Three Trials* 56). Charles Mathews, one of the two junior counselors (the other being Travers Humphries) offered a refutation: the witnesses who subsequently be called for the defense already had been identified as complicit and could themselves been subject to criminal prosecution, thereby discrediting their testimony at

best or having it withdrawn by the judge. (As will be discussed later, the question of reliable corroborating testimony would become central to the criminal trials.)

A fuller understanding of the withdrawal of the libel prosecution involves apprehending the rhetorical situation, as Lloyd Bitzer has defined it (6-11), as well as its corollary, how the participants could have misapprehended the situation. C. O. Humphreys and Sir Edward Clarke would have understood the rhetorical situation in a well-defined legal context. Given the circumstances and timing of the prosecution, and the opportunities for success as the trial unfolded, in a legal context Wilde was not only at a disadvantage, but also likely misunderstanding his own goals and the extent to which the law could either help him achieve those goals, or, as another possible outcome, could enmesh him in matters of legality and illegality that he didn't expect. Taking a sophistic approach, we could think of this particular rhetorical situation as a rhetorical in-between, the space occupied by the *dissoi logoi* ("twofold arguments," arguing both sides, or arguing from opposites), in particular the oscillations between the law as stasis and the forward movement of chronological time. On the one hand, the law provided (provides) for a verdict, a version of certainty, as the result of the proceedings. On the other hand, the law also provided (provides) for testimony upon which adjudication rests. As such, the certainty of the law was (is) dependent upon competing appeals and those appeals begin as uncertainties. Moreover, this specific rhetorical situation and the particular liminal space were within the general flux of the *fin de siècle* both chronologically and conceptually. The modernism of which Wilde was a part, if not a precursor, was a negotiation between what was possible (even likely) and what was treacherous for the

future of society. Wilde's counsel was evaluating evidence in real time, assessing that evidence in the context of historical events, and making decisions based on the likelihood of a positive outcome for their client.

Additionally, the shock of the Crown's decision to move swiftly to prosecution can be seen in letters hastily written by Wilde on Friday, 05 April to Constance Wilde, to the editor of the *Evening News*, and to Lord Alfred Dougles (Bosie), respectively:

> Dear Constance, Allow no one to enter my bedroom or sittingroom—except servants—today. See no one but your friends. Ever yours OSCAR

> [Editor,]
> It would have been impossible for me to have proved my case without putting Lord Alfred Douglas in the witness-box against his father.
> Lord Alfred Douglas was extremely anxious to go into the box, but I would not let him do so.
> Rather than put him in so painful a position I determined to retire from the case, and to bear on my shoulders whatever ignominy and shame might result from my prosecuting Lord Queensberry.
> OSCAR WILDE

> My dear Bosie, I will be at Bow Street Police Station tonight—no bail possible I am told. Will you ask Percy, and George Alexander, and Waller, at the Haymarket, to attend to give bail.
> Would you also wire Humphreys to appear at Bow Street for me. Wire to Norfolk Square, W.
> Also, come to see me. Ever yours OSCAR

Noticeable in these three letters is the awareness of the division between the private and the public, and between the necessary and the idealistic. One can imagine in the spaces between these correspondences a kind of Bergonsonian awareness of chronological time and lived time, between the quantitative, or mathematical, and the qualitative, or durational (Scott 186-87; Jameson 8). In such a framework, chronological time is objective and certain, whereas durational time is subjective and provisional.

Through these cursory notes, we can imagine time being focused dramatically (duration) for Wilde in his assimilation of events alongside the quantifiable movement of the clock. For instance, the tone and brevity of the first and third letters, especially the letter to Constance, suggest a hurried need to deal with matters at hand, matters that at that moment were out of Wilde's control. Business needed to be attended to, and both professionally and personally Wilde was adept at conducting business on his own behalf.[2]

In contrast, the letter to the editor of the *Evening Star* suggests a much different level of concern, one that would seek to address public perceptions of both Wilde's and Bosie's characters. In this sense qualitative time becomes at once both historical and propositional, fact and contingency, forensic and deliberative. It is a complex perspective from which Wilde is arguing because in a very short space (three sentences) he seems to be providing arguments for three participants: his counsel in the first sentence, Bosie Douglas in the second sentence, and himself in the third. In the first sentence, Wilde presents a forensic argument: he distills for the newspapers the untenable position in which his counsel felt they had found themselves and to which they had responded by withdrawing the prosecution. His use of passive voice implies that he alone was not responsible for the decision, but that it had been made upon advice from his counsel as to the likelihood of a successful prosecution. The newspapers would have known about the withdrawal as it occurred in the courtroom, and between 05 and 07 April 1895, partial

[2] Interesting and instructive examples abound in Wilde's *Collected Letters*. See, for instance, an 1887 letter to Wemyss Reid (299) and an 1894 letter to Lewis Waller (581) as well as numerous letters to Robbie Ross asking for money.

accounts appeared in most popular news sources, for instance, *The Evening News, The Daily Telegraph, The Echo,* and *The People* (Goodman 59-79). The fullest accounts appeared later in feature articles, such as that in a special supplement of *The Illustrated Police Budget* on 13 April 1895 (Goodman 80-86).

Wilde seems to feel compelled, though, to speak in his own voice and on his own behalf, and this act of personal testimony, as it were, is extra-judicial, and as much subjective as it is objective and forensic (Vismann 298). At this point in the progression of events, Wilde seems to perceive that he is occupying a space of simultaneity (Scott 187) that highlights distinctions and discrepancies between his sense of personal control over the ethos that he has constructed throughout his public life and the societal ethos that is determined in large measure by the law. Through initiating prosecution of Queensberry, Wilde had brought himself and his adversary (Queensberry) into this liminal space, if not having actually created the space, and in so doing had invoked these distinctions in chronological (quantitative) and durative (qualitative) time, and evidence of this invocation is the response to the editors of *The Evening Star*.

In the second sentence, Wilde continues the argument that Queensberry is an abusive father, this time with Bosie as the voiceless victim[3], the one whose name was so often spoken by others at trial, but who never got his day in court. The irony here, though, is twofold: first, Bosie's was the persuasive voice that gave rise to the

[3] Charles Gill, prosecutor in the first criminal case against Wilde, wrote in an opinion addressed to Hamilton Cuffe, Director of Public Prosecutions, that despite certain evidence Lord Alfred Douglas should not be prosecuted on indecency charges along with Wilde and Alfred Taylor because ". . . . Douglas, if guilty, may fairly be regarded as one of Wilde's victims" (Holland *The Real Trial of Oscar Wilde* 294).

prosecution, the argument that trumped the initial advice of Wilde's counsel. Wilde prosecuted Lord Queensberry for libel because Bosie had convinced Wilde that he [Bosie] had been silenced by and silent about his father's abuse of Bosie, his brother, and his mother. So, here Wilde is speaking in Bosie's stead, as a kind of attorney.

Ironically, in this sentence addressed to the newspapers Wilde is speaking as Bosie's advocate in the court of public opinion, and attempting to establish the ethos of both Bosie and himself in a kind of reenactment of the rhetorical strategies used in the libel trial. For instance, Wilde uses the adjective "anxious" to describe Bosie's state of mind. Wilde and his audience—in this case the editor of the *Evening Star*—certainly would have understood the full definition of the word "anxious," which in its primary definition means to be worried and nervous, and in its idiomatic sense means to be eager and enthusiastic. The definitional point here is more than just one of inattention; instead, it is a misalignment, a gap that opens a space for uncertainty, interpretation, and adjudication. It is the oscillation between facts and future akin to those unsophisticated errors that he satirizes in "The Child Philosopher" as "pure revelation": "For the mistakes made by the interesting pupils of the American Board-Schools are not mistakes springing from ignorance of life or dullness of perception; they are, on the contrary, full of the richest suggestion and pregnant with the very highest philosophy" (77). The "mistakes" are quantitative; the freedom of satire is qualitative, the freedom of the moment, the freedom of opportunity.

Moreover, we can understand the nature of that opportunity, of *kairos*, when we acknowledge that Wilde's choice of "anxious" also foreshadows the ambivalence, even

the anger, toward Bosie that Wilde would eventually express in *De Profundis*, but that is much more unvarnished in letters he wrote earlier in his imprisonment. For instance, one such letter written from Reading Goal and addressed to Robbie Ross includes the following digression:

> . . . . When one has been for eighteen terrible months in a prison cell, one sees things and people as they really are. The sight turns one to stone. Do not think that I would blame him [Bosie] for my vices. He had as little to do with them as I had to do with his. Nature was in this matter a stepmother to each of us. I blame him for not appreciating the man he ruined. An illiterate millionaire would really have suited him better. As long as my table was red with wine and roses, what did he care? My genius, my life as an artist, my work, and the quiet I needed for it, were nothing to him when matched with his unrestrained and coarse appetites for common profligate life: his greed for money: his incessant and violent scenes: his unimaginative speculativeness. . . . Then when his father saw in me a method of annoying his son, and the son saw in me the chance of ruining his father, and I was placed between two people greedy for unsavory notoriety, reckless of everything but their own horrible hatred of each other, each urging me on. . . I admit I lost my head. I let him [Bosie] do what he wanted. I was bewildered, incapable of judgment. I made the one fatal step. And now . . . [ellipses in original] I sit here on a bench in a prison cell. In all tragedies there is a grotesque element. He [Bosie] is the grotesque in mine. (*Complete Letters* 670)

These reflections are not only grounded in his imprisonment, but also are reconsiderations of his decisions within the context of his prosecution and subsequent conviction. The comments are a retrospective gloss on the significance of the decision to withdraw the prosecution, on the speed at which the consequences of the decision were unfolding, and on Wilde's inability to assess adequately about the scope and power of the law. Later on he will confess, "I admit I lost my head," in getting caught up in the turmoil between Queensberry and his son (*Complete Letters* 670). Wilde's response to the conditions to which he is referring—namely, interposing himself in a dysfunctional family relationship—is one thing. Yet, alongside that action, albeit unstated, is his awareness of the more practical ramifications of interposing himself—namely, that the

law is a context and force that represents, even imposes, an impartiality and a level of unconcern with personal disputations in the name of the law itself.

In the third and final sentence of the letter, then, Wilde reasserts a pubic ethos that he had long cultivated for himself, namely, that of the engaged public adversary and pontificant—heroic, intellectual, philosophical, artistic, and didactic. Jaffee and Goldman argue that such an ethos is that of the late-nineteenth-century celebrity—Morris Kaplan suggests "perhaps the first modern celebrity" (116)—and a precursor to current (postmodern) manifestations of celebrity, such as those examples presented in the introduction to this study. For Jaffee and Goldman, Wilde represents a context that shifts from the traditional "form/context split of an archaic system . . . to a new vocabulary. . . in terms of . . . medium and personality" ("Introduction" 10). I will examine these ideas later in this chapter, but one aspect of their point is relevant here, too. For Jaffee and Goldman, "medium and personality"[4] can be understood as the moment when "[c]haracter, in effect, steps into the 'real world,' becoming too big to be contained by literary works and authors" (10-11).

As for the Crown, the indications of opportunity are the apparent urgency with which the Director of Public Prosecutions, Mr. Hamilton Cuffe, decided on prosecution;

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[4] The textual reference is to *The Portrait of Dorian Gray* and to an exchange between Lord Henry and Basil early in the novel in which Lord Henry is inquiring about Basil's relationship with Dorian:

> "He is all my art to me now," said the painter, gravely. "I sometimes think, Harry, that there are only two eras of any importance in the world's history. The first is the appearance of a new medium for art, and the second is the appearance of a new personality for art also. What the invention of oil-painting was to the Venetians, the face of Antinous was to late Greek sculpture, and the face of Dorian Gray will some day be to me." (13)

the expeditiousness with which Wilde and Alfred Taylor were arrested on criminal charges and with which the criminal trial was scheduled; and the magistrate's, Sir John Bridge's, judgment to deny bail to Wilde while he was awaiting trial. Moreover, in view of previous, prominent indecency trials, most notably the Cleveland Street Affair prosecutions, as well as popular rumors about high-ranking government officials being tangentially connected with homosexual behaviors, there is the sense of imperative in Cuffe's decision (Holland, "Oscar Wilde's Crime and Punishment," 206; n. 19). Regarding the rumors about high-ranking officials, the Prime Minister, Lord Rosebery,[5] had become the target of rumor and gossip when it was leaked to the French press by one of the grand jurors that his name had come up as part of the evidence presented to the grand jury while it was deciding whether or not the libel charge could proceed to trial (Hyde, *Oscar Wilde*, 263).[6]

Accordingly, on Friday evening, 05 April 1895, Wilde was arrested at the Cardogan Hotel and taken to the Bow Street police station. The next morning, Saturday, 06 April, Alfred Taylor was also arrested. At 11:00 a.m. that morning (06 April 1895),

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[5] The connection between the Marquess of Queensberry and Lord Rosebery was through Queensberry's eldest son, Lord Drumlanrig, who was Rosebery's private secretary when Rosebery was Foreign Secretary. The Marquess bullied and tormented Drumlanrig as much as he did the rest of his family, including his wife, and in Drumlanrig's case particularly because of what he suspected was an unwholesome relationship between his son and Rosebery. Lord Drumlanrig was killed on 18 October 1894 by his own shotgun when it accidentally discharged while he was on a hunting trip in Somerset. Although the coroner's inquest determined that the death was accidental, there is speculation that Drumlanrig committed suicide because of rumors implicating him in a homosexual affair with Lord Rosebery (Hyde, *Oscar Wilde*, 219).

[6] The grand juror who leaked the information was apparently a French journalist, who was empanelled by mistake, given that he was a French citizen. And although the English press was prohibited from publishing evidence from a grand jury, no such prohibition existed for Continental press (Hyde, *Oscar Wilde*, 263).

Wilde and Taylor appeared in front of the magistrate, Sir John Bridge, and the two men were charged with indecent acts under Section 11 of the Criminal Law Amendment Act 1885. As mentioned before, such offenses were classified as misdemeanors that carried with them a maximum punishment of up to two years in prison with hard labor in the case of conviction. The difference in the amended act of 1885 was that both private and public acts could be prosecuted, whereas before Section 11 only provided for prosecution of public acts of indecency.

Kairos and Critics: Law as Literature

In terms of writing the history of the three trials, critics have recognized another kind of opportunity, this time one that would seek to make sense of a seemingly inconceivable but inexorable chain of events that led to Wilde's imprisonment and exile, and even contributed largely to his death. When considered as a common tendency or trajectory, the result is to historicize the trials in two ways: one, that of the construction of modern homosexual identity at the end of the nineteenth century of which Wilde is the primary emblem; and, two, the trials, notably the libel trial, as early examples of law as literature. Both of these approaches must necessarily address the legal system as a determining force in Wilde's trials, but as they have become much more fashionable and substantive in their application by social, cultural, and legal critics, they also have become much more neglectful of the role of the rhetoric in the three trials.

The Criminal Law Amendment Act 1885 extended by statute an historical and social context for indecency laws, by relabeling certain acts "gross indecency," and reinforcing grounds for the arrest, prosecution, and punishment of violators of the act. As

noted above prosecutions under the previous laws had cast a wide net, such as in the Cleveland Street Affair, which provided notoriety to the gossip about homosexuality among government officials and aristocrats (Bristow, "Introduction," 18; n. 60). As H. Montgomery Hyde and Morris Kaplan have established, during the late 1880s and into the 1890s the popular press had cultivated among its readership a sense that hidden, surreptitious immorality was rampant. This "immorality" was focused on homosexual relations among lower-class young men, aristocrats, and even government officials (Kaplan 114, n.5). Further, Mitchell observes the extent to which revisions to the Libel Act 1843 were meant to protect newspapers from growing prosecutions (28-30).

The most systematic and sustained discussion of the indecency laws as they relate to Oscar Wilde appears in Ed Cohen's *Talk on the Wilde Side*. In that book Cohen traces the history of masculine identity formation through early-modern distinctions between hetero- and homosexuality; laws connecting religious norms and moral behavior; and the modern reconstruction of these historical attitudes in the nineteenth century; and the presentation of Wilde as "the paradigmatic example for an emerging definition of a new 'type' of male sexual actor: 'the homosexual.'" Cohen summarizes and historicizes the construction of not only of nineteenth-century conceptions of homosexuality, but also addresses the legal system's prominent role in legislating normativity (103-15). Additionally, Cohen observes that the construction of the modern homosexual is to be found in the relation of the legal system to the popular press, the boundaries between the two being porous but not easily dismantled; indeed, they are so intertwined and interchangeable as to be seen as complicit social and cultural structures that together form

a coherent, seamless whole (123-25). Subsequent critical interpretations have tended to expand upon Cohen's arguments.

Yet, there are two important difficulties with these approaches. The first is that they tend to abstract Wilde out of the actual courtroom situation by casting him as an actor in a theatrical setting and considering the trials as one manifestation of a larger critique of *fin de siecle* literature and artistic culture. Ironically, these interpretations would seem to support Queensberry's justification defense. Put differently, by contextualizing Wilde and the trials within an interpretation (a history) that removes him from the actuality of the courtroom proceedings, they corroborate the evidence and testimony that Wilde was a poseur. Readings that present Wilde as personifying a radical cultural and sexual critique tend to fictionalize him and the trials as a dramatic performance, a kind of pose. This, in turn, erases him as an historical figure both from the stark reality of his predicament and the trials as well as from our understanding of the particularities of that reality. Further, arguments that Wilde was a willing, even intentional locus for radical cultural and sexual critique gather such momentum so that in the end the Wilde himself and the events (the three trials) are reified into one minor, albeit historically necessary piece. The aims of the critiques overtake the history upon which they are based.

Moreover, this reification takes place in spite of proceedings that we must acknowledge are fundamentally rhetorical, fundamentally action-oriented: making a persuasive case for or against a plaintiff or defendant, and the results of which have actual, specific, practical consequences for the litigants. These consequences are of

varying degrees, and we can recognize the degrees of import as we analyze the historical records. So, for instance, the potential judicial consequences were clear to Wilde, to Queensberry, and to their respective counsels in the libel trial; likewise, the potential judicial consequences were clear to the Crown, to Wilde and Taylor, and to their respective counsels in the criminal trials. The effect of the individual verdicts is still another level of practicality that proceeds from the successful or unsuccessful application of rhetoric. Similarly, extra-judicial, but equally practical, consequences are evident. For instance, at the end of the libel trial, Wilde was remanded to custody without bail to await trial on the criminal charges being filed under the indecency amendment. Lord Queensberry, though, was liberated, as it were, not only from the accusation of libel, having succeeded in his plea of justification, but also in the sense of being vindicated for his brutish, threatening, intimidating behavior (not only toward Wilde, but also toward his family), a behavior that he continued during the criminal trials.[7]

We must also acknowledge that the criminal trials increased the level of personal consequence dramatically for Wilde and represented a complex layering of social and individual contexts. Put differently, Wilde's celebrity status was part of the display, as it were, in the libel trial as he attempted to play to his public. The criminal trials, though, brought the matter rather closer to the individual. Further, Wilde's emblematic status is

[7] The effect that this had on Wilde will be discussed later, but a couple of references are relevant here. Queensberry had tried to interfere with the opening of *Importance of Being Earnest* by attempting to gain entrance to a backstage door at the theater, accompanied by two bodyguards, in order to present Wilde with a basket of rotten vegetables. During the criminal trials, Queensberry would occasionally appear among other spectators in the courtroom during the criminal trials, sneering at Wilde from the back of the courtroom. (See letters to Bosie Douglas.) Wilde notes the anguish he felt as he saw Queensberry in the back of the courtroom. He was haunted by it.

problematic to the extent that it is connected to a prominent historical precursor, the Cleveland Street Affair, which implicated publicly for the first time notable aristocratic and governmental officials (Bristow, "Introduction," 18; n. 60). Indeed, one of the witnesses for the prosecution in Wilde's criminal trials had been arrested in that raid. The confluence of these prosecutions should suggest legal and political concerns that looked beyond Wilde's individual celebrity and persona to more extensive and far-reaching societal issues to be considered by the Crown. In turn, even though Wilde and Taylor were being tried for misdemeanor sentences, which placed a limit on the amount of prison time that could be imposed (2-1/2 years), it also allowed for that time to be served in hard labor, which, as Hyde notes, was considered worse than a felony sentence because of the physical and mental brutality of the work.[8]

Rhetorical Analysis of the First Criminal Trial

Given this background context, there are four rhetorical aspects of the first criminal trial that deserve close attention. The first is the type of rhetorical argument, which differs significantly from the libel trial. The second is the fundamental rhetorical appeals used by the prosecution and defense, which, again, differ according to purpose from the libel trial. The third is the strategic rhetoric deployed during the first criminal trial itself, in this case spoken rhetoric within well-defined legal guidelines, but no such rhetorical boundaries. The fourth is the rhetoric outside the courtroom and in the public sphere that layered the rhetoric within the courtroom, a layering of popular, less formal

[8] Hyde notes that Wilde's confinement consisted of roughly 23 hours in the cell, little communication, monotony of the work, and the like. Also, while Wilde occasionally was provided reading material, it consisted on of religious tracts.

rhetoric on top of the legal, more formal of the courtroom. Put together, these can help describe the particular rhetorical-legal history and exigencies underpinning the arguments in the two criminal trials.

In contrast to the libel trial, which should be considered an agonistic argument, the first criminal trial can be considered the first of two eristic arguments (the second being the second criminal trial). So, some basic definitions of and differences between these two types of argument would be useful. Fundamentally, the differences lie in the rhetorical situations and in the rhetorical strategies used in those situations. Essentially, the rhetorical situations differ in the level of consequence to which each type of argument responds, and effective persuasive strategies should be fitted to the level of consequence. Agonistic arguments are what we might call contestative arguments, and we can consider the libel trial an agonistic argument. Contestative arguments imply, even demand, a serious level of rhetorical contest, but the goals of persuasion in these contests are negotiable. Obviously, one can certainly win or lose a contest, such as in a tennis match or a legal case; but contestative (agonistic) arguments also provide space for negotiation. For example, a tennis player might lose an important match but play so well that the player's ranking increases. Or, one might win (or lose) a legal case, such as a libel case, but the resulting material rewards (or damages) might be increased or decreased not because of the verdict but upon the strengths of the opposing arguments.

Distinct from agonistic arguments, eristic arguments are those that are combative, not just contentious. They are often life-or-death arguments—hence, my use of the term "combative"—and are familiar to us through such contexts as the arguments that lead to

war, arguments in capital trials, and the like. For instance, in a criminal case such as a first-degree murder trial, the verdict of which could range from innocence and freedom to life imprisonment or the death penalty, the rhetorical situation is defined by the highest level of consequence, the potential results being so distinctly different from one another. In such a case the consequences are binary oppositions; they are certain and firmly polarized. In a civil case, though, the continuum of innocence and guilt is less distinct, more fluid, and punctuated by numerous contact points along the continuum. The first-degree murder case would be referred to as an eristic argument, whereas the civil case would be an agonistic argument. Accordingly, rhetors must employ rhetorical strategies that effectively respond to these different rhetorical situations. For instance, underestimating the gravity of a capital case could be disastrous for the accused; overestimating the stakes in a civil case could hide useful settlement options from the litigants.

The libel trial was agonistic (contestative) because the consequences were significantly less severe than those associated with eristic arguments. For example, incarceration was not a consequence of a guilty verdict in Wilde's libel suit against Queensberry. To defend their client, Queensberry's attorneys only needed to prove justification, meaning that a reasonable person would find his accusation that Wilde was a *poseur* justifiable based on evidence presented at the trial. Moreover, if Queensberry's counsel failed to prove justification, which would have meant that Queensberry was guilty of libel against Wilde, then most likely Queensberry would have been ordered by the Crown to publish a public retraction of the libel and to pay a nominal fine. These

would have satisfied the judgment against him. These would have seemed rather inconsequential, a rather mundane symbolic gesture, to a person such as Queensberry. In contrast, as a punishment, a guilty verdict would have meant significantly more to his son, Bosie Douglas. Given this, one suspects that on a fundamental level it is the difference both in the letter of the law and in the type of argument that must be pursued that was involved in Wilde's solicitors' reluctance to pursue the libel case in the first place and in their hasty retreat from it thereafter.

These high-stakes, eristic arguments easily can lead to dramatic emotional intensity, and bombastic argument or fallacious argument. Put differently, the level of severe consequence possible in eristic arguments seems to provide a basis for rhetorical strategies that seem to have few, if any, boundaries. The arguments are "no holds barred," as it were. Moreover, because of this eristic arguments have a troubled past in the history of rhetoric. In rhetorical historiography sophistic arguments in general were often criticized by Hellenistic rhetoricians and philosophers because they were "overly disputatious (eristic)" (Murphy and Katula 23), and often associated with the least capable rhetors in the sophistic tradition as well as those whose morals were questionable (Jarrett 2). Sophists were also not native to Athens, yet, even as foreigners they attracted a significant following (Jarret 2; Kennedy 17). They were also criticized for their tendency to charge fees for their teaching, which was considered unseemly at best (Jarrett 2). Susan Jarrett sums up the sophistic reputation this way: "In contrast to the detached aristocrats Plato and Aristotle, the sophists in these unverifiable reports take on almost monstrous qualities of greed, exhibitionism, and deceit" (3). As Kennedy notes the

Sophists were described in Plato's *Protagoras,* and Protagoras was a representative, if not noteworthy, figure in sophistic rhetoric:

> According to Cicero (*Brutus* 46), . . . Protagoras wrote a collection of "topics" that exemplified general lines of argument and could be imitated and adapted by others, and a book of *Contradictory Arguments* is attributed to him by Diogenes Laertius (3.37). Protagoras was, Diogenes says (9.52), "the first to distinguish the tenses of the verb, to expound the importance of "the right moment" (*kairos*), to conduct debates, and to introduce disputants to the tricks of argument. . . [Aristotle] mentions him as a speaker who made the "weaker case the stronger." (*A New History of Classical Rhetoric* 17)

Three points in Kennedy's description of sophistic rhetoric are relevant to the current argument: the first is the reference to *kairos* as important to effective persuasion (discussed above and elsewhere in this study); the second is to the reference to debate and dispute; the third is the reference to the "tricks of argument." The second and third can be combined in the present discussion because they point to the teaching and practice of legal argument. (It should be noted that Kennedy traces the history of early Greek literature as including significant uses of legal rhetoric [*A New History of Classical Rhetoric* 14-16].)

Socrates's attack on the Sophists in *Gorgias* is the most famous and wide-ranging example of the attack on sophistic rhetoric, elaborating a philosophy of rhetoric based primarily on the practice of the Sophists and allowing thereby a condemnation of both theory and practice. While dialectical reasoning attempts to achieve the greatest level of proof and probability in an argument, Socrates capitalized on the idea that inherent in the dialectical process itself, focusing as it does on reconciling competing positions, is the potential to lure interlocutors into argumentative strategies that focus more on winning (eristic) than on arriving at a high degree of proof and probability (agonistic) (Murphy

and Katula 23). The Sophists were known for their doctrine of the "man measure," as it was called, as the indicator of truth and justice in any given rhetorical situation. For followers of Socrates, ultimate truth was distinct from basic persuasion and related more to general principles than to rhetorical situations. From this (and from Socrates as well as other anti-Sophists) we get the familiar battle of the Western rhetorical-philosophical tradition, namely, that between the "Truth" (with a capital "T") promulgated by Socratic philosophy and "truth(s)" (with a lower case "t") that are contextual, contingent, and situational—in a word, rhetorical. Because the Sophists subscribed to a strictly understood rhetorical basis of persuasion, as the Socratic position goes, arrival at truth-based persuasion is supplanted by personal and rhetorical flamboyance and excess that manipulates an audience's sense of right, wrong, and justice.

Importantly, though, the history of anti-Sophistic rhetoric is bound up with the Platonic and Isocratic critique of the teaching of and practice of rhetoric. In *Gorgias*, Socrates suggests that for the Sophists persuasion itself is the goal; accordingly, rhetorical and persuasive skills alone are what the effective rhetor should possess. The notion of Truth or an actionable approximation thereof as the most desirable outcome of an argument, Socrates argues, becomes secondary. In such a characterization, teachers of rhetoric are depicted as being primarily interested in verbal and technical display (ironically, the kind of display that Wilde exhibited in his witness testimony during the libel trial, but that he would abandon in the second trial). Further, because the Sophists were associated with collecting fees for their teaching, their rhetorical practices were impugned as a *paideia* based largely on rhetorical set-pieces, ready-made speeches and

the like that were collected in handbooks: a static medium, it was argued, when compared to the dynamic exploration of Socratic dialogue.

John Henry Newman, whose work in rhetoric (and in other areas) was very influential in the nineteenth century, directly addresses the rhetorical foundations of sophistic reasoning and, I would suggest, offers a corrective approach. Edward P.J. Corbett notes that in Chapter 6 of Newman's *Essay in Aid of a Grammar of Assent* (1870), "[t]he central question that Newman seeks to answer . . . is 'how is it that a proposition which is not, and cannot be demonstrated, which at the highest can only be proved to be truth-like, not true, such as 'I shall die,' nevertheless claims and received our unqualified adhesion" (460). What Corbett identifies here is Newman's understanding of persuasive argument based on probability, not on certainty. Newman is drawing attention to the power and persuasiveness of enthymemic reasoning, or provisional, informal reasoning, (what Aristotle considered a rhetorical syllogism), in contrast to formal syllogistic reasoning and scholastic logic. Corbett continues by quoting from Chapter 8 of Newman's *Essay in Aid of a Grammar of Assent*:

> It is plain that formal logical sequence is not in fact the method by which we are enabled to become certain of what is concrete; and it is equally plain from what has been already suggested, what the real and necessary method is. It is the cumulation of probabilities, independent of each other, arising out of the nature of the circumstances of the particular case under review; probabilities too fine to avail separately, too subtle and circuitous to be convertible into syllogisms, too numerous and various for conversions, even were they convertible. (460)

In "Rhetoric, Conscience, and Religion," though, Walter Jost offers an insightful reading of Cardinal Newman's work that directly addresses this topic. Some passages from Jost's analysis are worth remarking:

> Indeed, "practice" for Newman was the ground and test for all theory and philosophy. . . In the empirical sciences it is comparatively otherwise, but in concrete, existential cases human beings differ too much, according to Newman, for us to be satisfied with abstract systems and grand theory. "Life is for action," he states in his essay "The Tamworth Reading Room" (1841): If we insist on proofs for everything, we shall never come to action"; "Logic makes but a sorry rhetoric for the multitude." . . . It does so because "deductions have no power of persuasion." . . . In the same vein Newman asks in *The Grammar of Assent*: "What is the meaning of the distrust, which is ordinarily felt, of speculators and theorists but this, that they are dead to the necessity of personal prudence and judgment to qualify and complete their logic? Science, working by itself, reaches truth in the abstract, and probability in the concrete; but what we aim at is truth in the concrete. (102)

The last sentence of this quotation expresses an important paradox for 21st-century audiences who have been conditioned on the authority of statistical logic, and I will take up that paradox in the next chapter. For the present discussion, what is significant is Newman's contention that everyday people ("the multitude") arrive at truth through a rhetorical approach, not through a scientific or even philosophical approach. Further, Newman grounds his contention in an understanding of "prudence," which is a component of *kairos*. Newman focuses on subjectivity in rhetoric and persuasion as opposed to the (seeming) objectivity of logos.

Jost goes on to examine Newman's distinction between "formal inference" and "informal inference." The former addresses "empirical fact, scientific generalization, and logical deduction"; the latter addresses "'implicit' reason" and what Jost terms "rhetorical reasoning" (103). Rhetorical reasoning is recognizable as Aristotle's definition of enthymemic argument. Jost extends the importance of "informal inference":

> A good deal turns, therefore, on what Newman means by informal inference, what it includes and what it is grounded in. Central here is that such reasoning, while it can involve facts and logic, nevertheless also admits that all facts and logic depend more or less on what Newman variously names "prepossessions," "antecedent considerations," and "antecedent probabilities." . . . [K]nowledge of

> the world is mediated by the historically situated social self [*Grammar of Assent* 252], whose values, experiences, and the like mediate the individual's views of our world, what he or she call the real. (103)

The "situated social self" bases a "value-laden" understanding of events and actions not primarily on empirical fact," such as logic and statistics, or on other such "epistemological or ontological determinacies" (103). Instead, people rely on their own "experiences, beliefs, opinions, judgments, [and] actions. . . [as] rhetorical resources for argument and interpretation just because they do not timelessly dictate what will be considered real but rather provide reusable argumentative materials and forms" (103). Jost's reading of Newman applies to the discussion of both criminal trials because it suggests that in studying the proceedings it is crucial that we consider the participants, most importantly the respective counsels and the witnesses, and their argumentative strategies, responses, and the like.

In the first criminal trial, the prosecution delivered 25 counts in total against two primary defendants—Oscar Wilde and Alfred Waterhouse Somerset Taylor—in violation of Section 11 the Criminal Law Amendment Act 1895, which applied only to males, and which covered not only individual acts of "gross indecency" in public or private, but also the procuring or commissioning (the latter meaning payment for procurement) of individuals to engage in acts of "gross indecency." The Act defines the violation as a misdemeanor with punishment for conviction at the Court's discretion being imprisonment for not longer than two years, with or without hard labor. The counts also

referred to individuals who were alleged to have been involved in acts of "gross indecency" with Wilde, but those individuals were not part of the indictment.[9]

A summary (or "schematic" to borrow a term from Cohen) of the counts against Wilde and Alfred Taylor in the first criminal trial is provided below. In that summary the gross indecency charges against Wilde and Taylor, respectively, are listed first, followed by the conspiracy charges against each. After each category of offense (gross indecency and conspiracy) the specific counts are listed by number as recorded in the indictments. In parentheses after the numbered counts are the persons named in each count (or counts) as being either the persons being procured for acts of gross indecency or those being involved in those acts. The summary is as follows:

- Acts of Gross Indecency by Wilde: counts 1, 4, 5, and 6 (Charles Parker); count 11 (Frederick Atkins); count 13 (Alfred Wood); counts 18 and 19 (unnamed person); count 22 (Sydney Mavor, Charles Parker, Alfred Wood [on separate dates]); count 25 (Edward Shelley)
- Acts of Gross Indecency by Taylor: count 8 (Charles Parker); count 9 (William Parker); count 15 (Alfred Wood)
- Unlawful procurement by Alfred Taylor: counts 2, 3, 5, 6, 7, 8, and 12 (Charles Parker); count 9 (William Parker); count 10 (Frederick Adkins); counts 14, 15, and 16 (Alfred Wood); count 20 (Sydney Mavor); count 22 (Charles Parker and William Parker)

[9] There are several summaries of the trials, most notably H. Montgomery Hyde's and Richard Ellmann's. Other sources cited in chapters herein offer excellent partial summaries of the trials as relevant to their own discussions.

- Unlawful procurement by Alfred Taylor and Wilde: counts 7 and 12 (Charles Parker); count 10 (Frederick Atkins); count 17 (Alfred Wood); counts 21 and 22 (Sydney Mavor)

As mentioned earlier, 25 counts in all were presented by the Crown, and those counts centered on either acts of gross indecency or on conspiracy to procure others for such acts. Further, it should be noted that two counts charging Wilde with gross indecency (counts 18 and 19) involve a person who was not named in the indictment, unlike in all of the other counts. It is assumed that the unnamed person was Bosie Douglas, and that his name was withheld by the Crown not only for political reasons, but also to defer to the defense counsel's desire that Bosie not be called to testify. Also, in count 22 Wilde was charged with committing acts of gross indecency with three people, Sydney Mavor, Charles Parker, and Alfred Wood, but the indictment lists separate dates for each of those men. Last, it should be noted that Wilde was never charged with conspiracy on his own. Instead, Taylor was indicted individually on several counts of conspiracy to procure persons for acts of gross indecency with Wilde, and they were indicted on several counts of conspiring together to procure persons for acts of gross indecency with Wilde. There were no charges that Wilde had conspired to procure persons for acts of gross indecency with Taylor. Moreover, as I will discuss next, including both defendants in six joint conspiracy charges was a fundamental, if not crucial, point of contention at the beginning of the first criminal trial.

On the first day of the trial, Friday, 26 April, 1895, once the indictments had been read, a crucial exchange in the context of a demurrer (a motion to dismiss the case),

occurred between Sir Edward Clark (for the defense), C(harles) F(rederick) Gill (for the prosecution), and Justice Charles (presiding magistrate). The argument in Clark's demurrer was that there were essentially two different types of charges being proffered against the defendants, but that both charges required that the defendants be asked to give evidence against each other. As such, the defendants should not be asked to respond both to acts of commission and acts of conspiracy in one trial because they are only reliable witnesses in respect to their own actions, such as committing an act of "gross indecency," but are unreliable in testimony regarding conspiracy to procure others to engage in such acts. Clarke maintained that such testimony would be tantamount to adopting the legal position that a misdemeanor trial and a felony trial are the same sort of trial. The comparison between misdemeanor and felony trials regarding standards of evidence had been rejected in previous cases, Clarke observed, because in misdemeanor and felony cases "different modes of trial prevail" (Hyde, *The Three Trials*, 187).[10]

On close inspection, Gill's rejoinder focused not only on the analogy itself and on different case law—each advocate had cited one case in support of his argument—but focused just as importantly on the situation in which the case law differences and the analogy itself were being reconciled. Clarke based his argument primarily on the differences between felony and misdemeanor trials. In contrast, Gill focused on the closeness of the charges and potential for damage that Clarke expressed. While Wilde and Taylor were indeed party to two types of charges (acts of indecency and conspiracy

[10] The source for all quotations and references hereafter is Hyde's *The Three Trials of Oscar Wilde* (New York: University Books, 1956). Significant differences in textual accounts will be noted as they occur.

to engage in acts of indecency), Gill contended, the charges were so intertwined as to create no "hardship" to the defendants in making consistent statements under oath and under cross-examination, should either or both of the defendants choose to testify. Put differently, Clarke argued for dismissal based on general principles while Gill argued from present circumstance.

Moreover, this opening exchange signaled a change in argumentative strategy and emphasis by the prosecution that would continue throughout the trial. In the libel trial, the defense approach (Queensberry's counsel) was to examine evidence of a more abstract, culturally determined nature, namely, Wilde's reputation and his literary work. Accordingly, the arguments in the libel trial tended to be epideictic and value-based arguments. The emphases in that trial were on the ethos (private and public) of Queensberry and Wilde, and the values (personal and social) expressed by each man. In contrast, the strategy and arguments in the criminal trial began as pointedly forensic.

In initial questioning of prosecution witnesses on the first day of the trial, C. F. Gill did not hesitate to use language and to pose direct questions specifically based on the Indecency Act, language and arguments that were not available to him during the libel trial. For instance, Gill asked Charles Parker, the first witness for the prosecution, for specific language that Parker had used in an exchange with Alfred Taylor at St. James's restaurant and regarding prostitutes working Piccadilly Circus:

> Parker, witness, to Gill, prosecutor: I remember one day at that time [early in 1893] being with my brother at the St. James's Restaurant, in the bar. While there Taylor came up and spoke to us. He was an entire stranger. . . We got into a conversation with him. He spoke about men.
> Gill: In what way?

> Parker: He called attention to the prostitutes in Piccadilly Circus and remarked, "I can't understand sensible men wasting their money on trash like that. . . Now, you could get money in a certain way easily enough if you cared to." I made a coarse reply.
> Gill: I am obliged to ask you what it was you actually said?
> Parker: I do not like to say.
> Gill: You were less squeamish at the time, I dare say, I ask you for the words?
> Parker: I said that if any old gentleman took a fancy to me, I was agreeable. I *was* agreeable. I was terribly hard up [for money]. (Hyde 191-92)

While language such as this was used during the libel trial by Edward Carson (Queensberry's defense counsel) in his cross-examination of Wilde, it is much more concentrated and clarified in the first and second criminal trials. For instance, in the libel trial, Wilde was shocked when Carson asked Wilde if had ever "[opened Alfred Wood's] trousers" or "put your own person between his legs" (see Chapter Three). The language and approach used in the libel trial, though, need to be considered in context: Wilde was not the defendant in that trial, so the point of the questioning was not accusatory in the way that it became in the criminal trial, in which Wilde was the defendant.

The questions on the first day of the criminal trial followed a pattern suggested above, namely, that of inquiring into specific details of acts of indecency under the law, not on the use of euphemistic or suggestive situations. For instance, also on the first day of the trial, when the prosecutor, C. F. Gill, was examining William Parker, Charles Parker's brother, Gill wanted to explore specific details about a dinner that William had had with his brother (Charles), Alfred Taylor, and Wilde:

> William Parker: I was present at the dinner with Taylor and Wilde described by the last witness [Charles Parker]. On that occasion Wilde paid all his attention to my brother. He often fed my brother off his own fork or out of his own spoon. My brother accepted a preserved cherry from Wilde's own mouth. My brother took it into his, and this trick was repeated three or four times. My brother went off with the prisoner to the Savoy [Hotel] and I remained behind with Taylor who said,

> "Your brother is lucky. Oscar does not care what he pays if he fancies a chap." (Hyde 198-99)

Similarly explicit (sometimes lurid) testimony was solicited by the prosecution and offered by the witnesses, including Charles Parker testifying that Wilde "committed the act of sodomy upon me" and asked Parker "to imagine that [Parker] was a woman and that he [Wilde] was my lover": "I had to keep up this illusion. I used to sit on his knees and he used to . . . as a man might amuse himself with a girl" (Hyde 193; ellipses in original).

The second day of the trial, Saturday, 27 April, 1895, was opened by the prosecution and began similarly, but with much less intensity; Alfred Wood and Frederick Atkins were the first two witnesses, respectively. The early part of the session, though, featured more extended cross-examination of the witnesses by Wilde's defense counsel than on the first day. In contrast to the prosecution, which had focused on the questions of indecent acts and conspiracy to engage in such acts, the cross-examination by the defense, typically Mr. Grain or Sir Edward Clarke, focused on the character (ethos) and motivations of the witnesses for the prosecution with the intention of impugning and discrediting the testimony of those witnesses. The defense counsel was especially interested in pressing two lines of argument based on ethos and values: one, that it could be established that Wilde was a sincerely generous person who had a genuine interest in young men whom he thought were worthy of and in need of friendship and financial support; and, two, that other witnesses called so far by the prosecution were notorious characters, experienced blackmailers and extortionists, who saw an easy opportunity to capitalize not only on Wilde's fame and fortune, but also on his seeming

naivete in the context of criminal activity, or at least of the underground economy of heterosexual and homosexual prostitution.

Edward Shelley was the witness with whom the defense used its cross-examination to follow the first line of argument. Shelley was a 21-year-old clerk at Wilde's publishers, Elkins and Lane. Shelley admitted to his admiration of Wilde and to being proud of Wilde's attention, which included at least one dinner and several gifts. He testified that, "At first [he] thought that Mr. Wilde was a kind of philanthropist, fond of youth and eager to be of assistance to young men of any promise" (Hyde 213). This had changed, though, with the reports of Queensberry's accusations. Moreover, Shelley confessed to a strong sense of anxiety regarding his friendship with Wilde because those reports had reached his family, and his father had objected strongly to his association with Wilde, even to the extent of threatening to kick Edward out of the family home if he were to continue on with his friendship with Wilde (Hyde 213-15).

Most notable in respect to the second cross-examination strategy was Frederick Atkins, who along with a roommate named Burton had in 1891 and 1892 been accused of extorting money from at least two gentlemen by "threatening to accuse them of certain offences" (Hyde 208). Indeed, Atkins was recalled later in the day by Sir Edward Clarke after he had submitted to the judge a police report filed at the Rochester Row Police Station accusing Atkins and Burton with assault and extortion. Charges were dropped, though, because the unnamed gentleman refused to prosecute.

The prosecution concluded its case on the third day of the trial, Monday, 29 April, 1895. Testimony on this day consisted of eye-witness testimony and forensic evidence

from various employees, such as a masseuse, a chambermaid, and police officials. This testimony also tended to focus as much on Alfred Taylor as on Wilde. Significantly, Jane Cotter and Annie Perkins, a chambermaid and a former housekeeper, respectively, at the Savoy Hotel, testified that they had been alerted to and witnessed "the condition of Mr. Wilde's bed," the sheets of which, Cotter testified, "were stained in a peculiar way" (Hyde 220). Cotter also testified that she saw a young man in the room, and she identified that young man as Bosie Douglas. The police officials testified to the arrest procedures, and Sir Edward Clarke concluded the day by repeating the argument presented in his demurrer.

The prosecution's argumentative strategy in the first three days of the trial should be apparent. The prosecution wanted to establish for the judge and jury (the primary audience) and for the courtroom audience (a secondary audience) certain facts of evidence strictly confined to Section 11 of the Indecency Act and to the two types of counts allowed in the Act: specifically, that private acts (not just public ones) could be prosecuted, and that the commission of indecent acts as well as conspiracy to procure individuals to engage in such acts could be prosecuted. So, on one level the arguments were essentially forensic inasmuch as their purpose was to present to the audiences corroborated and indisputable empirical, factual evidence of actual acts or of conspiracy intended to produce those acts. To this end, the questioning by the prosecution focused on the kind of forensic evidence that is associated with the first two stases in stasis theory, those of fact and of definition. For instance, the prosecution wanted to establish for the judge and jury that physical contact between males, even if it was not actually sodomy,

occurred and that such contact was purposely negotiated between and arranged by the defendants. Establishing this would mean establishing factually and empirically (that is, through corroboration) that a violation of the Act had occurred. In addition, the testimony about homosexual intimacy in private, such as was testified to by William Parker, would conceivably expand the definition of violation under the Act, bringing such intimacy under the Act's umbrella for the same reasons, namely, that it was verified through corroboration as fact. Finally, evidence presented by the prosecution throughout the trials was directed toward details that were meant to undergird those basic goals of establishing fact and definition.

The closing speeches for the prosecution and the defense occurred in the afternoon of the fourth day of the trial, Tuesday, 30 April, 1895. But the day began with a legal maneuver by the prosecution that was perhaps more than coincidental to the end of the previous day (the third day) of the trial: the prosecution withdrew the conspiracy charges. This caught the defense off guard because Sir Edward Clarke had argued in his demurrer at the very beginning of the trial that the two charges should not be combined because it would permit the defendants to give testimony on both charges. Moreover, dropping those charges at this stage meant clearing a path to the defendants giving evidence against one another, which was precisely what Clarke had argued was unjust, and it would preempt Clarke from gaining a verdict of not guilty on the conspiracy charges. Accordingly, in response to the prosecution's withdrawal of the conspiracy charges, Clarke demanded that a verdict of not guilty on conspiracy be entered immediately. He was refused, at which point he added rather exasperatedly, "Then I say

that at some stage of the case I shall ask for a verdict of Not Guilty to be entered on those counts, and I shall probably find it my duty later in the day to comment upon the course taken by the Crown" (Hyde 228). In the tone of his remark, we can sense that the withdrawal of the conspiracy charges was, in a sense, a victory taken from Clarke inasmuch as it acknowledged the justness of his demurrer but without giving him credit for it.

In Sir Edward Clarke's opening statement for the defense on the fourth day of the trial, he again chose the strategy of focusing on character (ethos) as the best indicator of truth. In sum, Clarke argued that his client (Wilde) was consistent in all of his testimony throughout the libel trial, even when he had asserted that he had never engaged in indecent acts with those testifying against him. Moreover, Clarke asserted and defended the virtue and sincerity of his (Clarke's) own character:

> It was Mr. Wilde's act, and Mr. Wilde's act alone, in charging Lord Queensberry with libel which has brought this matter before the public and placed him in his present position of peril. I myself, together with the counsel acting with me in the Queensberry case, and not Mr. Wilde, was responsible for the advice given to Mr. Wilde and for the course taken in withdrawing from that charge of libel. It is partly owing to that fact that I am here again on Mr. Wilde's behalf to meet the accusation which could not be tried properly then. Men who have been charged with the offenses alleged against Mr. Wilde shrink from investigation, and in my submission the fact of Mr. Wilde taking the initiative of a public trial is evidence of his innocence. (Hyde 231-32)

Clarke went on to claim that it was actually a sign of strength of will and character that Wilde would go to such lengths to defend himself if he were indeed guilty of the charges. "Men guilty of such offenses suffer from a species of insanity," and "[i]nsane would hardly be the word" to describe a man who would so foolish as both to commit the offense and subsequently desire to be tried in public for it (Hyde 232). In sum, Clarke

asked the jury to connect the virtuousness of his own character and the uprightness of his own reputation with that of Wilde, which had been the point of attack by the defense in the libel trial.

Accordingly, Wilde was called to testify and asked by Clark to repeat, as Wilde had claimed in the libel trial, that there was no truth to the allegations of indecent acts. Upon cross examination by the prosecution, much of the evidence presented in the libel trial was discussed again, such as Wilde's writings and his letters, with roughly the same results: both the prosecution and Wilde were combative, and the audience in the courtroom enjoyed the performance. Additionally, Wilde was asked in cross-examination to respond to the accusations of the witnesses for the prosecution and that formed the basis of the prosecution's forensic evidence. He responded in the negative to all of the accusations.

The closing speech for the prosecution followed the lines of argument outlined above arguments based on objectivity and factual evidence), whereas the defense wanted to close with arguments based on subjectivity (ethos and values). Sir Edward Clarke included in his argument an accusation that the prosecution had used unprecedented actions, the "remarkable course taken by the prosecution in this case, which I do not remember to have been taken in any other case" (Hyde 244). The "remarkable course" was the withdrawal of the prosecution on the conspiracy charges. The judge, though, also was implicated in Clarke's attack. Indeed, the judge was presented as a bit behind the wheel, as it were, seeming not to have understood the prosecution's strategy, or that he was more complicit in the strategy than was prudent. In both senses the character of the

law was a point of critique in Clarke's closing statement. (Clarke's and Travers Humphrey's sense of their own ethos in relation to the three trials will be a point of emphasis in the next chapter, in which I discuss the second criminal trial.)

As might be expected, the closing speech for the prosecution, made by C. F. Gill, was shorter than Clarke's. Interestingly, though, Gill chose not to review the eye-witness and forensic evidence, evidence of actual acts of indecency. Instead, Gill chose to respond to the ethos- and value-based arguments presented by Clarke in his closing statement. Gill began his statement with reference to the libel trial but dismissed the arguments therein as pertaining to a different context, a different trial. He remarked that in the present case (the criminal case) he didn't even find it relevant to cross-examine Wilde regarding the evidence that Sir Edward Clarke presented in Wilde's defense. Moreover, Gill responded implicitly, albeit briefly, to Clarke's primary argumentative appeal:

> Sir Edward Clarke has made a courageous and brilliant defence of the prisoner Wilde, and incidentally has made an admission, of which I now take full advantage, that he was, in part at least, responsible for the course taken on Mr. Wilde's behalf at the previous trial, and that, in part at least, it was due to that circumstance that he—my learned friend—is now appearing on behalf of the accused. (Hyde 251)

The differences in the arguments are highlighted in these closing statements. As suggested above, those differences center on convincing the jury of either a strict understanding of the law as prescriptive of normative behavior; or, in contrast, of an understanding of the law as a fluid interpretation of normative behavior, and by extension the law as being based in context, situation, and circumstance. Gill and Clarke, respectively, represent the opposing sides of this difference. Gill represents the law as a

prescriptive, stabilizing, even coercive force. His arguments embody an ethos of the law as an abstract, atemporal, transcendent entity. Clarke, on the other hand, represents the law as descriptive of normative behavior, as law that changes as contexts, conditions, and society change. Accordingly, Clarke and his arguments embody an ethos of the law that is actual, physical, temporal.

On the fifth day of the trial, Wednesday, 01 May 1895, Mr. Justice Charles instructed the jury regarding a verdict. He reviewed the charges and the decision by the prosecution to withdraw the conspiracy charges. Oddly, he admitted that he didn't understand why the conspiracy charges were included in the first place (254). Importantly, too, as part of his instructions to the jury he noted the limits of corroboration in judicial argument:

> I am clearly of the opinion that there is corroboration of all the witnesses in the sense that the law requires—not corroboration by eyewitness; it would be idle to expect that, and the law does not require it—but there is corroboration as to the acquaintanceship of the defendants with the witnesses, and as to the many particulars of the narrative they gave, which would render it quite impossible for me to withdraw the case from your consideration." (Hyde 254-55)

I would suggest that the judge's instructions presented mixed messages to the jury and that this ambivalence might also have delimited persuasive argument in this particular trial. As a result the jury could not return a verdict, which set the stage for the next criminal trial.

CHAPTER 5

THE SECOND CRIMINAL TRIAL: *REGINA V. OSCAR WILDE AND ALFRED TAYLOR*, 21-25 MAY 1895

Introduction

The first criminal trial ended on Monday, 01 May 1895, the fifth day of the trial. The jury deliberated for nearly four hours, and returned to the courtroom in the late afternoon with notice to Mr. Justice Charles that the members were unable to come to agreement and thereby deliver a verdict on any of the 25 counts. As a result and upon direction of Mr. Justice Charles, some of the counts against Wilde and Taylor were entered as "Not Guilty," and the remaining charges were held over for further prosecution, if the Crown chose to continue such prosecution. Further, petitions for bail were granted. (A summary of this transitional period will be presented below.)

As with the decision to enter upon a prosecution after the libel trial, the decisions taken by the Crown at this stage represent another kairotic moment in the case against Wilde. While the same could be said for the Crown's case against Alfred Taylor, given that they had been charged together in the second trial, Taylor's case did not represent the same level of amplification in the popular press that Wilde's case did. Nonetheless, the response to the lack of a verdict in the first criminal trial recontextualized the situation. For instance, for the second criminal trial, the Solicitor General for the Crown, Sir Frank Longwood, took over from C(harles) F(rederick) Gill as primary counsel for the Crown, although Gill continued as part of the prosecution team. This was a somewhat remarkable change given a couple of factors: one,

the indecency charge was a misdemeanor charge, not a charge, one would think, of such gravity that the Solicitor-General, who would be much more likely to prosecute felony cases, would need to assume the lead role in the prosecution;[1] second, the counts against Wilde and Taylor had been reduced significantly on the basis of a jury rendering "Not Guilty" verdicts on nearly half of the counts in the original indictment. This change in prosecuting counsel suggests that the Crown had a very serious sense of urgency, a keen awareness of a critical moment in its opportunity to pursue the charges against Wilde as well as a sense of its own anxiety, anxiety that will be discussed later as an anxiety of instability inherent in (apparently) stable systems, such as legal systems, and especially those systems whose epistemologies rely fundamentally on principles of rhetoric.

Additionally, I noted at the end of the last chapter that part of C. F. Gill's closing statement for the prosecution included an explicit attack on Sir Edward Clarke's motivations for his defense of Wilde. Instead of concentrating solely on forensic evidence, in his closing statement Gill chose to focus almost exclusively on Wilde's character (with allusions to the characters of other defendants and witnesses) and on the character of his attorney. While Gill repeated evidence on record from the libel trial as well as evidence from the first criminal trial, he included an important supplement aimed directly at his legal opponent, Sir Edward Clarke (see above).

My contention is that little attention has been paid to analysis of the rhetorical situations represented both in the transition from the first to the second criminal trial (the third trial in

[1] It's worth remembering that Sir Edward Clarke's demurrer (motion to dismiss) in the first trial was based in part on differing standards regarding corroborating evidence in misdemeanor trials and criminal trials.

which Wilde was involved) and in the second criminal trial itself. Accordingly, the discussion of the second criminal trial will be grounded in three contexts. First, I will examine the transition from the first criminal trial to the second, including the Crown's decision to press the moment to its advantage, a legal as well as social and political advantage, and the telling remark by C. F. Gill in his closing argument for the prosecution at the end of the first criminal trial, a remark that signals an important rhetorical shift in the prosecution's case. Second, I will survey the rhetorical characteristics of cultural histories of the trial. Third, I will discuss the trial itself as an example of how rhetorical subjects (people making arguments) not only operate within and upon rhetorical contexts, such as legal proceedings, but are themselves modified and reconstituted as subjectivities. These oscillations between rhetorical subjects and rhetorical contexts represent instabilities within an apparent stable system (the law).

Sir Frank Longwood's decision to take over as lead prosecutor would suggest that the Crown was facing a moment of crisis in both social and political contexts. In addition, C. F. Gill's strategy to undermine the character of his legal opponent (Sir Edward Clarke) by aligning it with the character of the defendants is best and most fully understood as a rhetorical move that is noteworthy in its intention to establish Clarke's ethos specifically in relation both to his professional and personal ethic, and to the legal and rhetorical situation in which he found himself imbricated. Gill's remark itself would seem to be situated at the margins of the case; while the ethos of the defendants and witnesses would seem directly relevant to a jury, the ethos of the attorneys would seem tangential to any possible verdict. Indeed, the attorneys were not on trial any more than the jurors themselves were on trial. Nonetheless, we cannot forget the placement of the remark at a crucial moment in the trial, namely, the closing argument. As such,

it draws peculiar attention to itself because of the multiple audiences it addresses and the way that the jury is enfolded within those other audiences, even though the jury is charged with only one specific task, verdicts regarding Wilde and the other defendants.

On one level, then, Gill's remark is important as a rhetorical move in that it transgresses expected juridical boundaries. The extra-judicial comment exposes the jury to the interpersonal character of a closed community (the legal profession), the character of which Mr. C. F. Gill "will take full advantage" as part of his prosecution. One effect of this is that the judicial system itself becomes part of the contest, effectively asking the jury not only to decide the case for or against Wilde and the other defendants, but also to deliver a verdict regarding the effectiveness of the legal system in enforcing the law. A second effect is an ironic attack on Clarke's personal ethic and its transference to his professional obligation. Gill's observation of Clarke's personal character, which Gill transforms into an attack on Clarke's professional abilities, represents an accusation not only against Clarke personally, but also, and more importantly, against the legal validity and persuasiveness of Clarke's defense of Wilde. In this sense Wilde is not the only object of the prosecution's case; Clarke, too, becomes a defendant.

Moreover, we can begin to look at the second criminal trial as one with diminishing returns for the defense even as the case against the defendants was increasingly constrained. For instance, in the second criminal trial the number of defendants and number of counts against them were reduced. Also, the evidence presented by prosecution in the second criminal trial was substantially the same as in the first criminal trial, except that the second criminal prosecution relied more significantly on the forensic evidence than in the first prosecution. More importantly for the present examination, though, and connecting all of these juridical exigencies is Sir

Edward Clarke himself as an example of Quintillian's *vir bonus*, or "good man speaking well," who will not always prevail in a case, but who will exhibit both virtue and eloquence.

Who and What Were on Trial?

Historiographers, cultural critics, and literary critics have rightly tended to focus on the transition from the libel trial to the first criminal trial as a point that introduces the question of who and what were on trial. Moreover, for all of these scholars this combined question (who and what) has dominated Wilde studies, so it is not as simple a question as it might seem. For instance, Lois Cucullu contends that "[Wilde's] success at meshing public persona and literary production is arguably unrivalled by any of his English peers. The net result of his self-promotion . . . is that Wilde's public persona assumed a life of its own, surpassing even his bodacious fashioning of self-image" (19). Cucullu goes on to observe that in the popular imagination "Wilde was acclaimed and mocked, as he would be later castigated following his trials, imprisonment, and penurious death, as a celebrity in English society when the very category and term [celebrity] . . . were just gaining traction in the popular vernacular" (19). But Cuculla's goal is to extend these typical observations to a larger cultural critique of the late-nineteenth century, namely, "that the celebrity and modernism arise at roughly the same juncture in which adolescence begins" (23). These "phenomena" (celebrity, modernism, and adolescence) are "mutually enabling," and coalesce in *The Picture of Dorian Gray* (adolescence modernism as "the desire to indulge and prolong youthful potency") and in Wilde's public character (the modern figure who is both celebrated and "castigated") (23). Noteworthy here is the conflation of the literary and the personal, or the public and private. As was discussed earlier, this association of fiction with real life was a primary feature of the libel trial. In that trial

establishing this connection convincingly for the jury was the main goal of the defense because once that was accomplished the defense could argue the more pressing question of whether or not Lord Queensberry, in his role as a father, was justified in his accusation.

Moreover, this connection continues in various ways throughout Wilde studies as a touchstone for understanding. For instance, on the back-cover blurb of the paperback version of Jonathan Goodman's *The Oscar Wilde File* (1995), the publisher announces that "Jonathan Goodman's *Oscar Wilde File* treats news as history as he tells the story of the trials and tribulations heaped on Wilde through press cuttings, pictures, posters, theatre programmes and contemporary documents to recreate the fascination felt by the public in 1895."[2] The placement of the final modifying preposition phrase ("through press cuttings. . .) is not a grammatical misplacement of the modifier. Instead, it is necessary for understanding Goodman's achievement: as historiography, it is indeed the volume and character of the archival evidence of journalistic rhetoric and street gossip that was "heaped on Wilde," especially during his "trials," that "tells the story." That documentary evidence traces not only the daily journalistic accounts of Wilde's trials, but also, through illustrations and editorials, the popular attitudes toward the unfolding stories. Stories and storytelling would seem to be what's important.

Likewise, in his foundational book *Talk on the Wilde Side*, Ed Cohen traverses all three of these contexts (the historiographic, the cultural, and the literary) as he examines the development of the modern male homosexual. Yet, Cohen ends his "Prologue" with an important caveat:

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[2] Goodman, Jonathan, comp. *The Oscar Wilde File*. London: Allison and Busby, 1995. Since this is a compilation of documentary artifacts, Goodman includes minimal commentary, and what is provided is broad historical context from one year, 1895. So, to illustrate my point here I've included only the jacket blurb.

> Please keep in mind, however, that I am not primarily (or even secondarily) concerned with providing yet another version of Oscar Wilde's trials. Rather, I am interested in exploring how the meanings engendered by their journalistic representations crystallized a variety of social/sexual discourses already at play throughout the nineteenth century in England. In other words, I am trying to explore here how it was that a certain structural opposition between "heterosexual" and "homosexual" came to imbue the ways middle-class masculinities were embodied at the cusp of our own century. (5-6)

Following Cohen's lead, I hope to chart a course between "providing yet another version" of the trials (if that were even possible given the mostly static extant materials),[3] and providing yet another analysis of the art versus life, fiction versus reality approach. To accomplish this, I would like to examine what we can understand of the arguments that were made during the trials, and what rhetorical and legal strategies we might identify as they were manifested in those arguments. Further, we might consider the rhetoric of binaries implied in Cohen's exploration.

From the First to the Second Criminal Trial

To some extent the "who" and "what" questions were settled during the first criminal trial. All of the defendants, but Oscar Wilde and Alfred Taylor in particular, were on trial for the misdemeanor offenses of gross indecency and conspiracy to commit indecent acts. At the end of the first criminal trial, the jury was instructed by Mr. Justice Charles to enter a charge of "Not Guilty" on all of nine conspiracy charges regarding Wilde and nine regarding Alfred Taylor. Sir Edward Clarke proceeded to apply to Mr. Justice Wills to have Wilde released on bail, and Alfred Taylor's counsel, Mr. Clarke Hall, joined in the application for his client. Sir Edward Clarke's application to Mr. Justice Wills was denied, even though Mr. C. F. Gill, speaking for the prosecution, chose to "say nothing upon the matter. . . and [to] saying nothing to influence

[3] The most recent of the trial documents is Merlin Holland's *The Real Trial of Oscar Wilde* (Harper/Collins, 2003), a full transcript of the libel trial. The "transcripts" or reports of the two criminal trials have remained unchanged for a century.

[Mr. Justice Wills's] judgment in the matter" (Hyde 268).[4] Nonetheless, Sir Edward Clarke was able to present his application on different grounds to a different judge, one in chambers. This "renewed" application seemed to have rested on the timing of the next trial, that is, whether a trial was to begin immediately, if at all, or be held over to the next sessions of the court. Sir Edward Clarke's suggestion was that given the outcome of the first criminal trial, the prosecution would likely want time to consider its options, including the option of abandoning the prosecution. Speaking for the prosecution, Mr. Gill responded that "[t]he case will certainly be tried again; but whether at the next sessions or not will depend on what is the most convenient course" (Hyde 269). Subsequently, Sir Edward Clarke convinced the judge in chambers that Wilde should be granted bail.[5] The judge in the second criminal trial was Sir Alfred Wills (hereafter "Mr. Justice Wills"), and the importance of the prosecution was signaled by the selection of the Solicitor-General, Sir Frank Lockwood, to lead the prosecution.

Within this interlude the actual world in which the next trial would take place once again took on somewhat fantastical proportions. Wilde was shut in for the most part, finding that no hotel would provide him with independent accommodations. So, he was first forced into staying with his mother, and after a few days with her moved into Ernest and Ada Leverson's home. No doubt shaken from the refusal of the Crown to give up the chase, his fatigue is evident in one of the few letters he wrote during this time, this one written from his mother's home to Ada Leverson, shortly before he moved in with the Leverson's:

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[4] As in the previous chapter, all quotations and references to the criminal trials are from Hyde, *The Three Trials of Oscar Wilde.*

[5] Holland and Hart-Davis report that the judge who agreed to Wilde's release on bail was Baron Pollock. Ellmann and Hyde report this, too (Holland and Hart-Davis, *Complete Letters of Oscar Wilde* ,647, n3; Ellman 466; Hyde, *Oscar Wilde* 342).

To Ada Leverson

> My dear Sphinx, Thank you again and again, but I fear I can make no definite promise about tomorrow, as I am not well today. I have nervous prostration, so perhaps I had better do nothing till my Sunday evening with you. To that I look forward, I need hardly say, with all deep feeling towards you and Ernest. I heard today from Rouen. [A reference to a letter received from Bosie Douglas.]
>
> No more at present as I am ill. Your affectionate and devoted friend
>
> OSCAR
>
> (*Complete Letters* 649)

As if more were needed to keep the tension and the public's interest high, the lack of a verdict in the second trial was followed by two arrests that piqued public interest and attuned it to the upcoming trial. On Wednesday, 22 May 1895, the day that Wilde's second trial began, Queensberry and his son, Percy Sholto Douglas, (Lord Douglas of Halifax and Tibbers, and Queensberry's oldest surviving son),[6] were arrested for disorderly conduct on the basis of fisticuffs that occurred in Picadilly following the guilty verdict against Alfred Taylor (see the discussion below). The fact of the fisticuffs was plain: physical confrontations occurred twice in separate locations, both proximal in time and place.[7] The questions before the magistrate were the circumstances and reasons for the fight, and the penalty. The magistrate decided that the circumstances (time and place) were clear from the testimony of the constables, and that who started the fight was of no matter because the Marquess and his son were both involved and neither seemed to be in need of assistance from the police, who were nearby. The penalty was a

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[6] As noted previously the Marquess of Queensberry's oldest son, Lord Drumlanrig was killed in a hunting accident in 1894. The coroner's inquest determined that it was an accidental death, although H. Montgomery Hyde records that Lord Francis Queensberry (11th Marquess) "told [Hyde] that he was positive his uncle Drumlanrig had taken his own life in the shadow of a suppressed scandal" based on rumors of homosexual activity (Hyde, *Oscar Wilde* 219). Percy Sholto Douglas was the next oldest, and Lord Alfred Douglas was the youngest. Percy Sholto Douglas became the Tenth Marquess of Queensberry when his father died.

[7] Richard Ellmann records that in the fight Lord Douglas of Hawick suffered a black eye (*Oscar Wilde* 475).

fine of £500 and the assurance to keep the peace for six months (Hyde 348-49; Ellmann 475). The fine would not be a hardship to either man; maintaining peace, though, really meant sweeping under the rug, as it were, the rupture in the family that was the basis of these filial fisticuffs. Further, this rupture and resultant fight foregrounded the very questions of the relationships between younger and older men (in this case even father and son) that were being adjudicated in the court of law and the court of public opinion. So, although this case occupies little of the critical and biographical coverage of Wilde's criminal trials, it can be useful for framing issues of legal and social context just as the second criminal trial had begun.

Against the charge of civil disobedience, Lord Queensberry defended himself, and his son Percy was defended by Mr. S. D. Stoneham. The two witnesses who appeared before the magistrate, Mr. Hannay, were the constables who intervened in the fight. Interestingly, the evidence that father and son gave against each other and in defense of themselves consisted of forms of harassment and responses thereto. Percy Douglas (Lord Douglas of Halifax) complained that his father (Lord Queensberry) had been sending obnoxious letters to Percy's wife. For instance, Mr. Stoneham, Percy's counsel, presented to the magistrate "a sample of the letters that Lord Queensberry has been writing to Lord Douglas's wife, but also to other members of the family (Hyde 347). The telegram reads: "To Lady Douglas.—Must congratulate on verdict. Cannot on Percy's [Lord Douglas's] appearance. Looked like a dug up corpse. Fear too much madness of kissing. Taylor guilty, Wilde's turn tomorrow.—Queensberry" (Hyde 347; Ellmann 475). Moreover, Queensberry had sought to harass Wilde as well as Percy through a confrontation with Percy's wife at their home, where Queensberry thought Wilde was staying after his release on bail (Ellmann 475). In his defense of Lord Douglas, Mr. Stoneham also

alluded to a petition that he had filed “some time ago to get Lord Queensberry bound over to keep the peace” (Hyde 347). The magistrate thought that the family dysfunction was irrelevant to the complaint. Then, conflicting evidence was presented as to who started the fight, and the magistrate decided that this, too, was not important because both were guilty of civil disobedience.

The Second Criminal Trial: Rhetorical Background and Contexts

As Richard Ellmann aptly describes it, “[i]n this atmosphere of near-hysteria, the second trial of Oscar Wilde was to take place” (475), and the nature of this hysteria is embedded even in something as seemingly tangential as this row between Lord Douglas and his father. Of course, the press reported on the fight; what the audience would have understood, though, were a context and arguments that had been under construction rhetorically since the libel trial, namely, contemporary relations between older men and younger men; relations between fathers and sons; relations between men of different social classes; and society’s (the macro-unit) ideological and axiological mechanisms for determining the conduct and attitudes of families and of individuals (the micro-units). In this sense rhetoric is working dynamically both to construct an intertwined social-political-cultural context, and to construct specific circumstances and instances that condition responses to that context. Put differently, rhetoric is working at once within and between the general and the particular, at once creating as well as moving within and between both context and situation. Moreover, in order to achieve legitimacy in the discursive arena constructed by that layered context, the arguments must not only establish their own credibility, but also define a set of boundaries that will delineate relevance and applicability to the specific situation. For instance, Sir Edward Clarke’s motion to dismiss (the demurrer) in the first trial can

be understood as just such a movement within and between boundaries: he needed to establish a provisional boundary in regards to corroborating evidence in that specific trial as well as to ground that argument within the fixed boundary of legal precedence. This oscillation or reciprocity emphasizes the fluidity and multiplicity of forces that construct at one time the context that grounds for the moment the means for persuasive argument and possible persuasive lines of argument, and at the same time constructs the subjectivities that live within that context. Such a view suggests something different from the understanding of legal systems as stable contexts in which rules, protocols, and judgments are applied independently from those involved in the system.

Sharon Crowley identifies two familiar senses of invention that have arisen since the Enlightenment, both of which represent historically stable positions: "modern senses of [rhetorical] invention as discovery or creation gloss over the roles of difference and contingency in making arguments available" (50). Rhetorical invention as creation is what we would typically understand as the Romantic legacy of invention as inspiration: "[i]f the poet Shelley is to be believed, creation occurs by means of an utterly mystified process—revelation, perhaps, or the 'inspiration' in which relation to composition is mere stenography" (50). Anyone familiar with Romantic poetry and criticism could cite numerous other examples of the "writing-by-inspiration" metaphor, the institutionalization of which even could be extended to individual "processes" followed in various types of contemporary writing education.[8] As Crowley observes

[8] Crowley's point is easily extended to contemporary contexts such as secondary and post-secondary creative writing classes that stress inspiration and an attunement to the world as compositional strategies, as well as composition studies and writing assessment protocols (standardized writing tests and the like), which increasingly focus on evidence-based argument almost to the exclusion of emotional, ethos-based, and values-based argument.

rhetorical invention as discovery "happens when a stable world reveals itself to determined investigation" (50).

The key point here is the connection between stability and discoverability. For Crowley, the perception of a stable world is non-rhetorical, ahistorical, even naïve; in turn, the idea of the "discovery" of such a world becomes similarly non-rhetorical, naively objective, and archeological. I would follow Crowley in suggesting that postmodernism has successfully challenged and changed our thinking about those fundamental approaches by reintroducing multiplicity and difference in experience and epistemology, and highlighting the various and often disparate linguistic descriptions of individual subjectivities. Further, I agree with Crowley when she identifies the tenets of postmodernism with those of ancient rhetoric: "To the extent that such an argument is viable, it follows that ancient and postmodern rhetorics are more similar to each other than either is to modern rhetoric because of the mutual emphasis on discourse as a primary source for the construction of human subjectivity" (46).

Interestingly, though, both of the modern approaches to rhetorical invention and the arguments made available thereby can be seen in all three of Wilde's trials, which also means that the trials can be used to critique and reread those approaches. For instance, reference to the libel trial as "literature on trial" is well known, nearly a cliché. Conventional views of the trials tend to oppose literary culture and the legal system, the former being creative and personal, and the latter being systematic and impersonal. Moreover, Wilde's witty improvisations, and the extent to which he played up and played to his celebrity during the libel trial (and to some extent early in the first criminal trial), highlighted the ethos of inscrutable literary genius that attracted

attention and polarized audiences, and even led to his appearance as a fictionalized character in many of his contemporaries' own works (Kingston 2-3).

In contrast, the term "discovery" has a very specific definition in the law that is clearly applicable to Crowley's point. In a legal context, "discovery" is the doctrine and process that asserts that all evidence used in a trial would be shared between the prosecution, defense, and judge. This evidence would include witness lists, depositions taken from witnesses, forensic evidence, and the like. Further, what is required in discovery is only material that would be used in a prosecution or a defense. The primary goal of discovery is to ensure openness and transparency: the evidentiary playing field should be even, with no surprise evidence being introduced by either the prosecution or defense. The legal doctrine of discovery is an example of how two millennia of Western secular law have pursued the overarching purpose of establishing (and modifying) a stable, codified ground for governance of and conduct in civil society. The primary principle is public stability: democracy can be messy business, on the one hand, while authoritarianism is pretty straightforward business; nonetheless, both are directed at predictability and stability, without which a society would tend toward chaos and collapse. The corollary purpose, then, is that the codification of that primary principle in laws, a history of precedence based on those laws, and enforcement of laws must be available to all of the public. Certainly, the law must be based in judiciousness and fairness, or at least appear to be so, but the firm ground must be established before questions of judiciousness, fairness, and the like can be raised.

From a rhetorical perspective, though (such as Crowley's and in the current study), the idea of "discovery" is a more complicated, fluid concept. On the one hand, discovery in a legal

context indeed should be considered as revealing an already existing and fully constituted reality, the "stable world" that "reveals itself" to forensic investigation (50). It is one principle among others that provides authority for the law because it is grounded in history: discovery applies to contemporary cases just as it did to all cases that came before, and it is based on the fundamental idea that full disclosure is necessary to fairness. On the other hand, as was mentioned above, this apparent stability is a legal construct that is necessary for the maintenance of the appearance of stability, but that is at the same time is a necessary condition (a foundation) for uncertainty and interpretation. For instance, if the evidence acquired through discovery were irrefutable and unequivocal, then the basic idea of the interpretation of "facts" would not exist. The apparent "facts" would solve the case by themselves, as it were, with no intervention by attorneys necessary.[9] So, while discovery means that legal advocates on both sides have the same evidence, that same evidence yields many apparent "truths," as well as the arguments (the rhetoric) that each attorney will use to persuade the judge or jury which truth should prevail.

Another example of this sort of rhetoricity of the law is the idea of stasis, or standing before the court. In attempting to bring a case to court, a complainant must establish standing, meaning some way that the complainant has been adversely and materially affected by something in the law. The doctrine of standing ensures that one has a basis upon which to pursue legal recourse. It is relevant to this point to remember the origin and purpose of stasis theory, which is part of the rhetorical canon of invention (along with *kairos*) and which became a focus

[9] I would guess that many would argue that this is an approach to justice that characterizes totalitarian systems.

of Roman legal rhetoric.[10] Stasis theory focuses on four questions (questions of fact, definition, quality, and proposal) that are intended to help a person analyze an existing situation or occurrence in order to identify points of potential conflict. Accordingly, stasis theory is usually associated primarily with forensic rhetoric (arguments about the past). Janice Lauer notes that stasis theory "gained prominence in Roman rhetoric" in part because it helped the rhetor identify possible controversies among static points:

> The notion of controversy was also integral to early conceptions of *status*. In *De Inventione*, Cicero said that every subject containing within itself a controversy to be resolved by speech and debate could be classified according to status. In Rhetorica ad Herennium, Caplan translated the term constitution as "issue," explaining that it signified the "conjoining of the conflicting statements, thus forming the center of the argument and determining the character of the case." (129)

Lauer goes on to detail uses of stasis theory among Roman rhetors, concluding that there is a close connection between stasis theory and juridical argument: "In practice, therefore, *status* seems to have operated primarily in judicial situations even though in theory rhetoricians claimed a wider scope for it" (130). Thomas Cole suggests an even earlier connection and argues that Gorgias's *Helen* and *Defense of Palamedes* exemplify the question of quality (*status qualitativus*) and the question of fact (*status coniecturalis*), respectively:

> [In *Helen*], "this *status* [*status qualitativus*] or case category, exists when the facts involved and the legality or morality are not in dispute, but rather the 'quality' of the transgressions committed, willing or unwilling, linked or not linked to extenuating circumstances. . . . Palamedes' defense against the charge of having conspired to betray the Greek camp at Troy to the enemy provides a model for the *status coniecturalis*—the type of argument concerned with determining what actually occurred. More particularly, it is a study of the role of such a *status* of circumstantial evidence and plausible reconstruction of the inadequacies of both insofar as they might be expected to figure in the prosecution of Palamedes. (76)

[10] General agreement among scholars is that stasis theory as it was elaborated in Roman rhetoric was begun by the Greek rhetorician Hermagoras during the second century BCE (Bizzell and Herzberg 32; Lauer 129).

Moreover, Lauer identifies the important connection between stasis theory and the rhetorical situation. She points out that "[i]n Roman judicial oratory, the point at issue, the central conflict, was rooted in the rhetorical situation, arising from the dispute between contending parties—the defendant and the prosecutor—even though the judge or jury was the principle audience" (130). Lauer traces variations of this idea of finding stable points of conflict as they resonate up and into the twentieth century: "A somewhat different sense of *status* that emerged during the Roman period has echoes in the twentieth century. Quintillian introduced the terms 'basis,' 'point,' and 'standing': 'The basis of the cause itself is its most important point on which the whole matter turns'" (Quintillian III, vi, 4; quoted in Lauer 130-31). Accordingly, Lauer concludes, "[t]he terms 'point,' 'ground,' and 'basis' connote a firmer and more unilateral beginning than do the terms 'issue,' controversy,' 'dissonance,' and 'questioning,' which imply unresolved duality and tentativeness" (131). Similarly, Cole suggests that the stases occupy a space that is apparently uncontested, the law, but that rhetoric considers even such uncontested spaces as ones that are subject to circumstance, judgments of plausibility or implausibility, qualitative evaluation, and reasonable or unreasonable verdicts (76-77).

My point in citing the history of stasis theory is threefold: one, to establish a rhetorical basis point, as it were, upon which historical and agreed-upon conceptions of the law have always rested; two, to allow me to circle back Wilde's trials as a critique of stability; and three, to support the contention that the law is a site of disputation where "dispute" is a rhetorical principle, but that we do not give the law its due when we characterize that principle with binary oppositions, such as guilty/innocent, admissible evidence/inadmissible evidence, credible/non-credible witnesses, and the like. I would like to consider how within high-profile (popular) legal

proceedings subjects use rhetorical strategies that intervene, interpose, and even impose on those binaries by occupying instead the middle ground that is always already available but made operative when the binary itself is made apparent.

The Second Criminal Trial of Taylor and Wilde

To do this I would like to focus on three aspects of the third trial. The first aspect is the trial of Alfred Taylor, which was allowed to proceed before Wilde's after the judge had decided that the two trials were to be conducted separately. (The import of separating the two prosecutions and of Taylor being tried first will be discussed below.) The second aspect is the crucial, but typically unremarked, question of collaborative evidence that would be admissible and the extent to which the jury should accept or reject that evidence. This was an important holdover from the first criminal trial in regards to the jury's inability to reach a verdict in that trial, and it became even more of an issue in the second criminal trial (the third trial). Indeed, it was the main reason that the Crown did not object to having the charges of procurement removed from jury consideration in Taylor's case. More importantly for my analysis, the difficulties that became apparent with corroboration in witness testimony highlight the rupture in stable legal binaries and disclose a fluid, contextual, situational middle ground within the law that had public resonance. The third focus is on the private and public subject positions of the attorneys themselves, those charged with making the arguments on behalf of the Crown and of the defendants. Once Alfred Taylor was found guilty of gross indecency, and even though his sentence had not been delivered, Wilde's conviction would seem to have been determined, or at least predicted. The idea that Wilde's case would be prejudiced by that of Taylor's seems to have frustrated Sir Edward Clarke the most. Still, the Solicitor General and the defense counsels were

also part of the trial as primary rhetors. Since we should never lose sight of this role, it would seem important to examine the nature of the arguments that they presented. Accordingly, I will discuss that trial in two parts: the trial of Alfred Taylor and the trial of Wilde.

On Monday, 20 May 1895, at the Central Criminal Court of the Old Bailey, London, Taylor and Wilde were charged on the counts that were held over from the first criminal trial because the jury could not reach a verdict. Taylor was once again charged with acts of gross indecency and with procuring men to engage in such acts. Wilde was once again charged with several counts of gross indecency. Both defendants pleaded not guilty to the charges. The prosecution team had changed, as was noted before. It was led by Sir Frank Longwood, Solicitor General, but still included Mr. C. F. Gill, lead counsel in the first criminal trial, assisted again by Mr. Horace Avory. Alfred Taylor once again was defended by Mr. Grain. Likewise, Wilde's defense team remained the same as during the second trial (Sir Edward Clarke, Mr. Charles Matthews, and Mr. Travers Humphreys).

Immediately after the indictments were read, Sir Edward Clarke applied to Mr. Justice Wills that the defendants be granted separate trials. On Alfred Taylor's behalf, Mr. Grain joined in the application, although there is no record that he added anything to the justification for the application. (As discussed below, Grain's reticence at this point has some bearing on Mr. Gill's defense of his client.) The basis of Clarke's application was that conspiracy charges that included both defendants had been withdrawn by the Crown at the end of the previous trial. Conviction on such a charge would mean convicting both defendants of the same offense. Those charges having been withdrawn, Clarke argued, meant that if both defendants were involved in the same trial, then each would have a vested interest in providing testimony against the other, which would at

the least compromise the jury's ability to render an impartial verdict. More importantly, the question of corroborative evidence, which becomes so important to this trial, is also compromised: evidence of one person against another, both of whom are on trial for the same offense, violates the very basic notion that the law depends on various levels and types of independent verification.

In his rebuttal to the defense counsel's application, the Solicitor General, Mr. Frank Lockwood, asserted that the circumstances amounted to such that "the history of [the two criminal] cases is so bound up together that it is impossible to inquire into one without inquiring into the other" (Hyde 272). The rebuttal is significant for two reasons. First, it presages the argument that what has been adjudicated to be inadmissible within legal confines nonetheless has status within extrajudicial contexts. This would become a cornerstone of Lockwood's argument that the jury should consider that by its very nature the commission of an act of gross indecency is one that is not practiced in the light of day, as it were. (It should be recalled that Section 11 of the Criminal Law Amendment Act 1885 introduced private acts of indecency, not only public ones, as eligible for prosecution.) Put differently, while some forensic evidence was produced in the second criminal trial, corroboration of witnesses was undermined to the extent that the forensic evidence became circumstantial. Second, it suggests a metonymic tension between a common, everyday understanding of corroboration and the law's high regard for corroboration as a standard of evidence.

Before making a decision, Mr. Justice Wills admitted that he was expecting the application and was prepared for it: "I have anticipated this application and I have already considered it carefully with regard to the evidence" (Hyde 273). The judge offered his opinion

that it would be “much fairer that the defendants should be tried separately, and that that course is only right and proper” (Hyde 273), an opinion to which the Solicitor General deferred. Then, the Solicitor General invoked his right to select which of the defendants would be tried first, and he selected Alfred Taylor to be tried first.

This represents a crucial moment in the defense of Wilde for several reasons. In his objection to having Taylor tried first, we get a sense of the anxiousness that Sir Edward Clarke feels about the possibility of Wilde being tried second. (There is a double irony here in the quotation that is part of the title of this study: two barrels meaning not only two criminal trials, but also Taylor’s conviction in the second criminal trial as providing a near-fatal wounding and Wilde’s trial finishing off the most important target.) Sir Edward Clarke argued that it was common sense, even obvious, that Wilde should be tried first: “His [Wilde’s] name stands first on the indictment, and the first count is directed against him. There are reasons, I am sure, present to your lordship’s mind why it would be unjust to Mr. Wilde that his case should be tried after, and immediately after, the trial of the other defendant” (Hyde 273). Again, though, Clarke’s argument did not rest on a point of law; once the Solicitor General had agreed to the cases being tried separately, it was his prerogative to determine which defendant would be tried first. Nonetheless, Clarke continued his argument on the grounds that the jury would be prejudiced by testimony in the first trial when it came time for Wilde to be tried, which was scheduled for immediately after Taylor’s trial and with the same jury. (The latter would change, though.)

What is interesting is how the argument oscillates from one of the fixity of the law to one of the unknowable effect on the impartiality of the law. As Mr. Justice Wills remarked, “[i]t is, in

my opinion, within the rights of the prosecution to elect in what order the cases should be taken" (Hyde 274). Still, Sir Edward Clarke and Mr. Justice Wills clearly acknowledged that the order of the trials contained the possibility of jury prejudice. Mr. Justice Wills asserted that "[c]ertainly I—and I am sure that the jury will—will do my best to take care that one trial shall have no influence upon the other." To this assurance Sir Edward Clarke responded, "[i]t ought not, my lord; it ought not, I know, make any difference. I am sure the jury will try to do their duty. But never was a time and a case in which that duty was more difficult to discharge. . . ." (Hyde 273-74). Clarke's argument at the end of his statement points to the unknowable effect on impartiality that is inherent in the exigencies of a specific moment. This does not imply that somehow the law can make the unknowable knowable. Instead, it suggests that the context of this specific trial highlights the tensions between the certainty of the law, foundational certainties that are meant to instill confidence, and the situational uncertainty that always threatens that confidence.

This is the tension to which Jurgen Habermas refers when he elaborates a "discourse theory of law" that attempts to accommodate both "normative judgments" and pragmatic argument (226-27). Habermas describes the interplay of legal norms and specific judgments in this way:

> Hence interpretation of the individual case, which are formed in the light of a coherent system of norms, depend on the communicative form of a discourse whose socio-ontological constitution allows the perspectives of the participants and the perspective of uninvolved members of the community (represented by an impartial judge) to be transformed into one another. (229)

Further, Habermas identifies that legal arguments are not self-contained arguments, isolated "inside a hermetically sealed universe of existing norms but must rather remain open to arguments from other sources" (230). Instead, these additional, extralegal arguments are situational, and based in ethical, moral, and practical reasoning that applies to specific cases

(230). In turn, the "rightness of legal decisions" is more rhetorical than it is purely or exclusively legal. Put differently, while we typically conceive of the law as based in fixed, or at least agreed-upon, moral principles, the "rightness" of legal decisions depends upon negotiation between several layers of argument, many of which are not exclusively in the domain of morality or ethics, but also in the domain of competing rhetorics (230-33).

Preparing Rhetorical Ground: Alfred Taylor's Trial

So, the defendants were tried separately, Alfred Taylor first, and Oscar Wilde was allowed to leave the courtroom on bail. Taylor's trial lasted two days (20-21 May 1895), and it seems clear that Mr. Grain's defense of Alfred Taylor was inadequate at best. Indeed, the Solicitor General dominated both examination and cross-examination, and the trajectory of his questioning was that the witnesses would testify regarding the charges of procurement and gross indecency that would corroborate one another's testimony. While Mr. Grain anticipated correctly the goal of Sir Frank Lockwood's argument, Mr. Grain did little outside of his closing speech to undermine the prosecution's position. Accordingly, the necessity of corroboration of witness testimony became a central point of contention in Alfred Taylor's trial, and that point of contention would carry over to Wilde's trial. Moreover, as will be shown, in Taylor's trial Sir Frank Longwood laid the groundwork for using the legal standard of corroboration against itself, as it were, by asserting that the standard was too strict in and of itself to address the current state of the evidence.

To examine this premise, I'd like to look mostly at the closing arguments for the defense and the prosecution, and the judge's charge to the jury. As we shall see, corroboration of witness testimony is a principle of evidence that has been underestimated in analyses of Wilde's trials.

For instance, in his closing speech on behalf of his client, Alfred Taylor, Mr. Grain is reported to have focused on the testimony of witnesses that lacked credibility because they were criminals themselves. More importantly, Mr. Grain argued that not only was the testimony of each person seriously suspect when considered individually, but that corroboration among the individuals was irreparably compromised by their individual lack of credibility. Credible corroboration of testimony, Grain argued, could not be based on the testimony of individuals who themselves could not be demonstrated as credible witnesses. The point here is that corroboration among witnesses was being argued as indispensable to impartiality (Hyde 288-89).

This was precisely the point that the Solicitor General, Mr. Frank Lockwood, took up in his closing remarks for the prosecution. It was Lockwood's point that the standard demanded by the principle of corroboration could not possibly be met in a case such as Taylor's because the crimes of which Taylor was accused are by definition crimes that take place in secret, behind closed doors, as it were. Further, they were not crimes whose outcomes are obvious, such as the obvious results of assault, murder, robbery, and the like, or even acts of indecency committed in public. What is significant about Lockwood's framing of this specific context is his contention that the activities with which the defendant was charged were sufficiently special that the evidentiary standards should give way to exigent, extra-judicial consideration. We should remember, too, that the charges were misdemeanor charges, which lends gravity to Lockwood's argument that the legal standards should be relaxed, even though the potential punishment in such a case was not as severe as in a felony case. Further, in his argument Lockwood tied the definition of the crimes as those that take place in secret with the inability of the law to project itself into those criminal spaces (Hyde 289-90).

In his charge to the jury, then, Mr. Justice Wills took up the foremost question, that of corroboration. In *The Three Trials of Oscar Wilde*, Hyde notes in his summary of the two criminal trials (that is, not part of his transcription of the arguments) that the judge "dealt first with the abstract question of the need of corroboration in such a case. . . " (290). Hyde returns to the judge's words and records the following remarks:

> In charges of such a dreadful character, there would be a great terror added to life if the rule were not observed as to the necessity of insisting on independent corroboration. If I had not thought that in respect of all of these charges there was corroborative evidence fit to be submitted to you in respect of each one of these, which did not depend on the testimony of their accomplices, I should most undoubtedly have stopped the case. The weight of such corroboration is entirely a question for you, gentlemen of the jury. . . . The two Parkers have declared that improper conduct took place, and in my opinion there is sufficient corroboration to warrant the case going to the jury. It is for you to say whether in your opinion it is corroboration that should weigh with you. (290)

The importance of this "abstract question" might be elucidated from a different source, namely, from a trial held a couple of years after the Wilde trial and at some considerable geographical distance from London, but nonetheless within very close legal proximity.

In 1897, the Supreme Court of North Dakota overturned on appeal the convictions of three Native Americans who had been convicted of murdering a white family in a settlement in rural North Dakota. The white family was part of a group of homesteaders in the town of Winona, North Dakota, and the Native Americans who were convicted lived on the Standing Rock Sioux reservation land located just across the Missouri River from Winona. The murders and subsequent trials represented not only the results of the brutal, extrajudicial justice that characterized the colonization of the American West, but also the attempt to install in those territories a legal system that would protect both the settlers and the original inhabitants of the land. In short, the Native Americans were tried and convicted in a court of law and in the court of public opinion. When the ruling delivered in the court of law was challenged on appeal and

overturned, the court of public opinion took retribution into its own hands and lynched the three Native Americans (Beidler 1-3).

What is relevant to the current discussion is that the convictions of the three defendants was overturned on appeal on the basis of the standard regarding corroborative testimony and the extent to which the supreme court justices relied on tradition based in English Common Law. In his book *Murdering Indians*, Peter G. Beidler reprints the opinion written for the court by Justice J. Bartholomew and from which the following is excerpted:

> The errors alleged [in the trial], and which we shall discuss, relate exclusively to the sufficiency of the evidence to support the conviction. If there was in the case no question as to the proper corroboration of an accomplice, our task, in this instance, would be brief. . . . [T]he principal evidence for the state in this case came from two confessed accomplices. Our statute, voicing the almost universal practice in both England and the United States even in the absence of statute, declares, in section 8195, Rev. Codes: 'A conviction cannot be had upon the testimony of an accomplice unless he is corroborated by such evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense, or the circumstances thereof.' (154-55)

The opinion confines itself to the standard of corroboration as the sole reason to review in close detail the testimony provided by the defendants and other witnesses: "We shall discuss the testimony only so far as may be necessary to an understanding of those portions which the state claims furnish the corroboration required by the statute" (156). Indeed, the justices reviewed all the testimony of the accused as it related to evidence against the other and as to evidence of who committed the crime. Interestingly, the language used in the opinion is strikingly similar to that used my Mr. Justice Wills in his instructions to the jury regarding corroboration and to the argument presented by the Sir Frank Longwood, Solicitor General:

> It was suggested in argument that as there were two accomplices, and their testimony was substantially the same, a less amount of corroborating evidence than in ordinary cases, and where there was but one accomplice, would suffice. This argument should be addressed to the jury. It can have no weight here, because we are not concerned with the

> amount of corroborating evidence. If there be any such evidence, coming within the requirements of the statute, its weight was for the jury, and we cannot disturb the verdict. But, if there was no such testimony, then the jury should have been so instructed, or, failing in that, the motion for a new trial based upon that ground should have been granted. (156)

Notable here is that the evaluation of the credibility of the evidence should be the jury's responsibility, and that there are differing levels of evaluation in different cases. Foundational to both of these considerations is the law in the form of statute (laws that are the product of legislation) as well as that of precedence (laws based on prior judicial rulings), both representing the historical power that corroboration as evidence has accumulated to itself in Anglo-American law. Moreover, the opinion stresses that individual cases play across the surface of this foundation, and that, most importantly, adjudication of cases inevitably must rely on rhetoric that negotiates the liminal space between the foundational and the situational, even between statutory and precedential law. So, while in Taylor's and Wilde's cases Mr. Justice Wills embodies the foundation of the law, his instructions to the jury represent a rhetoric of negotiation that characterizes application of the law through the deliberative process.

After receiving its charge, the jury was dismissed for deliberations. The jury deliberated for a little less than an hour before returning to the courtroom. The jury members could not agree on the counts related to procurement, and the judge and the Solicitor General quickly and readily agreed to not guilty verdicts on those counts alleging that Taylor had procured Alfred Wood, Charles Parker, and his brother, William Parker, with the intention of engaging in acts of gross indecency with Wilde. Nonetheless, Alfred Taylor was found guilty on the two counts of gross indecency with which he also had been charged. Following this, Mr. Justice Wills stated that in the interest of providing Wilde with a fair trial a new jury would be empanelled and that the trial

would not begin until the following day, Wednesday, 22 May 1895. It would last four days, 22-25 May 1895.

Wilde's Second Criminal Trial

The first and second days of Wilde's second trial were uneventful in the sense that they provided little new information, except for the very important fact that all of the testimony was supposedly new for the newly empanelled jury. For instance, on the first day of the trial the content of the prosecution's opening speech, and the subsequent questioning of prosecution witnesses and cross examination of those witnesses were patterned after the case against Taylor, but without the charges regarding procurement. The Solicitor General outlined the alleged acts of gross indecency between Wilde, Edward Shelley, Alfred Wood, William Parker, Charles Parker, and the witnesses who were called gave testimony that was congruent to the testimony that they had given in Taylor's trial. On the second day of the trial (Thursday, 23 May 1895), the various hotel workers who had given testimony in the Taylor trial gave evidence, and it, too, repeated what had been offered in Taylor's trial.

Given this, I would like to focus this part of the discussion on the third and fourth days of Wilde's trial (Friday, 24 May, and Saturday, 25 May 1895). More specifically, I would like to focus on the opening speech for the defense; the closing arguments presented by the prosecution and the defense; and the charge to the jury by Mr. Justice Wills. I would suggest that Quintilian's ideas regarding an appeal to pathos in judicial rhetoric can be helpful in understanding how something as seemingly grounded and objective as the law becomes much more uncertain in specific legal contests. Further, I would like to examine the rhetoric at the end of the trials from the perspective of the jury. In the closing speeches and the judge's charge to the jury, we might

consider that it would be “just the facts” that the jury is asked to consider. But, perhaps that is just the theory; instead, perhaps the practice is based less in logos (objectivity) and more in the appeals to ethos and pathos (subjectivity).

In “Emotion in the Courtroom,” Richard Katula notes that typically in legal arguments, the closing argument (the peroration) should be concerned chiefly with recapitulating the basic argument and the evidence presented to support that argument, whether it be for the prosecution or defense (146). We might consider this a logos-based or objective appeal to the audience’s (the jury’s) sense that fact- and evidence-based argument is the most persuasive type of argument. As he observes, everything about the officials in a judicial context (judges, attorneys, clerks, and officers), from clothing to volume and manner of speaking suggests that the context is meant to convey an impression that is “serious, dispassionate, overtly objective” (146). Yet, ancient rhetoricians, especially Roman rhetoricians such as Cicero and Quintilian, suspected that simply restating the facts for an audience (in this case a judge and jury) was less than desirable because that strategy did not attempt other appeals that could be used to bolster the argument (Martin 160). Moreover, facts can be arranged and manipulated to support various conclusions; indeed, the same facts can be used by both prosecution and defense to prove opposing sides of the argument potentially leading the judge and jury “only to indecision” (Katula 147). So, in agonistic (contestative) arguments, such as those in legal proceedings, and especially in even those cases that include eristic (combative) arguments, classical rhetoricians such as Cicero and Quintilian imply that audiences are receptive to arguments that assert that prudent and proper decisions naturally must be made on more than just the facts. (The stases of definition and quality are relevant here, too.)

Accordingly, as Katula and other discuss, Quintilian identified that emotion and ethos are crucial appeals for rhetors attempting to persuade a judge and jury (see also Martin, Mastrorosa, and Bons and Lane). These appeals can be especially useful when an advocate seems to be losing the case. In other words an emotional appeal can evoke in the audience feelings and ideas that might qualify the basic facts and construct knowledge that is more subjective than objective, but just as persuasive. The rules for using emotion in judicial argument are as follows: knowledge of the emotions that might be effective in a situation; sincerity of emotion; identification with the client's predicament; evoking emotions that are not typical in the situation; similarity between the advocate's and the client's emotion; transference of the emotion from the judge and jury to sympathy for the client (Katula 148-49). We can use these principles as we examine the closing arguments in Wilde's second criminal trial.

Differences in the persuasive power of fact-based, forensic evidence actually appear at the end of the second day of the trial (Thursday, 23 May 1895) regarding an application by Sir Edward Clarke that the counts alleging indecent activities at the Savoy Hotel with various young men should be withdrawn. This application also related to the question of corroboration that was discussed above and that continued to remain an issue (a status) in the third trial. The forensic evidence discussed was the condition of the linen on Wilde's bed at the Savoy Hotel. This evidence had been introduced by the prosecution in the first criminal trial and had been testified to by a chambermaid and housekeeper. It is not stated in the transcripts as they are reported by either Hyde or Mason, but the prosecution implied through his questioning of the hotel employees that the linen showed evidence of a particular sort of sexual activity. This, added to

the fact that the hotel staff saw only young men with Wilde during the time period in question, was meant to point to acts of gross indecency that had occurred in private.

Sir Edward Clarke submitted to the judge that the evidence provided by these witnesses did not meet the standard for reasonable corroboration, so that count in the indictment should be withdrawn. Mr. Justice Wills remarked that, "[t]he condition of the rooms furnishes a certain amount of corroboration of the charges of misconduct" (Hyde 305). But, he added, "[t]he point in respect to the Savoy Hotel incidents is just on the line. . . . It would not be fair to a man charged as Wilde is that a number of nothings should be put to make up a something" (305). The judge agreed to the withdrawal of that particular count involving indecent acts between Wilde and Edward Shelley.

Following this, Sir Edward Clarke presented another application for immediate acquittal based on the lack of corroboration, namely, the count involving indecent acts between Wilde and Alfred Wood. And it is at this point that we glimpse the use of pathos and ethos in the courtroom. In response to Clarke's application, Mr. Frank Lockwood (Solicitor General) protested that the "strange and suspicious circumstances under which Wilde and Wood became acquainted" are themselves reason enough to let the jury decide (Hyde 307). Additionally, Lockwood sought to remind Mr. Justice Wills that the standard regarding corroboration was not law, but precedence. In turn, Sir Edward Clarke quoted Mr. Justice Charles's statement from the first criminal trial about the importance of corroboration:

> "By, I will not say, the law of England, but by the wholesome practice of our Courts for nearly two hundred years, no defendant can be convicted upon the uncorroborated evidence and testimony of an accomplice in his crime. If it were otherwise, to what terrible dangers might not innocent people be exposed by designing and spiteful adversaries?" (Hyde 307)

Clarke followed the quote with his own declaration: “I rely, therefore, upon this rule of practice as a wholesome rule of two hundred years’ standing, even if it is not actually a rule law” (Hyde 307), thereby allying his own ethos with that of the judge, both of which were grounded in the long-standing ethic of the law. Hyde (and Mason) record that the audience applauded.

As regards Quintilian’s ideas about the use of ethos and pathos in the courtroom, three aspects of this exchange between the litigants and the judge are worth remarking. The first aspect is the appeal to the ethos of the jury by the Solicitor General. (Quintilian described two types of emotion, pathos and ethos, where pathos was the deeper type of emotion and ethos the shallower [Katula 147]). Lockwood’s contention was that the jury had primary and ultimate authority because the standard of corroboration was not statutory, but only precedential; as such, statutory law carried the greater authority. Likewise, a duly sworn, empanelled jury was an instrument of statutory law and so embodied that greater authority. This authority included the right to decide on its own whether or not to follow past practice in regards to corroboration. The second aspect is Sir Edward Clarke’s emotional appeal to the judge, jury, and audience in the courtroom based on pride in the righteous and just tradition of English jurisprudence. The third is that the arguments of both counsels were directed at persuading Mr. Justice Wills. Given that the standard of corroboration was not fixed in statutory law, not a certainty, it would seem that both counsels were well aware of the need for emotional argument as a persuasive tool in this circumstance. And, use of that tool seemed to have succeeded for both, at least to some degree: Sir Edward Clarke roused the courtroom audience to applause, but Sir Frank Lockwood was successful in having the petition to dismiss the count involving Wilde and Wood denied.

Oscar Wilde was the sole witness for the defense on the third and fourth days of the trial, appearing after Sir Edward Clarke had made his opening statement. Wilde's testimony during both the examination by Sir Edward Clarke and the cross examination by Sir Frank Lockwood repeated mostly what had been presented in the two previous trials. So, at this point I would like to focus on Sir Edward Clarke's opening statement for the defense. In that statement Clarke reviewed the history of the two previous trials and, more importantly for this analysis, directed his argument to the character of the people who occupy the position of Solicitor General.

Clarke began by referring to "Mr. Wilde [who] has heroically fought against the accusations made against him, accusations that have broken down piece by piece" (Hyde 310). Clarke then embarked on an extended *praeparatio* (Lanham 118) in which he prepared the jury for his decision to call Wilde as his only witness. In his *praeparatio* Clarke focused on the nature of the office of Solicitor General, a position that he once held, and on the ethos of both the office and the person occupying that position. He stressed the importance of the office and the responsibility to the public, not to oneself, of the person holding the office: "But I always look upon the responsibility of the Crown counsel, and especially upon the responsibility of a law officer of the Crown, as a public rather than a private interest or responsibility. He is a minister of justice, with a responsibility more like the responsibility of a judge than like that of a counsel retained for a combatant in a forensic fray" (Hyde 310). Here, Clarke is making an appeal to the authority of an intellectual, legal, and disciplinary tradition (Gross 151), and it is an appeal that is

meant to outline principles upon which the character of his adversary, the current Solicitor General, Sir Frank Longwood could be judged.[11]

The primary principle is the opposition between personal ambition and the tradition of the office. The latter establishes the ethic of the office as one that is based in the law and on service to the public. Any "law officer" of the Crown, but certainly the chief law officer, a "minister of justice," is beholden to the law as well as to the tradition that maintains the law. In this sense, the character of the Solicitor General is fixed by the institutions of law, government, and tradition. Personal ambition of any sort, then, would subvert that fixity, and in so doing undermine the confidence that the public should have in the integrity, sincerity, and authenticity of the law. Having established his own *bona fides* for the jury as both one with experience as Solicitor General and as one who has reflected on the public responsibilities of the position, Clarke went on to suggest that Sir Frank Longwood had taken over prosecution of Taylor and Wilde for personal, even vindictive, reasons:

> I say these things without the least unfriendliness of feeling towards the Solicitor-General, I say them in the hope that I may do something to induce my learned friend to remember—what I fear for a moment yesterday he forgot—that he is not here to try to get a verdict by any means he may have, but that he is here to lay before the jury for their judgment the facts on which they will be asked to come to a very serious consideration. (Hyde 310)

Clarke's support for his contention was that it was highly unusual for a Solicitor General to exercise the option of taking over a misdemeanor case, an option that Clarke referred to as a "strange and invidious" option that he himself had never exercised or ever would if he became Solicitor General again (Hyde 310-11). Finally, Clarke concluded his argument by presenting Wilde as the victim of an unethical and unnecessary prosecution by the Solicitor General. Even

[11] We might remember the previous discussion regarding C. F. Gill's remarks about Clarke's character at the end of the first criminal trial.

though he had already suffered abuse at the hands of the law, Wilde had willingly agreed, Clarke argued, to once again subject himself to the indignities of questioning because of his steadfast denial of the charges (Hyde 311).

In his closing speech for the defense later in day on Friday, 24 May 1895, Sir Edward Clarke began with an apology for his attack on the character of the Solicitor General, blaming it on "some stress of feeling" (Hyde 322). He said that he was "moved . . . to expressions which sounded hostile" toward his adversary. Moreover, he congratulated Lockwood on the deftness of his cross examination: ". . . let me say at once, in the frankest manner, that the way in which he has cross-examined absolutely destroys any suggestion [of impropriety] which have lain in my words" (Hyde 322). It would appear from the beginning of his closing speech that Clarke had given up, that he, too, had been convinced by the cross examination that Wilde was guilty, and as a corollary, that Lockwood's decision to try the case himself was the prudent one, as befitting the ethos of one occupying the office of Solicitor General. It also suggests that he was apologizing to the jury for choosing the wrong argumentative strategy, that of appealing to emotion and character.

I would suggest, though, that as we look at the rest of Clarke's closing argument we see something that is more consistent with his opening argument, something that makes the apology part of his original rhetorical strategy. In particular, Clarke focused his attention on the lack of moral character of the witnesses against Wilde, and he did not abandon his condemnation of the decision to prosecute in the first place: "This trial seems to be operating as an act of indemnity for all the blackmailers in London. Wood and Parker, in giving evidence, have established for themselves a sort of statute of limitations. In testifying on behalf of the Crown they have secured

immunity for past rogueries and indecencies" (Hyde 322).[12] Clarke argues for condemnation of both the witnesses for the prosecution as well as the "invidious" nature of the prosecution itself. Moreover, and parallel to his opening speech, Clarke juxtaposes this indictment of the character of the prosecution with that of his client, observing that prosecution of such dubious intentions on behalf of the public belittles the greatness of that very public (Hyde 323). Upon close examination, then, Sir Edward Clarke wanted to present a consistent argument to the jury that oscillated between emotional and ethical appeals that established his own character as a caring, thoughtful, experienced advocate; that associated his own ethic with that of his client's; that, in contrast, critiqued the ethic of his adversary, which meant critiquing the responsibility of the law itself; and that put it to the jury to decide if the evidence presented was capable on its own of bearing the weight of all of that by delivering a guilty verdict.

In the first part of his closing speech for the prosecution (Friday, 24 May 1895), Sir Frank Lockwood not only followed the rhetorical strategy of Sir Edward Clarke, but raised the ante, as it were. Because of time constraints, he was only able to begin his statement; he would continue it on the following day, Saturday, 25 May 1895, the last day of the trial. Nonetheless, Lockwood chose in his statement to confront directly Clarke's arguments regarding public expectations of the responsibilities of the Solicitor General and accusations regarding Lockwood's execution of those responsibilities. The emotion at the beginning of Lockwood's argument seems somewhat petulant: "With regard to the right of reply on behalf of the law officer, and with reference to Sir Edward Clarke's observations that he had never availed himself of that right when he was a law officer, I say that my learned friend had no right to lay down a rule which could not affect others

[12] As previously noted, Section 11 of the Criminal Law Amendment Act 1885 was referred to by some jurists as the "Blackmailer's Charter." (See also Senelick.)

who filled the office" (Hyde 324). We should remember, though, that Clarke had attempted from the opening of his defense to put the office of Solicitor General on trial on the same ethical grounds as those of Wilde. Court was adjourned on that Saturday before Lockwood had concluded his closing speech.

Sir Frank Lockwood continued his closing speech on the last day of the trial, Saturday, 25 May 1895. In his remarks he once again attacked the character of both the defendant and the defense counsel He reportedly reviewed the evidence that had been presented with specific emphasis on impugning the character of Wilde, the only witness for the defense. He stated that the answers to cross examination were not credible and that on the basis of this the jury should convict the defendant. He also once again raised the question of corroboration, but this time in the context of Sir Edward Clarke's contention that the events (those leading to the libel charge against Queensberry) that had resulted in the criminal trials were so far in the past that credible corroboration could not be obtained.

There then followed an interesting (and to Mr. Justice Wills, a disturbing) display of emotional rhetoric between the two counsels. In rebutting the idea that the libel trial was too far in the past to allow for reasonable corroboration among witnesses, the Solicitor General mentioned the relationship between Alfred Taylor and Oscar Wilde. To this, Sir Edward Clarke raised a strenuous objection: "I must rise to object to Mr. Solicitor-General's rhetorical descriptions of what has never been proved in evidence, and in asserting that an intimate friendship existed between Mr. Wilde and Taylor" (Hyde 324). The Solicitor General responded by providing evidence that was part of the Taylor trial, and asserting not only that the evidence was fact, but that Clarke was not concerned with disinterested justice for all, but only a kind of

self-serving justice that would exempt his client from punishment: “Gentlemen, it is not rhetoric; it is a plain statement of fact [that Wilde had an intimate relationship with Taylor]. . . . He [Clarke] wishes as a result of this trial that one should be condemned and the other left free to continue his grand literary career” (Hyde 324-25). Clearly, Sir Edward Clarke’s objections were on the grounds that the a new jury was empanelled specifically to avoid tainting Wilde’s case with knowledge of the verdict in the Taylor case. Mr. Justice Wills noted that in an official, explicit sense no mention had been made in court of the verdict in the Taylor case. Of course, though, the press had published the verdict against Taylor.

Still, Clarke’s exasperation is clear: “All this is as far removed from the evidence as anything ever heard in this Court. . . . They ought to have been fairly tried in their proper order” (Hyde 325). The exasperation expressed in the hyperbole “as far removed from the evidence as anything ever heard in this Court” was a misstep that Quintilian warned against when he stressed that an advocate must accurately predict what emotions are most effective at particular points in the trial. In other words, the advocate must fit the emotion to the moment (Katula 147). In this exchange between Clark, Lockwood, and Mr. Justice Wills, Clarke seems to have gotten it wrong. Lockwood dismissed Clarke’s complaints by saying, “Oh, my lord, these interruptions should avail my friend nothing. . . . My learned friend does not seem to have gained a great deal by his superfluity of interruption,” comments that led to laughter in the courtroom (Hyde 325). More importantly, the emotional response elicited in the judge by the entire exchange provides even more evidence that Clarke’s rhetorical appeal mistook the moment:

> The interruptions are offensive to me beyond anything that can be described. To have to try a case of this kind, to keep the scales even, and do one’s duty is hard enough; but to be pestered with the applause or expressions of feeling of senseless people who have no

> business to be here at all except for the gratification of morbid curiosity, is too much. (Hyde 326)

Contrary to my calling Clarke's frustrated hyperbole a misstep, one might suggest that Clarke had effectively transferred his own emotion and that of his client to Mr. Justice Wills. But, it seems as though the judge was frustrated more with interruptions in the proceedings, of which Clarke was the instigator, than with the validity of Clarke's own frustration and upon which his objections were based.

Two last aspects of Sir Frank Longwood's closing argument for the prosecution are worth noting, and they, too, relate to emotional and ethical argument. Longwood placed the members of the jury in an oppositional social status to Wilde. He said sarcastically that the evidence of Wilde's writings, such as the letter to Bosie Douglas, should be considered as "lovely thing[s] which I suppose we are too low to appreciate" (Hyde 326). To make such a judgment, he contended, was tantamount to mocking any "right-minded man" who would "appreciate things of this sort [only] at their proper value, and this is somewhat lower than the beasts" (Hyde 326). In suggesting that the defense was trying to make the jury feel humbled at best and belittled at worst by Wilde's success and popularity, Lockwood was asking the jury to acknowledge a kind of nobility in the common sense of everyday people, common people, such as those who make up juries.

Additionally, Longwood drew a distinction between the admirable common sense of everyday people and the nefarious intentions of criminals, those who would seek to disrupt the social order. Lockwood's reference was to the attack on Alfred Wood's credibility in which the defense had characterized him as a blackmailer and had "warned you [the jury] against giving a [guilty] verdict which should enable this detestable trade to rear its head unblushingly in this

city" (Hyde 327). Personifying blackmail (a "trade") as an embodied activity that would "rear its head unblushingly" in the community is crucial to the next step in the argument, which establishes a causal link and social lineage: "The genesis of the blackmailer is the man who has committed these acts of indecency with him. And the genesis of the man who commits these foul acts is the man who is willing to pay for their commission" (Hyde 327). Lockwood's argument established characterological and economic connections that defined for the jury a certain segment of British criminals and their progeny, as it were. This "detestable" group, Lockwood argued, was antithetical to a moral society that understood the place of commerce within that moral system, and the antithesis could be eradicated with a guilty verdict against Wilde: "Were it not that there are men willing to purchase vice in this most hideous and detestable form, there would be no market for such crime, and no opening for the blackmailers to ply their calling" (Hyde 327).

Turning now to Mr. Justice Wills's charge to the jury, we can identify similar arguments regarding corroboration, and emotional and ethical based appeals that were presented by the counsels, but in this context Mr. Justice Wills was speaking for himself as well as instructing the jury. While he provided summaries of the evidence and counsel arguments in order to direct the jury's attention to what is relevant legally, he also argued for a kind of dual credibility: his authority as the highest and most dispassionate legal representative of the Crown; and the credibility of his own subjectivity, his own place as just another individual, within the apparently fixed and rigid context of a legal proceeding.

For instance, Mr. Justice Wills expressed his "regret that the conspiracy charges were ever introduced" because they both unnecessarily complicated the defense's task and were easily

dismissed anyway. Likewise, he expressed that he would have chosen a different order for the trials (Wilde first, then Taylor), but then again it did not seem to make much of a difference (although, of course, the jury had not yet delivered a verdict in the Wilde case). Further, he argued that the jury should see him as an equal, or, really, should see themselves as his equal: "Speaking personally I can never bring myself to make a colourless summing up which is no good to anybody. Hence I call upon you, gentlemen, to look upon my opinions in this case not as views which you are expected to adopt but as matters for your criticism" (Hyde 330).

Regarding corroboration of witness testimony and forensic evidence, then, Mr. Justice Wills offered that he felt that some of the witness testimony lacked credibility because it was not corroborated, but that the jury should consider very seriously circumstantial evidence regarding Wilde, Lord Alfred Douglas, Alfred Wood, and William and Charles Parker. Interestingly, he also seemed to dismiss any argument based on forensic evidence:

> I must state here that I wish that medical evidence had been called. It is a loathsome subject, but I make a point of never shrinking from details that are absolutely necessary. The medical evidence would have thrown light on what has been alluded to as marks of grease or vaseline smears. Then, with reference to the condition of the bed, there was the diarrhoea [sic] line of defense. That story, I must say, I am not able to appreciate. I have tried many other similar cases, but I have never heard that before. It did strike me as being possible; but more than anything else it impressed me with the importance of medical evidence in such a case, which unfortunately we have not had. (Hyde 335)

What seems important in these positions taken by Mr. Justice Wills is a sort of dual argument based in the oscillation between the construction of his own subjectivity against the background of commonly perceived authority. The former would be characterized by his apparent ambivalence about his own thinking, the regular qualifications of his own analysis, as though he were modeling for the jury the right way of engaging in their deliberations. The (perceived) authority always present in the law was itself embodied by Mr. Justice Wills as well as within his

invocation of the authority of medical evidence. It is as if he were admitting to the jury that if only they had that medical authority, the forensic authority, to rely on, then there would be no need to resort to subjective judgment. Absent that authority, though, the jurors needed to content themselves with negotiating between their own individual subjectivities and the generally agreed-upon authority of the law.

The jury retired for deliberation and returned only a few minutes later. The jurors had found Wilde guilty on all counts of gross indecency except for the one involving Edward Shelley. Subsequently, Alfred Taylor and Oscar Wilde were sentenced to imprisonment and hard labor for two years each.

As I mentioned earlier in this chapter, Sir Edward Clarke pulled out all the stops in attempting to gain Wilde's acquittal. On examination, the rhetorical strategies he employed were purposeful and consistent, and they were based in appeals to emotion and character. Indeed, looking at it from the distance of time, one could rely as much on Clarke's arguments as on the historiography that followed as confirmation that Wilde was made an example by the Crown for numerous reasons. I would also suggest that the arguments presented by the lead prosecutors and defense counsels in all of the trials demonstrate that rhetorical strategies are routinely used to maintain and reinforce as well as critique and subvert easy divisions between the public and the individual, the objective and the subjective, and a host of other apparent oppositional pairs. Further, the maintenance, reinforcement, critique, and subversion of these oppositions really serves to highlight the fluid spaces that rhetoric can help us understand and respond to in practice, those situational and circumstantial spaces that cannot be codified or fixed, but that can nonetheless be described.

In summary, the second criminal trial, in which the two defendants, Alfred Taylor and Oscar Wilde, were tried separately but concurrently, features the identification of a kairotic moment; arguments based on the theory and practice of the standard of corroboration between witnesses; and arguments based more in appeals to pathos and ethos than ones based in logos. After the first criminal trial and extending through the second, the Crown demonstrated a sense of urgency in prosecution, a sense that only the most forceful approach to the prosecution of a misdemeanor charge would satisfy the moment. The arguments related to corroboration identify a liminal space between the law as certainty and the law as one institution among others that is fluid, that is characterized by the oscillations between certainty and uncertainty, and stability and instability. As such, the "standard" of corroboration calls into question the law as foundational. Instead, it suggests that Western jurisprudence is contextual, circumstantial, and situational, which aligns it with the fundamental principles of ancient rhetoric. Moreover, the arguments in Wilde's second criminal trial reinforce this alignment inasmuch as the two counsels and the judge consciously employed rhetorical strategies that can be traced back to ancient Greek and Roman rhetors, especially as those ancient sources identified the discrepancies between objective argument (logos) and subjective argument (pathos and ethos), and the persuasive power of each in specific contexts, circumstances, and situations. Accordingly, forensic argument became subordinate to the arguments presented by the prosecution, defense, and the judge, which centered on appeals to pathos and ethos.

CHAPTER 6

CONCLUSION

In the previous chapters I have attempted to chart a different course from what has been typical of Wilde studies in the past 20 years or so. I have pursued a close analysis of the rhetorical aspects of the extant accounts of the three trials and what we might understand of the arguments presented in those trials through such a rhetorical analysis. Accordingly, I have used sources from rhetoric studies as well as those outside of the field of rhetoric. This included establishing the general foundations of Western law that are intended to provide social and political stability for citizens; examining the structure and persuasiveness of the arguments presented at the trials; and exploring how the rhetoric of the trials manifests a basic tension and oscillation between the apparent stability of the law and the fluid, situational critique of the law. Studying the trials as socio-cultural artifacts is ground that has been covered extensively and that continues to be mined for additional approaches; while those approaches were not the main focus of my analysis, they have been references points as well as touchstones for differentiating my own approach from them.

Wilde's life and work have lent themselves to multiple contextualizations that cut across numerous academic disciplines. That the list of approaches and topics is so long is justification enough for over one hundred years of studies in the life and trials of Oscar Wilde, and for continuing that work. The reach of such studies is not only because his biography and his work touch on aspects of life and thought that resonate between modern and contemporary contexts, but also that, as I hoped my analysis would show, the realities of his life could be framed in

terms and concepts from antiquity with which Wilde would most certainly be aware. Such a rich and enduring resonance also means, though, that any analysis of something such as his trials might never be comprehensive because it would need to omit material from Wilde's biography, his creative work, his personal communication, his public persona, and so on that others would find relevant, if not crucial.

To that point, there was one specific aspect of the second criminal trial that I did not address in my analysis, and some general lines of investigation that suggested themselves to me for subsequent research. I chose not to address the rhetoric of Mr. Justice Wills's sentencing of Alfred Taylor and Oscar Wilde for a couple of reasons. First, it was an aspect of the law that presented no argument in itself: the sentence was provided for in the law, and the justice was following "sentencing guidelines," as they are sometimes called, and he had already sentenced Alfred Taylor similarly. So, while the vehemence of the judge's attack on Taylor and Wilde is more than obvious, and as such might be worthy of extrajudicial analysis, it is really only a kind of sour icing on the cake. If, for instance, Mr. Justice Wills had reviewed some of the questions that had arisen in the trials regarding corroboration; or complaints about the order in which Taylor and Wilde were tried; or the fairness of proceedings that were such a spectacle both inside and outside his courtroom; or any number of other objections that were presented officially or could be reasonable predicted, then perhaps the judge's remarks would have been worth more attention as legal rhetoric.

Last, as I worked on this analysis, a couple of lines of research suggested themselves for further investigation. One is the life and work of Wilde's defense counsel, Sir Edward Clarke. While some information is available about him, as far as I know no large scale study of his

distinguished career and of individual cases has been undertaken. In *The Three Trials of Oscar Wilde*, Hyde includes an appendix that identifies Bosie Douglas's ambivalence toward Sir Edward Clarke in regards to Clarke's handling of all of the trials and specifically of Clarke having never called Bosie as a witness in the libel trial ("Appendix B" 348-49). That avenue of investigation, though, might be more relevant to studies of Bosie Douglas than those of Clarke. Also, there remains the problem of the texts of the trials. That problem has been worked out with the publication of Merlin Holland's *The Real Trial of Oscar Wilde*. Nonetheless, I am keenly aware of the irony that at least a third of the last chapter of my study was devoted to the issue of corroboration of evidence. This is a subject for standard textual studies, and my suspicion is that when it came to writing about the two criminal trials Hyde, Ellmann, Cohen, Beckson, and many others had to reconcile themselves to the existence of only three primary texts (Stuart Mason/Christopher Millard, Hyde, and Holland), all of which are themselves reconstructions to a greater or lesser degree (Holland's being the most reliable). Perhaps this lack of a copy-text of any sort has been part of the reason for avoiding close analysis of the rhetoric of the trials and focusing instead on the general import of the proceedings. On the other hand, barring any discoveries, perhaps some agreement is being arrived at regarding which texts should be considered reliable in the case of the two criminal trials.

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