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## What She Said: Recovering Early Modern Women's Experiences through Court Records

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*Much of the fame of early modern England's church courts today is based on their reputation as "women's courts." Because ecclesiastical law allowed women to initiate suit and to be sued in their own names, the courts' records are full of women's words. But the task of discovering women's experiences through these records is a methodologically complex one. Words attributed to women, for example, come to us courtesy of the male church court clerk, whose education and legal experience shaped the written record of legal oral proceedings. And while women filing suit gives the appearance of female agency, it was male kin who provided the material support to pursue a cause under the law and whose interests helped sustain the continuance of legal action. The advantages of using these sources in today's college classroom are many. Documents recounting dramatic verbal confrontations, physical altercations over pews, and secret pregnancies captivate students' attention. These centuries-old dramas help humanize the past and allow students to encounter ordinary women whose names do not appear in traditional textbooks. These sources offer students access to a more complicated depiction of women's actions and identities than those associated with the handful of famous early modern women.*

I incorporate exercises using ecclesiastical court records into a range of introductory and upper division courses on European history and the history of England to give students an understanding of the lives of non-elite women, a topic often neglected in textbook treatments of the period. Testimony provided by litigants and witnesses in England's ecclesiastical courts offers compelling narratives about early modern life from a variety of perspectives in terms of age, status, and sex.<sup>1</sup> In addition to censoring disorderly or deviant behavior, ecclesiastical justice allowed women to initiate litigation in their own names. The courts heard actions of defamation, unpaid tithes or uncertain tithe rights, contested ownership of pews in the parish church, probate disputes, and breaches of faith, including

<sup>1</sup> See Ingram, *Church Courts, Sex and Marriage*; Outhwaite, *Rise and Fall of the English Ecclesiastical Courts*; Shepard, *Accounting for Oneself*; Donahue, *Law, Marriage, and Society*; and University of Nottingham's Archdeaconry Resources, <https://www.nottingham.ac.uk/manuscriptsandspecialcollections/collectionsindepth/archdeaconry/introduction.aspx> (accessed 17 January 2021).

those involving courtship, matrimony, and marriage. Many of these are topics about which students have considerable curiosity; they are fascinated by early modern insults hurled in streets and churchyards and are intrigued by the reports of broken promises, jilted lovers, and illicit sex that drove litigants into court. I trade on and promote that curiosity as I introduce early modern primary sources into my classroom. In transcription from my own research files, depositions allow students to explore how women talked about marriage, family, household, and neighborliness before ecclesiastical authorities. Digitized witness statements available online offer important insights into the processes of their production that reveal women's active participation in creating the documentary record of their words.<sup>2</sup> Together, transcribed and digitized depositions allow students to reflect on church court records as both narrative and material constructions in which early modern women played pivotal roles.<sup>3</sup>

In instance litigation – suits instigated by private individuals rather than agents of the court – witnesses were called on behalf of either the plaintiff or the defendant, with the expectation that whatever testimony they provided would support a favorable legal outcome for the party who produced them.<sup>4</sup> Modern police procedurals have trained our students to think that some witnesses tell the truth and others are lying, so it is essential to help them understand that early modern

2 Putnam, "The Transnational and the Text-Searchable," 377-402; Underwood, "Theorizing Research Practices We Forgot to Theorize," 64-72. For digitized collections of depositions, see the University of York's Cause Papers in the Diocesan Courts of the Archbishopric of York, 1300-1858, <https://www.dhi.ac.uk/causepapers/> (accessed 17 January 2021); the University of Exeter's Court Depositions of Southwest England, 1500-1700, <http://humanities-research.exeter.ac.uk/womenswork/courtdepositions> (accessed 17 January 2021); The Bawdy Courts of Lichfield, <https://lichfieldbawdycourts.wordpress.com> (accessed 17 January 2021); and Consistory: Testimony in the Late Medieval London Consistory Court, <http://consistory.cohds.ca/index.php> (accessed 17 January 2021).

3 Recognition of these circumstances has shaped the work of many empirical bibliographers and historians of the book, who make a convincing case for the value of paying particular attention to the practical processes by which early modern documents were created and to the materiality of the recorded word. Samuelson and Morrow, "Empirical Bibliography," 83-109.

4 I use transcriptions of documents produced by the Chester consistory, whose records are housed at Cheshire Archives and Local Studies: Deposition Books of the Consistory Court of Chester (hereafter, CALS EDC 2/3-2/9), and Cause Papers of the Consistory Court of Chester, 1560-1653 (hereafter, CALS EDC 5), consisting of procedural papers (libels, respensions, interrogatories, depositions, articles, and sentences).

depositions do not present objective “truth.” They instead represent plausible versions of truth, designed to benefit one of the litigants.<sup>5</sup>

The procedures of early modern England’s ecclesiastical courts both afforded and mediated the ability of female deponents to shape their legal narratives. I talk through these processes with students: witnesses were called before ecclesiastical officials and asked to respond orally to a series of questions, called interrogatories, written in advance by legal representatives of parties at suit.<sup>6</sup> Witnesses were deposed in the presence of a court clerk, who recorded spoken responses in writing. These were not verbatim transcripts, however, since the clerk needed to frame depositions in language meaningful within the parameters of ecclesiastical law. Written accounts were then read back to deponents, who had the opportunity to call for changes as a condition of their acceptance, which they indicated by endorsing the document with a signature or other mark. I encourage students to see extant depositions as an intersection of oral and literate cultures, a negotiation based on what a deponent spoke, what a clerk decided to write, and what both negotiated as an acceptable textual representation of oral testimony.

In a time when women’s voices were routinely associated with the category of gossip, court depositions present an important opportunity to hear women talking in a forum that accorded respect to their stories, on subjects over which they were believed qualified to offer evidence. I help students identify gender-specific narrative strategies in women’s depositions that suggest a tension between speaking with authority and acknowledging the perceived limits of women’s expertise. A deponent in a defamation suit from 1575, Margaret Mainwaring, concluded her testimony by noting although witnesses Katherine Jones, Elizabeth Johnson, Alice Massie, and Elizabeth Bristowe “be women,” their reputations for honesty “are to be credited.”<sup>7</sup> I make it a point to discuss with students why women might appear

<sup>5</sup> Davis, *Fiction in the Archives*; White, *Content of the Form*; Richardson, *Clothing Culture*.

<sup>6</sup> For a useful overview of procedures, Donahue, *Law, Marriage, and Society*, 33-41.

<sup>7</sup> CALS EDC 5 1575, no. 2

to destabilize their own position with phrases that seem to express uncertainty and why it is important not to take them at face value.

In the diocese of Chester in northwest England, my own area of study, defamation suits were dominated by women – who spoke, heard, and were the subjects of insulting speech – and matrimonial suits, by definition, included women, so I focus on these two types of litigation in classroom exercises.<sup>8</sup> Women’s testimony in these suits shows them negotiating and contesting the law and contemporary social conventions. Defamatory speech revolved around the issue of sexual honesty for women, and students can see in deponents’ narratives anxieties about female sexual reputation that could have significant consequences, as when wives facing rumors of sexual impropriety related that their husbands had thrown them out of the house until they could clear their names.<sup>9</sup> Such circumstances offer a valuable opportunity for class discussions of the complex issue of assigning agency in early modern legal action. While defamation suits might name married women as plaintiffs and defendants, for example, it was husbands who paid the costs associated with litigation, since wives lacked independent material resources under the law. After all, when a man’s wife was branded a whore, he was, by implication, a cuckold; a husband’s failure to support a legal objection to the assault on his wife’s reputation could appear to signal his lack of authority and to broadcast his own failings. These suits certainly offer valuable access to early modern women’s words and actions, but they require students to understand context and motivations for proper interpretation.

Matrimonial causes feature fractured relationships where one party alleged that an exchange of consent, outside the oversight of the church, had created indissoluble marriage, and the other party rejected that claim. Women made up approximately one-third of the witnesses

<sup>8</sup> The scholarship on defamation is robust. For two helpful discussions accessible to students, see Gowing, “Gender and the Language of Insult,” 1-21, and Ingram, “Law, Litigants and the Construction of ‘Honour’,” 134-60.

<sup>9</sup> In 1570 Anne Newton’s husband was “much offended” by reports of her adultery, for example, as documented in CALS EDC 2/9 p. 19, and witnesses reported that Elena Hodgkin’s husband “evicted her from his house and compayne” after she was defamed as a whore (CALS EDC 5 1585, no. 1).

in matrimonial contract suits in the diocese of Chester, in part because private marriages and consummation frequently took place in domestic spaces, considered the preserve of women. Young female servants could serve as star witnesses, given their familiarity with the movements of members of the household. From their testimony, it is clear that women were familiar enough with the words, actions, and circumstances that created the legal proof or at least the appearance of binding marriage to provide convincing narratives concerning the legitimacy of their own and others' relationships: their testimony demonstrates an understanding that particular combinations of sex and words made marriage. When women spoke of marriage as either plaintiffs or defendants, they alternately indicated clear understanding of matrimonial law or claimed ignorance of it, depending on circumstances, a marked contrast to male litigants, who stressed their knowledge of the law. In court women constructed realities concerning sex and marriage through words accorded legitimacy and delivered publicly, providing a subjective truth that gives us valuable information about their agency, actions, and attitudes.

The digitization of ecclesiastical court records in recent years allows for consideration of their physical condition and the processes by which they were created, which also enriches students' understanding of women's experiences. Digital images reveal early modern depositions as unstable texts. Alterations were a regular feature of the documents and show women as partners in the production of written accounts. While some changes reveal the attempt to eliminate what were possibly scribal errors, elaboration or retraction of text captures the negotiation of witness and scribe. Added text – above lines, in margins – served to expand or explain information previously provided by the witness. Records also contain numerous examples of material being eliminated, although the successful obliteration of text makes discerning its contents and an analysis of changes impossible. Where the original text can be read, though, a comparison of the first and second versions can demonstrate the attempt of witnesses to renounce information that exposed them or their preferred party to censure or to correct the clerk's transmission of the spoken word

into written form. Depositions need to be understood as presenting multiple perspectives on – or versions of – women’s testimony to the reader at the same time; one sees simultaneously the first draft of the testimony, written by the clerk to record the deponents’ spoken answers, a revisions phase, comprised of any subsequent stylistic or content changes required by the interchange between the recorded and the recorder, and the final draft, the version deemed sufficiently accurate to secure the witness’s signature or mark of approval.

Emendations negotiated during the course of recording witness testimony, perhaps unsurprisingly, focus on the same key issues that shaped broader storytelling patterns: the precise words spoken on the occasion of defamatory speech or marriage and the behaviors, interaction, and reputations of the parties involved. This usefully signals the reciprocal construction of legal realities between women and institutional authority and allows students to glimpse the intersections among early modern law, social custom, and women’s lived experiences.

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The Bawdy Courts of Lichfield, <https://lichfieldbawdycourts.wordpress.com>

Cause Papers in the Diocesan Courts of the Archbishopric of York, 1300-1858, University of York, <https://www.dhi.ac.uk/causepapers/>

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