

# The Terrible Haystack Murder: The Moral Paradox of Hypocrisy, Prudery and Piety in Antebellum America

by IAN C. PILARCZYK

The concept of law as a mirror of society is one that has influenced generations of legal historians. As Oliver Wendell Holmes, Jr. stated, "[t]his abstraction called the Law is a magic mirror, [wherein] we see reflected, not only our own lives, but the lives of all men that have been. . . ."<sup>1</sup> In recent years, historians have produced a growing body of scholarship trials on an individual level, recognizing that they present fruitful areas of inquiry into legal, cultural and socioeconomic issues.<sup>2</sup> Indeed, the notion of "law as mirror" may be extended to encompass individual trials themselves. This view regards trials as discrete fragments of time which reflect the prevalent, underlying social and cultural ethos, through their conscious as well as unconscious testimony. As Lawrence Friedman has written, "[l]aw reflects the agenda of controversy—the things that are in actual dispute. It also gives strong negative evidence about which issues are *not* in dispute, the things that nobody questions."<sup>3</sup> One such historian, Robert Ferguson, has pointed out that "[f]amous trials, trials that capture the imagination of a community, are particularly useful for observing the

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1 OLIVER WENDELL HOLMES, JR., *THE SPEECHES OF OLIVER WENDELL HOLMES* 17 (1891) (quoted in KERMIT L. HALL, *THE MAGIC MIRROR* 3 (1989)).

2 See, e.g., Laura Hanft Korobkin, *The Maintenance of Mutual Confidence: Sentimental Strategies at the Adultery Trial of Henry Ward Beecher*, 7 *YALE J. LAW & HUM.* 1 (1995); Robert A. Ferguson, *Story and Transcription in the Trial of John Brown*, 6 *YALE J. LAW & HUM.* 37 (1994); Karen Halttunen, "Domestic Differences": *Competing Narratives of Womanhood in the Murder Trial of Lucretia Chapman*, in *THE CULTURE OF SENTIMENT: RACE, GENDER AND SENTIMENTALITY IN NINETEENTH CENTURY AMERICA* (Shirley Samuels ed., 1992); A. Cheree Carlson, *The Role of Character in Public Moral Argument: Henry Ward Beecher and the Brooklyn Scandal*, 77 *QUAR. J. OF SPEECH* 38 (1991); Daniel A. Cohen, *The Murder of Maria Bickford: Fashion, Passion, and the Birth of a Consumer Culture*, 31 *AMER. STUD.* 5 (1990).

3 Lawrence M. Friedman, *Notes Toward a History of American Justice*, in *AMERICAN LAW AND THE CONSTITUTIONAL ORDER* 24-25 (Lawrence Friedman & Harry Scheiber eds., 1978) (emphasis in text).

nature of legal-literary-cultural connections and dependencies."<sup>4</sup> It is for precisely this reason that so many historians have undertaken to analyze early American trials, especially for the narrative effects exhibited in the proceedings themselves.

The murder trial of Reverend Avery in 1833 offers a wealth of sub-conscious testimony on Victorian beliefs, presuppositions and concerns, capturing the public's imagination not only because of the sordid nature of the charges, but also because it implicated deeply-entrenched social and cultural beliefs. In the process, the Avery trial is a veritable boon for legal historians, having produced numerous pamphlets, trial reports and related publications. This paper proposes to use the Avery trial as a vehicle for examining the manner in which gender roles intersected views on sexuality and religion, as well as to probe the underlying reasons as to why the fear of hypocrisy was so ubiquitous during the Victorian period in antebellum America.

## I

On the morning of December 21, 1832, Sarah Maria Cornell was found hanging from the rafters of a haystack on the outskirts of Fall River, Massachusetts, in a town called Tiverton.<sup>5</sup> Cornell was a young, single woman employed in one of the local textile mills that had sprouted since the advent of the Industrial Revolution. When news of her death reached the town of Fall River, her physician traveled to the scene to examine her body. Feeling her abdomen for indications of pregnancy, Dr. Wilbur disclosed a statement Cornell had made to him some time earlier, wherein she had alleged that a married Methodist minister by the name of Ephraim K. Avery had seduced and impregnated her. The local coroner arrived shortly thereafter, rounded up six men to form a jury of inquest, and performed a cursory examination of the body. Wilbur's testimony of her seduction served only to reinforce their belief that Cornell had committed suicide. In her personal belongings were found several anonymous

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4 Ferguson, *supra* note 2, at 37. Ferguson also notes that "[s]ince trials involve the transcription of everything that is said in a courtroom they make excellent cultural barometers." *Id.* at 37-38. It is worth noting however that transcriptions were rarely verbatim during this period.

5 For the full account of the circumstances of the Avery trial, see generally DAVID RICHARD KASSERMAN, *FALL RIVER OUTRAGE: LIFE, MURDER, AND JUSTICE IN EARLY INDUSTRIAL NEW ENGLAND* (1986). While Kasserman does an admirable job of providing biographical information on both Reverend Avery and Sarah Cornell as well as a chronology of the trial itself, the issues with which this paper are concerned are not comprehensively discussed in his work. In addition, William McLoughlin raises some intriguing issues in his brief work on the Avery trial. See William G. McLoughlin, *Untangling the Tiverton Tragedy: The Social Meaning of the Terrible Haystack Murder of 1833*, 7 J. AMER. CULT. 75 (1984). For a bibliographic listing of the Avery Trial literature, see THOMAS M. MCDADE, *THE ANNALS OF MURDER* 13-18 (1961).



letters misaddressed to "Sarah Connell" which proved tantalizing corroboration of Dr. Wilbur's testimony that Cornell had been seduced. The following morning, having seen and heard the evidence presented, the jury of inquest ruled Cornell's death to be a suicide induced by the "wicked conduct of a married man."<sup>6</sup>

Following Cornell's burial, further evidence came to light which suggested that the initial verdict of suicide may have been in error. While searching through her personal belongings in order to locate next-of-kin, a handwritten note was found, dated the day of her death, wherein Cornell had written, "[i]f I should be missing, enquire of the Rev Mr. Avery of Bristol he will know where I am." In addition, two pieces of her comb were discovered many feet away from the spot where her body was found. The matrons who prepared her body for burial noted an abundance of bruises on the lower half of her body, and some disquieting evidence was presented that the knot around her neck was a clove hitch—which allegedly would have precluded Cornell from tightening the knot herself.

In the face of this growing body of evidence, the coroner again requested Dr. Wilbur perform an autopsy, to be observed by a new jury of inquest. Interestingly, the verdict of the first jury was dismissed as invalid under Rhode Island law, as two original members of the jury were not freeholders and therefore ineligible to act as jurors, although this may have been largely a convenient pretext.<sup>7</sup> In stark contrast to the first jury, the second jury appeared convinced that Cornell had been murdered by Reverend Avery; this conclusion was strengthened when the subsequent autopsy revealed that Cornell had been pregnant. Before the verdict was officially announced, the assistant postmaster as well as the man who had originally found Cornell's body, John Durfee, proceeded to Bristol to obtain an arrest warrant for Reverend Avery. The arrest warrant which was ultimately obtained was marred by myriad legal violations: the authority to swear out a complaint resulting in an arrest warrant for murder was vested solely with the coroner, and the jury of inquest had not yet issued its verdict. Moreover, the two men failed to accurately remember Avery's name, swearing out a complaint against a Daniel Evereth or Daniel Everill.<sup>8</sup> This was later corrected to read "Daniel Avery", a name which nonetheless did not coincide with Avery's given name, Ephraim. The warrant of arrest was not invalidated, however, as the following day the coroner's jury of inquest issued a verdict of murder, and Avery himself

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6 Kasserman, *supra* note 5, at 8.

7 *Id.* at 11-12 ("Their signatures being invalid, [the coroner] could claim that the original verdict was signed by only four men instead of the required six....In this way, [his] haphazard procedure came to his rescue by providing an easy technique for legally dismissing an unpopular and perhaps ill-advised conclusion.").

8 Benjamin F. Hallett, *A Full Report of the Trial of Ephraim K. Avery, Charged with the Murder of Sarah Maria Cornell, Before the Supreme Court of Rhode Island, At a Special Term in Newport, Held in May 1833* (Boston: Daily Commercial Gazette, 1833), at 181.

later waived "all exceptions to misnomer in the complaint or warrant."<sup>9</sup>

In the interim, Avery had been informed by the Methodist minister of Fall River, Reverend Ira Bidwell, of the accusations which were circulating against him. Arrested shortly thereafter, Avery lost little time in obtaining counsel, and the following Monday he was brought before two Justices of the Peace in Bristol. To the prosecution's chagrin, however, the jury had not yet issued a verdict and the autopsy had not yet been completed, leaving the prosecutors, William Staples, "in the embarrassing position of prosecuting as man for a crime that legally had not been committed."<sup>10</sup> Staples begged the indulgence of the court for a brief postponement, which was granted until the following day. By that time, the jury's verdict was officially announced, rendering the prosecution legal.

While these events transpired, popular sentiment in Fall River appeared to be that decisive action had to be taken—after all, it was one of their fellow citizens who allegedly had been so cruelly used by Reverend Avery.<sup>11</sup> Two committees were formed, one a "committee of investigation" and the other a "committee of vigilance;" the former committee was to contact the Rhode Island officials and render any possible aid, and the latter committee was to collect evidence and information helpful to the prosecution.

Within days, the committee of investigation had sprung into action, seeking to secure Avery's prosecution in Fall River or Tiverton rather than Bristol, where it was feared his legions of supporters would ensure his acquittal. Committee members attempted to convince Justice Howe that Avery should be released into their custody, and cited the technical violations which had marred the Bristol arrest warrant. Justice Howe, unsure as to how to proceed, solicited Rhode Island Attorney General Greene for advice. Simultaneously, a large number of Fall River inhabitants made their way to Avery's house and demanded to be allowed to see him. Avery had been released from prison shortly after his arrest, and thereafter was kept under a form of house arrest. This group of Fall River inhabitants, characterized pejoratively as "wild fellows, mostly Irishmen" in the local press, eventually dispersed when the ferry on which they had arrived prepared to depart back to Fall River.<sup>12</sup>

On December 25, 1832, Avery appeared in the Bristol County Courthouse and, keeping to a carefully prepared text, painted Cornell as an unsavory, promiscuous, dissipated young woman while simultaneously painting himself as a model of Christian solicitude who had attempted—

9 Marshall and Brown, *The Correct, Full and Impartial Report of the Trial of Rev. Ephraim K. Avery, Before the Supreme Judicial Court of the State of Rhode Island, at Newport, May 6, 1833, for the Murder of Sarah M. Cornell* (Providence: Marshall and Brown, 1833), at 147; see also Kasserman, *supra* note 5, at 12-13.

10 Kasserman, *supra* note 5, at 15.

11 See generally *id.* at 15-28.

12 *Id.* at 17-18.

13 THE FALL RIVER RECORDER, January 30, 1833 (cited in Kasserman, *supra* note 5, at 26).



unsuccessfully—to redeem Cornell's wayward soul prior to expelling her from the church due to her alleged sexual dissipation. The following day, the prosecution attempted to convince the justices to extradite Avery to Tiverton or to Fall River. While it initially appeared that their motion would be successful, the justices formally denied the motion on December twenty-seventh.

During the examination, while both the prosecution and defense called numerous witnesses—many of whom were grossly ineffective—the notoriety of the alleged crime spread. Papers throughout the Northeast began following the case, including those in Rhode Island, New York, Massachusetts, Connecticut and Maine, and coverage soon spread as far as Virginia.<sup>14</sup> On Sunday, January 6, 1833, the justices announced their decision: Avery, a man of the Church and of unsullied reputation, could not possibly have murdered Cornell who, as an “undoubted prostitute,”<sup>15</sup> most likely committed suicide with the intent of avenging herself on Avery for exposing her as a harlot.

The finding of the Bristol court, not surprisingly, was met with dismay and outrage by the inhabitants of Fall River. Armed with the knowledge that the examination had taken place outside of the county where the crime was alleged to have been committed, members of the committee of investigation obtained a warrant for Avery's arrest in Fall River. After several unsuccessful attempts to serve the warrant on Avery's counsel due to various successful stratagems on the part of his supporters, it was discovered that Avery had been spirited away to New Hampshire to avoid his extradition. Harnden, a central member of the committee of investigation, was entrusted with the responsibility of ferreting out Avery's hiding place. After several days spent in following leads and after obtaining the necessary extradition documents from the governors of Rhode Island and Massachusetts, Harnden eventually tracked Avery's probable hiding spot in the town of Rindge, New Hampshire. Harnden and his compatriots burst into a house owned by known friends of Avery and demanded to see the minister. When the houseowner unconvincingly claimed that he “never knew such a man as Ephraim K. Avery,” it was apparent that Avery's place of refuge had been found. Indeed, Avery was found hiding in an upstairs bedroom.<sup>16</sup> After taking Avery into custody, the two travelled through Boston to Fall River, where Harnden released Avery into the hands of a Rhode Island agent. Avery was examined in Tiverton before two Justices of the Peace, and he was bound over for trial before the next session of the Rhode Island Supreme Court, to take place in March 1833.

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14 Kasserman, *supra* note 5, at 112-113. References to this case even appeared in Canadian newspapers.

15 Luke Drury, *A Report of the Examination of Rev. Ephraim K. Avery, Charged with the Murder of Sarah Maria Cornell* (1833), at 55.

16 Harvey Harnden, *Narrative of the Apprehension in Rindge, N.H. of the Rev. E. K. Avery* (Providence: W. Marshall, 1833), at 23.

Due to time constraints, the Rhode Island Supreme Court postponed Avery's trial until a special session of the court could be convened for that purpose on May 6. The trial, lasting until the second of June, proved to be the longest trial in state history, and possibly in the United States, up to that time. The defense strategy was a simple one—they sought to discredit the case against Avery by impugning Cornell's character in an attempt to show that Avery could not possibly have seduced a woman as debauched as Cornell. In the end, the strategy proved successful, as Avery was acquitted. His acquittal did little to assuage the sentiment of many that Avery had indeed murdered Cornell, nor did two subsequent church council hearings conducted by the Methodist church.<sup>17</sup> He was pilloried in songs, plays and poems, burned in effigy numerous times (even in Bristol), and surrounded by angry mobs when he ventured outside of Bristol. Avery's supporters undoubtedly hoped that the controversy would eventually fade away. However, newspaper editorials continued to criticize the Methodist Church, Avery, and the court process which resulted in his acquittal.

Further exacerbating the situation, newspaper accounts in June 1833 began suggesting that the defense—and many of the defense witnesses—had confused Sarah Maria Cornell with a highly disreputable woman who resided in Providence, called Maria Snow Cornell. Given the number of witnesses in the Avery trial that had referred to Cornell as "Maria" or "Maria S. Cornell," these allegations further weakened the credibility of the verdict.<sup>18</sup> Articles such as these, coupled with numerous articles that continued to criticize the Methodist Church for defending Avery, convinced the Methodist church that the controversy would not abate. Eventually, faced with relentless criticism and diminishing membership rolls, the church encouraged Avery to cease his ministry. Avery and his family lived out their days on a modest farm in Ohio, dying in virtual obscurity. The "Terrible Haystack Murder," remained a fixture of New England culture until it was supplanted some fifty years later by another infamous murder trial which also had its roots in Fall River, and likewise ended in the acquittal of a defendant thought by many to be guilty: the trial of Lizzie Borden.

The level of public excitement over the Avery trial appeared to be unprecedented in antebellum America. As a result, it spawned a rich literature, consisting of more than a dozen pamphlets published during 1833-

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17 By all accounts many people who followed the trial, particularly residents of Fall River, were convinced of Avery's guilt. There is even some evidence that the Chief Justice who heard the case thought Avery to be guilty—one account states that "Chief Justice Eddy, who presided on the trial, has said, since that trial, that he had very little, if any, more doubt of the guilt of Ephraim K. Avery, THAN OF HIS OWN EXISTENCE." *Strictures on the Case of Ephraim K. Avery, Originally Published in the Republican Herald, Providence, R.I., with Correction, Revisions, and Additions, By Aristides* (Providence: William Simons Jr., Herald Office: 1833), at 92 [*hereinafter Strictures*] (emphasis in text).

18 Kasserman, *supra* note 5, at 221.



1834 as well as countless newspaper articles across the country.<sup>19</sup> These trial publications exhibit the characteristics of what was then an emerging form of publication known as trial reports. Scholars such as Daniel Cohen have traced the evolution of trial publications in the United States, which originated as execution sermons written by clergymen in the 1670s and eventually developed into mass-produced trial report and biographies.<sup>20</sup> Cohen points out that by the 1830s the landscape of trial publications had changed dramatically: execution sermons were replaced by the proliferation of trial reports, the rise of newspaper coverage of criminal trials, and the advent of crime publications which were influenced by the "sentimental and romantic fictions that revolutionized American literary culture dur-

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19 See, MCDADE, *supra* note 5. Ironically, the Avery trial literature also figured prominently in the ultimately unsuccessful defense of a young farm laborer charged with murder the same year. In the process, the Avery trial also indirectly offers a glimpse into the pervasiveness of readership of such trial reports. As Daniel Cohen writes, "[o]n a Sunday morning in June 1833, Mr. Chauncey Cochran sat in the front room of his house in Pembroke, New Hampshire, engrossed in a trial report that he borrowed on the recent case of Ephraim Avery, a Methodist minister accused of impregnating and then murdering a Fall River factory worker. When a young hired laborer who lived in his household came into the room and told him that his wife wanted him to go out with her to pick some strawberries, Cochran declined. The laborer then accompanied Sally Cochran to a secluded field, where he clubbed her to death with a wooden stake. Although a defense lawyer claimed that the Avery report had induced his client to murder the woman while in a somnambulistic fit, the prosecutor pointed out that there was no evidence that the laborer had ever read the pamphlet. The miscreant was convicted and executed." See DANIEL A. COHEN, *PILLARS OF SALT, MONUMENTS OF GRACE* 35 n.171 (1993) (citing *Report of the Trial of Abraham Prescott* (Concord, N.H.: M.G. Atwood, and Currier and Hall, 1834)) [*hereinafter* *PILLARS OF SALT*]. As such cases indicate, reading trial publications could prove to be a hazardous undertaking! During the height of the Beecher-Tilton scandal, one newspaper reported that "three people in Washington have gone crazy over the great scandal, and have been sent to the insane asylum. Two of them were women who addled their weak brains with keeping track of the case, and the other, we regret to state, belonged to the masculine gender." Richard Wightman Fox, *Intimacy on Trial, Cultural Meanings of the Beecher-Tilton Affair*, in *THE POWER OF CULTURE* 103, 111 n.8 (Richard Wightman Fox & T.J. Jackson Lears eds., 1993) (quoting *The Chicago Tribune*, April 16, 1875).

It is worth noting that the popularity of such trial publications may also reflect a reaction to the rigidity of the Victorian era. As Cohen writes, "In part th[e] demand embodied a timeless human fascination with sex and violence. In part it probably exposed frustrations inherent in an emerging regime of Victorian gender relations that celebrated romantic engagement while demanding sexual restraint. Like many of the cases that they described, nineteenth-century newspaper stories, trial reports, and criminal biographies exposed some of the darker contradictions of a moralistic consumer culture that alternately mandated self-discipline—and that mediated those demands by transforming human aggression and sexuality into marketable commodities." Cohen, *supra*, at 38.

20 See generally Cohen, *supra* note 19. For a discussion of seventeenth and eighteenth century American trial literature, see Karen Halttunen, *Early American Murder Narratives*, in *THE POWER OF CULTURE*, *supra* note 19, at 67.



ing the early national period."<sup>21</sup> The period after 1830 in particular witnessed a clearly discernable increase in the frequency and depth of coverage afforded criminal trials, coinciding with the rise of inexpensive urban newspapers.<sup>22</sup>

Trials which were of special public interest engendered a concomitantly high number of publications. As such, in trials involving "murders with a strong sexual component, coverage typically included not only sensationalistic crime accounts and moralistic editorials but also detailed synopses or even verbatim transcripts of criminal proceedings."<sup>23</sup> These nineteenth century trial reports tended to mimic the order of the trial proceedings themselves, including the presentment of the indictment, arguments of counsel, testimony and cross-examination of witnesses, the judge's charge to the jury, and the verdict.<sup>24</sup>

The Avery trial also illustrates that trial publications continued to be used as a means of disseminating the views of parties who had a stake in the outcome of the trial.<sup>25</sup> The Avery controversy is also illuminating in

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21 Cohen, *supra* note 19, at 26; see also Halttunen, *supra* note 2, at 43 ("Had William Chapman been murdered in 1731, the printed account of the incident would have assumed the form of an execution sermon for the convicted murderer, which would have passed briefly over the sequence of events before and after the assault to concentrate on the spiritual destiny of the convicted criminal about to be launched into eternity at the gallows. But in 1831 the cultural work necessitated by Chapman's violent death assumed the form of a printed transcript of the murder trial, which represented the state's attempt to reassert moral order by uncovering the true narrative of what happened in the Chapman household in the summer of that year, so as to assign legal responsibility for the crime.").

22 Cohen, *supra* note 19, at 31; see also Cohen at 192 ("Literary responses to the Dedham tragedy of 1801 suggest that the dawn of the nineteenth century may have marked a key transition in the cultural history of New England; it certainly did in regard to the region's crime literature. In addressing the case of Jason Fairbanks, execution sermons appeared only as attenuated afterthoughts; the dry husk of the last-speech broadside was exploded by an infusion of motifs from sentimental fiction; expanded newspaper treatments of crime suggested the coming flood of journalistic reportage; and early trial reports illustrated the legalistic component of a new cultural regime. By the 1830s and 1840s, the transition was complete: execution sermons and last-speech broadside had vanished; sensationalistic newspaper accounts, legalistic trial reports, and romantic biographies had become the primary media of crime coverage. An older literature of Protestant piety had been overwhelmed by a new culture of legal romanticism.").

23 Cohen, *supra* note 19, at 31; see also Cohen at 34-35 ("One of the most striking aspects of the nineteenth-century literature, cutting across the different genres, was its preoccupation with crimes of sexual deviance and violence. Such themes evoked a range of literary voices, including the sentimental, the romantic, and the pornographic. Some treatments aroused pity and sympathy for female victims of male lust; others explored the darker passions and destructive impulses of both sexes; still others graphically recounted the details of sexual violence, dwelling particularly on the mutilation of female bodies. Sometimes all those approaches were juxtaposed in a single work.").

24 *Id.* at 26.

25 Cohen states that "it might be noted that trial reports were a natural response to epistemological and ideological tensions within the literature itself....[T]he most



that at least two pretrial publications were published, concerning the Bristol hearing in which the evidence against Avery was deemed insufficient to warrant a trial. The first of these, *Report of the Examination of Rev. Ephraim K. Avery*,<sup>26</sup> was an attempt to conceal the limitations of the hearing, published by persons sympathetic to Avery.<sup>27</sup> The second, *A Correct Report of the Examination of Rev. Ephraim K. Avery*,<sup>28</sup> was essentially the prosecution's response.<sup>29</sup> Harvey Harnden, a member of the committee of vigilance which sought Avery's prosecution, published a short pamphlet detailing his pursuit and taking into custody of Avery in New Hampshire before his trial in Newport, no doubt as a means of profiting for his trouble.<sup>30</sup>

The literature which followed the trial in Newport was more voluminous but equally partisan. The three pamphlets by Benjamin Hallett exhibit a strong prosecutorial bias,<sup>31</sup> while Richard Hildreth's version<sup>32</sup> echoed the views of the New England Conference of the Methodist Church.<sup>33</sup> In addition, two other trial reports were published which I consulted: Marshall and Brown's *The Correct, Full and Impartial Report of*

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popular crime narratives of the late eighteenth and early nineteenth centuries depicted alleged miscarriages of justice. Criminals or their editors, enjoying a virtual monopoly, presented one-sided versions of events to the public. Whether or not their claims were fully accepted by readers, such antiauthoritarian accounts suggested a troubling epistemological impasse in New England's literature of crime and punishment... Trial reports provided... a literary vehicle designed to present and fairly evaluate competing factual accounts and legal interpretations of disputed events." *Id.* at 28. While trial reports may have been more objective when compared in the aggregate to earlier forms of trial publications, the Avery trial reports and pamphlets alone provide ample evidence that such publications could—and did—reflect the biases of their sponsors.

26 Drury, *supra* note 15.

27 Kasserman, *supra* note 5, at 255.

28 WILLIAM READ STAPLES, *A CORRECT REPORT OF THE EXAMINATION OF REV. EPHRAIM K. AVERY, MINISTER OF THE METHODIST CHURCH IN BRISTOL, R.I. WHO WAS CHARGED WITH THE MURDER OF SARAH M. CORNELL* (Providence: Marshall and Brown, 1833).

29 Kasserman, *supra* note 5, at 255. William Staples, the author of this pamphlet, was the lead prosecution attorney at the initial Bristol hearings and also a key member of the prosecution during the later Newport trial.

30 Harnden, *supra* note 16.

31 See Kasserman, *supra* note 5, at 255. These three pamphlets are: Hallett, *supra* note 8; *The Arguments of Counsel in the Close of the Trial of Rev. Ephraim K. Avery; Also a Literal Report of the Medical Testimony of Professor Walter Channing and Dr. William Turner* (Boston: Daily Commercial Gazette, 1833); and *Avery's Trial: Supplementary Edition* (1833). The first of these, Hallett's *A Full Report*, appeared in at least two editions.

32 RICHARD HILDRETH, *REPORT OF THE TRIAL OF THE REV. EPHRAIM K. AVERY, BEFORE THE SUPREME JUDICIAL COURT OF RHODE ISLAND, ON AN INDICTMENT FOR THE MURDER OF SARAH MARIA CORNELL; CONTAINING A FULL STATEMENT OF THE TESTIMONY, TOGETHER WITH THE ARGUMENTS OF COUNSEL, AND THE CHARGE TO THE JURY* (Boston: Russell, Odiome and Co. & David H. Ela, 1833).

33 Kasserman, *supra* note 5, at 255.

the *Trial of Rev. Ephraim K. Avery*,<sup>34</sup> and *The Trial At Large of the Rev. Ephraim K. Avery*.<sup>35</sup> David Melvill also produced a pamphlet reproducing the letters admitted into evidence at Avery's trial.<sup>36</sup> Of these, I have used Hallett's reports as my primary source, as they are not only the most comprehensive of the trial reports, but are also the only reports which attempt to capture verbatim testimony.

Aside from the trial reports, a pamphlet published by Avery following his acquittal, entitled *Vindication of the Result of the Trial of Rev. Ephraim K. Avery* echoes the views of the New England Conference and also provides a fascinating insight into Reverend Avery's views on his prosecution.<sup>37</sup> Perhaps most interestingly, the trial also produced a false confession ostensibly written by Avery, which circulated contemporaneously with Avery's genuine pamphlet.<sup>38</sup> This document purported to be Avery's admission to having seduced Sarah Cornell and then attempting to induce an abortion, thereby unintentionally causing her death from shock, and was written so as to closely mimic Avery's writing style. Other publications of interest include Catherine Williams' book, *Fall River: An Authentic Narrative*,<sup>39</sup> and *Strictures on the Case of Ephraim K. Avery*, which is a compendium of articles published in the *Republican Herald* of Providence, Rhode Island under the name of Aristides, one of Avery's (and the Methodist Church's) most strident critics.<sup>40</sup> More than forty years after the trial, an anonymous publication appeared which was a fictionalized account of the seduction and murder of Sarah Cornell

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34 Marshall and Brown, *supra* note 9.

35 *The Trial At Large of the Rev. Ephraim K. Avery, For the Wilful Murder of Sarah Maria Cornell, At Tiverton, In the County of Newport, R.I. On the Evening of 20th Decem. 1832* (New York, 1833).

36 DAVID MELVILL, A FAC-SIMILE OF THE LETTERS PRODUCED AT THE TRIAL OF THE REV. EPHRAIM K. AVERY, ON AN INDICTMENT FOR THE MURDER OF SARAH MARIA CORNELL, TAKEN WITH GREAT CARE, BY PERMISSION OF THE HON. SUPREME JUDICIAL COURT OF RHODE ISLAND FROM THE ORIGINAL LETTERS IN THE OFFICE OF THE CLERK OF SAID COURT (Boston: Pendleton's Lithography, 1833).

37 EPHRAIM K. AVERY, VINDICATION OF THE RESULT OF THE TRIAL OF REV. EPHRAIM K. AVERY, TO WHICH IS PREFIXED HIS STATEMENT OF FACTS RELATIVE TO THE CIRCUMSTANCES BY WHICH HE BECAME INVOLVED IN THE PROSECUTION (Boston: David Ela, 1834).

38 EXPLANATION OF THE CIRCUMSTANCES CONNECTED WITH THE DEATH OF SARAH MARIA CORNELL; BY EPHRAIM K. AVERY (Providence: William S. Clark, 1834).

39 CATHARINE WILLIAMS, FALL RIVER, AN AUTHENTIC NARRATIVE (Boston: Lily, Waite 1833); Kasserman writes that "Williams's book is of particular interest, far beyond its limited literary merit, because it concisely combines the favored themes of the Fall River Committee: the public virtue of Fall River and the private virtue of Sarah Cornell, contrasted with the personal guilt of Ephraim Avery and the social culpability of his church." Kasserman, *supra* note 5, at 255.

40 *Supra* note 17. (Providence: William Simons Jr., Herald Office: 1833). This collection provides fascinating insight into some of the contemporary criticisms which were levelled against the Avery trial and the conduct of the Methodist church.



based on the prosecution's testimony. This pamphlet is not only a marvelous example of sentimental literature, but also clearly exhibits the potential rhetorical power that the Avery trial could muster among its critics, even decades later.<sup>41</sup>

## II.

From the perspective of a jaundiced twentieth century eye, the Victorian age has become synonymous with the notions of repression and hypocrisy, where everything hinged on appearances. As such, the Dickensian character of Mr. Pecksniff serves as an embodiment of the worst characteristics of the age,<sup>42</sup> exemplifying the manner in which Victorians claimed to be pious when they were not, professing sexual purity which—most strikingly in the case of men—was but a facade.<sup>43</sup> As Halttunen wrote, “anxious to make their mark in an age of dramatic industrial capitalist development, hemmed in by the rigorous demands of bourgeois propriety, and afflicted by at least as much innate depravity as the vilest Puritan who ever lived, nineteenth-century English men and women simply became hypocrites.”<sup>44</sup>

However, to observe that the Victorian age was a time of hypocrisy is true yet trivial. What is most striking is that Victorians themselves were filled with apprehension that because of swiftly changing social currents the era was becoming characterized by “confidence men and painted women.”<sup>45</sup> As Houghton has stated, “[o]f all Victorian attitudes none was so often attacked by the Victorians themselves as hypocrisy . . . .” The very fact that they saw the period as one of radical transition made the

41 *The Terrible Haystack Murder: Life and Trial of the Rev. Ephraim K. Avery for the Murder Of the Young and Beautiful Miss Sarah M. Cornell, A Factory Girl of Fall River, Mass.* (Cincinnati: Barclay & Co.: n.d.). [Hereinafter *The Terrible Haystack Murder*] Kasserman writes: “In 1877, apparently in hostile response to the evangelical successes of Dwight Lyman Moody and Ira D. Sankey, the case was rehearsed in [this] pamphlet....Primarily a work of imagination, the pamphlet erroneously paints Avery as an influential evangelical figure as well as a proven adulterer and murderer.” Kasserman, *supra* note 5, at 256. However, I disagree with Kasserman as to the primary impetus behind the pamphlet. I believe a more plausible suggestion is that it was written in response to the Beecher-Tilton scandal, in light of the date of publication (1876 or 1877) and the references in the text itself.

42 CHARLES DICKENS, *THE LIFE AND ADVENTURES OF MARTIN CHUZZLEWIT* (1861).

43 See Halttunen, *supra* note 2, at xiii.

44 *Id.*

45 See *id.*

46 WALTER E. HOUGHTON, *THE VICTORIAN FRAME OF MIND, 1830-1870* 424 (1957). Houghton goes on to say that “[t]he worship of material progress, the anti-intellectualism, the dogmatism, the commercial spirit, the exaltation of force, the marriage market, the insincerities of conformity, moral pretension, and evasion—all of these Victorian weaknesses were recognized and attacked more clearly and vigorously than anyone today exposes the shortcomings of our own time.”

major thinkers . . . highly sensitive to the loss of old values or the adoption of new ones that seemed to spell a deterioration of the moral or intellectual life."<sup>46</sup> Hypocrisy was therefore perceived as a grave threat to social cohesion in a society governed by the "cult of sincerity."<sup>47</sup> As one contemporary work emphasized:

Instead of acting in open daylight, pursuing the direct and straight-forward path of rectitude and duty, you see men, extensively, putting on false appearances; working in the dark, and carrying out their plans by stratagem and deceit. Nothing open, nothing direct and honest; one thing is said, and another thing meant. When you look for a man in one place, you find him in another. With flattering lips and a double heart do they speak. Their language and conduct do not proceed from fixed principle and open hearted sincerity; but from a spirit of duplicity and management.<sup>48</sup>

In a society where maintaining appearances was paramount and which deeply craved moral guidance, it is no surprise that a paradox developed: if appearances were not always synonymous with reality, then appearances could not be trusted. In such a society, the notion that a religious leader could be a secret sinner would necessarily be terrifying.<sup>49</sup>

The trial of Reverend Avery offers insight into many of the conflicting forces that were intrinsically part of 1830s America. Both Sarah Cornell and Reverend Avery were intimately involved in the Methodist Church, a church which preached emotion over intellect and which was

<sup>47</sup> Halttunen, *supra* note 2, at 34.

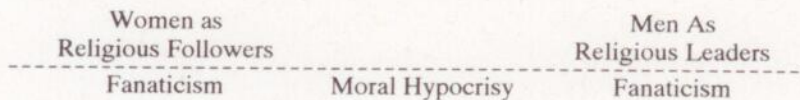
<sup>48</sup> JOEL HAWES, LECTURES ADDRESSED TO THE YOUNG MEN OF HARTFORD AND NEW HAVEN (1828) (cited in Halttunen, *supra* note 2, at 33).

<sup>49</sup> Nowhere are such apprehensions better illustrated than in the Beecher-Tilton affair, which, in the eyes of many, proved to be yet another example in a long line of hypocritical clergymen. See generally, Korobkin, *supra* note 2, at 8 ("one important explanation for the [Beecher-Tilton affair's] spectacular notoriety is that both the months of adversarial interrogation and the concentration of interest on the single issue of credibility played into a profound pre-existing cultural anxiety about the difficulty of distinguishing sincerity from hypocrisy. What Paul Carter has called the 'obsessive, even compulsive quality' of the nation's involvement in the case becomes more understandable if we think of the trial as a convergence of structure, substance, and national concern about the difficulty of making reliable judgments about other people. Transformed from titillating, gossipy newspaper stories into a formal public trial which became an increasingly undecidable interrogation of hypocrisy, the trial touched one of the country's rawest nerves. Following each day's testimony in their newspapers, Americans saw both a beloved figure and longstanding role model, and the reliability of their own methods of judgment on trial."); see also Fox, *supra* note 19, at 131 ("In those early pieces [some contemporary journalists] could see only the individual dimension of the scandal: although the evidence was not all in, Beecher would probably be revealed to be another in the long line of pastor-hypocrites who couldn't distinguish comforting his female parishioners from seducing them.").

<sup>50</sup> For a discussion of some of the social ramifications of the Avery trial, see generally McLoughlin, *supra* note 5. For instance, McLoughlin writes that "[i]t is safe now to assume that the terrible haystack murder reflected the anxieties and forebodings of the times. America was changing rapidly, and for some this was an exhilarating challenge. For many New Englanders it was unsettling, if not frightening. Home, family, and local ties were weakening and so was the sense of com-



undergoing significant growth in the face of hostility from more established churches. The behavior of Cornell and Avery also raised questions about the corruption of piety into outright fanaticism. Furthermore, this trial also indicates the extent to which prudery permeated Victorian interaction, and emphasized the contradiction between the ideal of prudery and the male double-standard. Finally, the Avery trial offers a glimpse into Victorian attitudes towards gender and the paradox inherent in these views: while men were slaves to passion in a way that women supposedly were not, men were not held primarily accountable for a woman's fall from grace; while women were considered more deeply pious, they were prevented from holding positions of religious leadership; while women were seen as inherently pure and upright, men were viewed as inherently more trustworthy; while women were perceived as more sincere, their social isolation rendered them powerless against the pervasiveness of hypocrisy in society at large.<sup>50</sup> If one were to view these concerns about hypocrisy and fanaticism schematically, drawn along a 'gender continuum,' I envision the diagram as follows:



These issues, illustrated in the context of the Avery trial, will be discussed in turn.

### III.

One preoccupation attributed to the Victorian age was the notion of prudery. Prudery manifested itself through a virtual ban on sexuality, not only in the realm of polite society but also in the private domestic realm, as well. While prudery is commonly viewed as intrinsically Victorian, it was not a Victorian construct. Rather, prudery had its roots in antiquity.<sup>51</sup> What made it such an integral part of the Victorian landscape, however, was a unique transformation of the economic and social circumstances of the time.<sup>52</sup>

Two important observations about the time period help to clarify

munity. As small-town agricultural life gave way to the anonymous factory life of the new mill town, this murder seemed to portend the worst; deranged times would lead to deranged behavior. Avery and Cornell for a brief moment brought these fears into dramatic focus. Cornell had been a rural girl, but she left home to work in the factory; she had been a Congregationalist (the religion of the Puritans) but she was converted to Methodism." *Id.* at 76.

<sup>51</sup> DUNCAN CROW, *THE VICTORIAN WOMAN* 26 (1972) ("Prudery was part of the puritan ascetic attitude to human existence and had existed since long before the nineteenth century, had existed in the Middle Ages, had existed at least since the early Christian Fathers and their Jewish predecessors.").

<sup>52</sup> *Id.*

why prudery became inextricably woven into the Victorian cultural fabric. First, as one scholar has stated, the Victorian age was merely a "paper-width from the harsh centuries;"<sup>53</sup> that is, this era marked a time of rapid progress and evolution and yet was fairly closely removed from an earlier, less sophisticated and more "brutish" time.<sup>54</sup> Acknowledging the existence of sexuality, for instance, was tantamount to encouraging it. Thus, prudery was necessary insofar as any lesser standard would not sufficiently ward off the demons of earlier ages. As Crow writes:

As part of the grand strategy for civilizing society so that it became safe for the rising middle classes it was deemed necessary to tame the savagery of sex so that it was no longer the gambolling cruel priapic anarchist that brought misrule through the carefully daubed dykes of propriety. The way to achieve this most effectively, it seemed to the collective subconscious of the 'civilizers', was to ban sex as far as possible from everyday life and to enlarge to its fullest extent the interpretation of the sixth commandment so that it brought social anathema and hell-fire not only on adultery but on all lewd thoughts and fumbings.<sup>55</sup>

Authorities in the eighteenth century also warned of the dangers of sexual excess, but did not do so with the vigor and extremism typical of the Victorian age. Furthermore, such authorities believed that failure to fulfill the sexual urge could lead to pathogenic results.<sup>56</sup> As scholars have indicated, however, by the early 1800s societal mores called for a veritable ban on sexual activity. Cott suggests that promiscuity began to be viewed as an "aristocratic excess" that was starkly in violation of middle-class ideals.<sup>57</sup> By the 1830s, the transition was obvious—the prohibitions against sexual activity became not only more stringent, but also condemned sexual relations as an intrinsically dangerous activity. In the

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<sup>53</sup> *Id.* at 23.

<sup>54</sup> *Id.* at 23 ("Because the Victorians had the appurtenances of modern life in unsophisticated form...they are often judged by later standards....Hypocrisy, prudery, and probably snobbery too, were the pawls that were used to prevent the ratchet-wheel of progress slipping back." As such, "[i]t is easy to despise Victorian hypocrisy, and that whole euphemistic approach that went with it, forgetting that this blinkered attitude was adopted to hide the proximity of the abyss in which seethed the primitive society the Victorians were struggling away from."); see also Houghton, *supra* note 46, at 2 ("the past which they had outgrown was not the Romantic period and not even the eighteenth century. It was the Middle Ages. They recognized, of course, that there were differences between themselves and their immediate predecessors, but from their perspective it was the medieval tradition from which they had irrevocably broken—Christian orthodoxy under the rule of the church and civil government under the rule of king and nobility; the social structure of fixed classes, each with its recognized rights and duties; and the economic organization of village agriculture and town guilds.").

<sup>55</sup> Crow, *supra* note 51, at 25.

<sup>56</sup> See, e.g., Charles Rosenberg, *Sexuality, Class, and Role in 19th-Century America*, in *THE AMERICAN MAN* 224 (Elizabeth & Joseph Pleck, eds., 1980) [hereinafter *AMERICAN MAN*].

<sup>57</sup> Nancy Cott, *Passionlessness: An Interpretation of Victorian Sexual Ideology, 1790-1850*, 4 *J. WOMEN IN CULT. & SOC.* 219, 223 (1978).



words of Rosenberg, "only the need for propagating the species, some authors contended, could justify so dangerous an indulgence."<sup>58</sup> The very concept of sex, even in the context of propagation, was taboo. As a result, "[i]n the Victorian home swarming with children sex was a secret. It was the skeleton in the parental chamber. No one mentioned it . . . [f]or the sexual act was associated by many wives only with a duty and by most husbands with a necessary if pleasurable yielding to one's baser nature; by few, therefore, with an innocent and joyful experience."<sup>59</sup>

Secondly, the industrial revolution brought with it an upwardly mobile society. Industrialists and merchants acquired levels of wealth previously possessed only by the landed aristocracy. As Crow wrote, "[n]othing is so conducive to a reactionary frame of mind as the fear that one's comforts may be snatched away. Believing that human beings were still fundamentally barbarous, the respectables felt the imperative need to enforce rigid tenets of behavior without which violence and the rule of the roughs would again become supreme."<sup>60</sup> Another consequence of the industrial revolution was that young men and women—such as Cornell—left the safety and nurturing environment of small towns to find employment in the cities, where every conceivable form of vice lurked behind every corner.<sup>61</sup>

58 Rosenberg, *supra* note 56, at 225. For a discussion of American views on sexuality, see generally JOHN D'EMILIO and ESTELLE B. FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* (1988). For instance, the noted nineteenth century medical expert Benjamin Rush warned, "[the sexual appetite] when excessive, becomes a disease of both the body and mind." Failure to heed such warning could result in "seminal weakness, impotence... pulmonary consumption, hypochondriasis, loss of memory...and death." *Id.* at 67.

59 Houghton, *supra* note 46 at 353; see also Blanch Glassman Hersh, *A Partnership of Equals*, in *AMERICAN MAN*, *supra* note 55, at 202 ("As children [women] had been taught that salvation was endangered by placing carnal pleasure before spiritual love, and that men were distinguished from beasts only by their ability to control their passion and ascend to the heights of heavenly love."); Rosenberg, *supra* note 56, at 226-27 ("Control was the basic building block of personality. To allow the passions—among which sexuality was only one—to act themselves out, was to destroy any hope of creating a truly Christian personality. 'Self respect' was impossible if mind could not control emotion. Sexual health lay fundamentally in the ability to 'restore the calm equilibrium of mind and senses; put down the terrible mastery of passion.' One could not relax even momentarily, for such emotions intruded themselves 'upon the attention of all alike, with more or less power of impertinent distraction.'" (citations omitted)).

60 Crow, *supra* note 51, at 31; see also KITSON CLARK, *THE MAKING OF VICTORIAN ENGLAND* 64 (1965) ("The concentrated industry of Victorians was the natural habit of men confronted by new and exciting opportunities. The uneasy Victorian snobbery was probably the result of the impact of new classes who wanted to secure their position in a traditional hierarchy, Victorian hypocrisy the result of the attempt to lay claim to new standards of conduct which proved to be too hard to maintain consistently, Victorian prudery the result of a struggle for order and decency on the part of people just emerging from the animalism and brutality of primitive society.").

61 See generally Judith Walkowitz, *CITY OF DREADFUL DELIGHTS* (1992); see also E. Anthony Rotundo, *AMERICAN MANHOOD: TRANSFORMATIONS IN*

The Victorian phenomenon known as "prudery" applied, at least theoretically to both genders. However, it is clear that women bore the brunt of the societal expectations regarding prudery. Prudery was not limited solely to the arena of sexual activity, but rather permeated every facet of daily existence. Prudery dictated what a woman read, how she spoke, how she socialized, and how she was treated.

The Victorian view of female sexuality essentially inverted the views of centuries past, in which women were seen as passionate creatures whose sexuality posed grave dangers to men. The Victorian ideal pictured women as largely free of the "amative impulses," and elevated the notion of the chaste female as the highest ideal. As Cott has written, "[b]y elevating sexual control highest among human virtues the middle-class moralists made female chastity the archetype for human morality."<sup>62</sup> As such, women were expected to completely refrain from sexual relations outside of the marital home, and only sparingly within the confines of marriage itself.<sup>63</sup> This non-sexual paradigm, however, possessed paradoxes of its own. In reality, the female reproductive organs were held to exert an overpowering influence over a woman's physiology, emotions and psychological makeup.<sup>64</sup> The paradox of this view was that while women could be viewed as pure and chaste, they could also be viewed as "quintessentially sexual."<sup>65</sup> This notion of passionless, however, was part of another dichotomy, where the concept of "pure" women resided uncomfortably along side the antecedent concept of woman as inherently sexual temptresses.<sup>66</sup>

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MASCULINITY FROM THE REVOLUTION TO THE MODERN ERA 120-21 (1993) ("This stringent code developed in the early nineteenth century, when the expansion of commerce lured young men away from the traditional values and communal vigilance of small towns. The ideology of sexual repression offered an alternative to the unchecked selfishness of the marketplace; it provided a sense of personal control and a form of moral discipline at a time when ethical chaos seemed imminent. This doctrine of self-control hardened into a public orthodoxy once the migration from country to city became a steady, permanent flow.").

<sup>62</sup> Cott, *supra* note 57, at 223.

<sup>63</sup> Mabel Collins Donnelly, *THE AMERICAN VICTORIAN WOMAN* 45 (1986); see also Crow, *supra* note 51, at 26 ("Anxiety-making doctors promised diseases and disintegration to those who transgressed the ascetic rules against sex.").

<sup>64</sup> Rosenberg, *supra* note 56, at 183.

<sup>65</sup> *Id.*

<sup>66</sup> Halttunen's scholarship on the Chapman murder case, which took place a year earlier than the Avery trial, poignantly evidences many of these concepts. As Halttunen wrote, "[t]he sentimental view of womanhood rested on the bourgeois ideology of passionless, initially propounded by late eighteenth- and early nineteenth-century Anglo-American Evangelicals, which declared that woman was morally superior to man because she was less carnal and more spiritual than he: it was her essential passionless that enabled her to serve as 'guardian angel' to her husband and children. But the prosecution's characterization of Lucretia Chapman points to the survival of a presentimental understanding of the nature of woman into the nineteenth century. In charging her with a moral temperament radically diseased, the prosecution echoed a premodern view of woman as naturally more



When analyzing the notion of passionlessness, however, it becomes clear that it transcended mere sexual activity, as women were also expected to be verbal and social prudes.<sup>67</sup> Prudery necessitated a great sensitivity in the use of language as it pertained to functions or parts of the body. For example, the word "leg" was not to be used in polite company; instead, the word "limb" was the preferred form—even when the object in question was a piano leg.<sup>68</sup>

While the expectations of prudery may have applied to both men and women, one reason the Victorian age is typically viewed as hypocritical was the existence of a pronounced sexual double standard. In some very tangible way, men viewed themselves as exempt from the underlying sexual ethos which governed female conduct.<sup>69</sup> Feminists of the nineteenth century often crusaded against this double standard as vehemently as they campaigned against licentiousness in general. One common goal was to

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evil than man, because of her depraved inheritance from the first woman, Eve, who had introduced sin into the world by succumbing to the blandishments of the satanic tempter. Woman, within the traditional Christian view, was morally weaker than man as descendant of Eve; she was intellectually weaker and thus more susceptible to deception; and she was physically weaker, subject to deeper passions and an insatiable carnal lust." Halttunen, *supra* note 2, at 48.

Halttunen goes on to write that "[t]he competing narratives offered by the prosecution and the defense in the murder trial of Lucretia Chapman thus offered two versions of the nature of womanhood: the nineteenth-century sentimental view of (the middleclass) woman as man's moral superior by virtue of her natural passionless, and the traditional view of woman as intrinsically more evil than man owing to her descent from that mother of sinners, Eve, and her naturally uncontrollable sexual appetite. As a number of scholars have noted, the premodern view of woman as evil persisted side by side with the newer sentimental ideal throughout the nineteenth century, not simply as a vestigial remnant of an outmoded gender ideology, but as a crucial prop to the doctrine of masculine protectionism that legitimized the separation of spheres." *Id.* at 55.

67 See, e.g., Houghton, *supra* note 46, at 356-57 ("The term has come to be used loosely and broadly to cover all efforts to conceal the facts of life: the demand for expurgated editions of English classics, the drawing up of indexes of books or authors not to be read, especially by girls, the powerful condemnation (and hence in effect prohibition) of any candid treatment of sex in literature, the insistence that conversation be impeccably proper, even to the point of banning any words which could conceivably carry a sexual suggestion, and the chilling disapproval of the slightest approach to levity—all this is called prudery....").

68 Crow, *supra* note 51, at 28. A variant on this theme are the accounts of Victorians covering up the legs of pianos with curtains. See, e.g., Rotundo, *supra* note 61, at 119.

69 Barbara Leslie Epstein, *THE POLITICS OF DOMESTICITY* 86 (1981) ("The idea that sexuality was evil was a tenet of Victorian thought, applicable to men as well as women; but few people expected men to take such ideas very seriously, while women were expected to renounce sexual desire utterly."); see also Rotundo, *supra* note 61, at 121-22 ("The assumption was widely held in nineteenth-century America that males had urgent sexual passions; the next logical step was the belief that it was natural and necessary for men to express those passions. An assumption like this may not be quite the same thing as a moral imperative, but its effect on behavior (by discouraging opposition to male sexual expression) was probably much the same.").

"to make the impure man lose his character as effectually as the impure woman," by urging the virtuous to "esteem the licentious man as little as they do the licentious woman," and insisting that "this work must begin with the ladies. They are the injured and they must rise and assert their rights."<sup>70</sup>

This double-standard, however, may be evidence of paradox within the realm of male sexuality as well. Given the common view that men were slave to licentious impulses, men were faced with two conflicting imperatives: on the one hand, satiating sexual impulses may have been both natural as well as recommended; on the other hand, men were indoctrinated to believe that love was largely devoid of sexual connotations.<sup>71</sup> Using the Victorian concept of romance as spiritual, men may have simply classified women into two categories: those who were pure and deserving of love in the largely spiritual sense, and those who were sexual objects.<sup>72</sup> In this way, many middle-class males sought "a way to obey one sexual ethic without violating the other."<sup>73</sup>

The trial of Reverend Avery, like any other squalid affair which attracted the public's attention, itself illustrated the contradictions inherent in Victorian society: ticket holders scalped tickets for days when testimony was expected to be particularly interesting, as overflow crowds listened with rapt attention to the sordid details brought out in testimony. The trial also offers insight into the standards that governed Victorian men and women, and illustrates how women bore the brunt of maintaining social and sexual conventions.

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70 Nancy Cott, *THE BONDS OF WOMANHOOD* 153 (1977) [*hereinafter* BONDS OF WOMANHOOD] (citing *The Second Annual Report; Advocate of Moral Reform* (Sept. 1835), at 72); see also Rosenberg, *supra* note 56, at 109 ("These self-assertive women hoped as well to confront that larger and more fundamental abuse, the double standard, and the male sexual license it condoned. Too many men, the [New York Female Moral Reform] Society defiantly asserted in its statement of goals, were aggressive destroyers of female innocence and happiness.").

71 See, e.g., Rotundo, *supra* note 61, at 122 ("Middle-class men...were confronted by two ethics of sexual conduct, one urging the natural' expression of aggressive impulses and the other demanding stringent self-control"); and at 150 ("few males were completely immune from the reality of both."). Rotundo has pointed to the rates of premarital pregnancy and the literature of moralists who argued against the double standard as evidence that many young men were faced with this paradox. See Rotundo at 121: ("Another kind of evidence (besides premarital pregnancy rates) for the doctrine of sexual aggression comes from the testimony of those who opposed it. Many evangelicals complained of the widespread pressure on young men to experiment with sex before marriage, and a late-century American physician railed against fathers who tickled the penises of their baby sons into a state of erection to assure themselves that their sons were "robust.").

72 *Id.* at 124 ("This ethereal view of romance could be combined readily with another strategy for reconciling the conflicting codes of sexual behavior. Certain young men found that if they pursued spiritualized love and practiced self-restraint with one class of women, they were still free to enjoy erotic pleasures and give vent to their natural passions with another.").

73 *Id.* at 123.



Women were commonly portrayed as passionless but weak creatures, who constantly fell victim to the machinations of men driven by eros. In the words of Rosenberg, "they were in almost every instance induced to violate the Seventh Commandment by lascivious men who craftily manipulated not their sensuality but, rather, the female's trusting and affectionate nature. A woman acted out of romantic love, not carnal desire; she was innocent and defenseless, gentle and passive."<sup>74</sup> This view is embodied in a pamphlet issued some forty years after the Avery trial, which—while grievously partisan—unconsciously illustrates this view. Whatever its faults as an accurate representation of the true events involving Sarah Cornell and Reverend Avery, the seduction scene as portrayed in this pamphlet represents the archetypal Victorian view of male as sexual predator and woman as the prey:

After a moment's silence, Avery drew nearer and passed his arm around her waist. He was trembling violently, and his voice was husky. "I want to ask you a question, Sarah," he said, at length. She made no reply, and he went on. "You must know that I have a very high regard for you—that—I—love—you," and with his confession he bent over and drawing her face closer kissed her hotly.

"Sir! Mr. Avery!" cried the startled girl, struggling to break away from him. "Remember you are a married man, and I am a virtuous woman." "As God is my judge!" said Avery, fiercely, "I love you—madly—devotedly—better than all else—and a wife—no!—not even she shall stand between us."

In vain the frightened girl endeavored to release herself. His strong arms held her fast. He drew her head down on to his bosom and rained kiss after kiss upon her lips and cheek. His breath came hot and fast, and he pressed her convulsively to his heart. With a last effort she endeavored to struggle to her feet, but still he held her fast. Her senses seemed deadened in a mystical spell. She closed her eyes: her tense muscles relaxed and she burst into tears. The tempter's artifices had proved successful, and the prey was his!

Several hours elapsed before the pair returned to the grounds, he ahead, elated over his easy victory, yet frightened when cool reflection taught him the awfulness of such a crime, committed by a minister of God; and she, poor, weak woman, degraded in her own eyes, and with sinking heart, like a meek lamb going to the slaughter, followed in the footsteps of the man who was henceforth to be her master.<sup>75</sup>

A similar scene is suggested by the testimony of Lucy Hathaway during the Bristol examination, wherein she testified that:

<sup>74</sup> Rosenberg, *supra* note 56, at 116.

<sup>75</sup> *The Terrible Haystack Murder*, *supra* note 41, at 35. For a similar treatment of another murder trial, see COHEN, *PILLARS OF SALT*, *supra* note 19, at 207 ("As an engaging hodgepodge of melodrama, satire, and social expose, Silas Estabrook's biography of Maria Bickford lurches from one literary cliché to another, alternately characterizing its subject as romantic heroine, sentimental victim, and sexual predator. The printer begins by portraying Bickford as a romantic and mysterious young woman—the subject of ominous prophecies and alarming dreams, much given to philosophical speculations, contemplative trances, and solitary communions with nature. Having thus endowed Maria with the standard accoutrements of a romantic heroine, Estabrook goes on to portray his subject as a sentimental victim, the pathetic dupe of a lustful seducer.").

[a] week or a fortnight from the Sabbath before her death . . . [Cornell] asked me this question: "Lucy, don't you think it is possible for an innocent girl to be led away, by a man that she has confidence in, and rather looks up to?" I hesitated and said—"I don't know." She then said—"But what can an innocent girl do, in the hands of a strong man, and he using all kinds of argument."<sup>76</sup>

One of the paradoxes of this view is that, while women might be the innocent victim, they were also considered the morally culpable party. This dichotomy encouraged the notion that while a chaste woman might represent the epitome of human virtue and purity, a fallen woman represented the very nadir of human depravity and degeneracy. In his closing statement for Avery's defense, Jeremiah Mason appealed to this view:

That there is a charm, a refinement, a delicacy in the female sex, superior to man, no civilized community has ever doubted. It is female character, when pure and unstained, which contributes to the embellishment and refinement of society in the highest degree, but in the same proportion as woman, when chaste and pure, excels the other sex, but just so much, when profligate, does she sink below them; and if you were to seek for some of the vilest monsters in wickedness and depravity, you would find them in the female form.<sup>77</sup>

In the context of the Avery trial, this standard manifested itself in the manner in which Avery's counsel conducted his defense. While certainly not the first trial to do so, the Avery trial is a notable example of the premise that the optimal way to defend against a sex-based crime is to malign the victim. In so doing, the defense's strategy ran the gamut from testimony of seemingly-innocent occurrences to lurid accounts of Cornell's alleged promiscuity, illustrating that any deviation from the parameters of accepted social behavior was tantamount to proof of sexual abandon.<sup>78</sup> Once having succumbed to such sexual abandon, there was no

<sup>76</sup> Drury, *supra* note 15, at 15.

<sup>77</sup> Hallett, *supra* note 8, at 25; see also D'Emilio & Freedman, *supra* note 59, at 70 ("Even as woman is supremely virtuous", she became, "once fallen, the vilest of her sex.") (quoting DAVID BRIAN DAVIS, *HOMICIDE IN AMERICAN FICTION, 1798-1860: A STUDY IN SOCIAL VALUES* 212 (1957)).

<sup>78</sup> This theme of "sexual slander" or "gender slander" may be seen in two contrasting, albeit related ways: the invidious practices of discrediting female witnesses based on their gender (see *supra*, pgs. 49-53) and the assumption that women were necessarily either chaste or harlots. See, e.g., Andrew J. King, *Constructing Gender: Sexual Slander in Nineteenth-Century America*, 13 *LAW & MIST. REV.* 63, 68-9 (1995) ("In dealing with sexual slander, courts and legislatures carried forward the idea that sexual propriety constituted the principal element of female reputation. As part of the social underpinning of society, middle-class men esteemed chastity for unmarried women and fidelity for their wives. This concern for 'proper behavior' paralleled the emergence of a more general concern with reputation and authenticity in social relations in the antebellum period....Male-dominated antebellum thought divided the world of women into the 'pure' and the 'fallen.' This dichotomy prescribed only one set of appropriate sexual behaviors for women....Judges and all-male juries believed that women who deviated from the 'true path of chastity' inevitably descended to the level of the prostitute."). The defense's strategy of besmirching Cornell's character and reputation was noted by many contemporary writers. See, e.g., Williams, *supra* note 39, at 61 (noting that the defense tried to "turn public attention from the murder...to the person murdered," to "prove the deceased a perfect fiend....").



depravity to which women could not sink—including suicide as a means of wrecking vengeance on a guileless minister, or even murder itself.<sup>79</sup>

The parade of witnesses called to the stand to discredit the Prosecution offers fascinating insight into Victorian social conventions. Such was the concern with sexual propriety that unmarried people were severely constrained in the manner in which they could socially interact. The transcript of the Avery trial offers substantial unconscious evidence of such beliefs. In one example, an innkeeper recounted a meeting between Cornell and a young man in the lobby of his inn. When the four went into the office to speak in greater privacy, the witness recalled that “[m]y wife told him to leave the door open. We did not allow young people in a room alone together.”<sup>80</sup> Another witness, after asserting that Cornell “kept company with a loose young man,” stated as way of an example that “I should consider it immoral for a young woman to come out of a store house between 8 and 9, with a young man.”<sup>81</sup> It was therefore not ridiculous to call an elderly woman to the stand to demonstrate, upon a gentleman present in the courtroom, the manner in which Cornell breached propriety by patting the shoulders of a young man sent to fetch her luggage.<sup>82</sup>

Much emphasis was also placed on Cornell’s alleged lack of verbal decorum, as a means of suggesting that she was both dissipated as well as unstable. Several witnesses testified that she use language not befitting a woman. One physician testified that he “was almost inclined to think she was insane” as “her language was so different from what I ever heard

79 For another contemporary example of this phenomenon, see generally Halttunen, *supra* note 20. In the 1832 murder trial of Lucretia Chapman and Lino Amalia Espos Y Mina for the murder of Lucretia’s first husband, William Chapman, the prosecution painted Lucretia Chapman as a sexually dissipated adulteress, thereby arguing that she was sufficiently depraved to also commit murder. As Halttunen wrote: “[t]he key to Lucretia Chapman’s depraved appetite, according to the prosecution, was her sexuality. That passion ‘which, when refined, burns in the purest bosoms’ as love, developed in her as an ‘uncontrolled indulgence’ of ‘sensual and animal passion.’ The prosecution addressed Lucretia Chapman’s sexual misconduct by staging a kind of verbal peep show: ‘For the honour of human nature, as well as for the honour of the female character, I would willingly drop the curtain over a scene disclosing so much profligacy and licentiousness as the testimony in this cause has presented to our view’; but since the defense had tried to undermine that testimony, the prosecution felt compelled ‘to lay aside all feelings of delicacy’ and discuss at length the evidence of ‘illicit intercourse.’ And so they did, referring repeatedly to Lucretia Chapman’s ‘gross depravity and wantonness,’ her ‘open and shameless exhibition of vice,’ her ‘glaring outrages upon the laws of decency and of good morals.’” *Id.* at 46. As Halttunen goes on to say, “[t]he underlying aim of the prosecution was to convince the jury that to find Lucretia Chapman guilty of adultery was implicitly to convict her of murder....[as] the two crimes were close allies, the prosecution argued, and ‘the woman who could perpetrate the one, would commit the other.’” *Id.*

80 *Id.* at 115.

81 *Id.* at 127.

82 *Id.* at 140.

from a female;"<sup>83</sup> another added that "her gesticulations were different from what we ordinarily find in females."<sup>84</sup> Such testimony may have prompted Avery to write in his post-trial pamphlet that her conversation "was so obscene that the pen has never written it, nor the tongue pronounced it audibly."<sup>85</sup>

From these allegations brought out in trial, it was but a short step to suggest that Cornell was completely dissolute. The defense called numerous witnesses who, for the most part, were able to only vaguely attest to Cornell's unsavory reputation based on observations or information allegedly given by Cornell herself years earlier. Even though it seems counter-intuitive to believe that Cornell would freely admit her indiscretions to virtual strangers, the defense used these witnesses to depict Cornell as a common harlot by the trial's conclusion. Thus, on the questionable evidence of witnesses who testified to clear recollections of matters occurring up to a decade earlier, the defense was able to state that "[t]hirty witnesses . . . all concur in the substance of their testimony as to her character . . . I doubt, if on examining all the Factory villages in New England, you could find an individual that would equal her in profligacy. The result gives to the deceased a character abounding in most of the vices that degrade human nature and render a female odious."<sup>86</sup> Using hearsay testimony as a basis, Avery himself emphasized her alleged promiscuity in terms calculated to repulse the reader: "Her deeds of lasciviousness, according to her own account, were sometimes committed on the Sabbath, and at noonday. She was afflicted with a filthy disease, the abhorrence of all flesh . . ."<sup>87</sup>

The defense's strategy appeared less to suggest that Avery himself would have been repelled by such a loathsome female—perhaps as there was too much circumstantial evidence linking the two for this to be effective—and more to suggest that suicide was the logical conclusion to her degenerate lifestyle:

there is no class more likely to commit suicide than the miserable class to which the deceased belonged. Suicide is so common a termination of their career, that it may almost be called the natural death of the prostitute. Excited by violent and unrestrained passions, driven to extreme distress and often desperation, self destruction is the ready resort of the profligate.<sup>88</sup>

Prudery also influenced the behavior of the witnesses and, in some cases, that of counsel. When dealing with the sensitive issue of whether Cornell had ceased to menstruate at the time of the camp meeting, counsel inquired "do you know any fact, respecting her being unwell as females

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83 *Id.* at 111 (testimony of Dr. William Graves).

84 *Id.* at 112 (testimony of Dr. Noah Martin).

85 Avery, *supra* note 37, at 28-29.

86 Hallett, *The Arguments of Counsel*, *supra* note 31, at 27.

87 Avery, *supra* note 37, at 28-29.

88 Hallett, *The Arguments of Counsel*, *supra* note 31, at 27.



are?"<sup>89</sup> A practicing physician tactfully referred to it as the "periodical habit."<sup>91</sup> The most striking examples, however, are found in the testimony of female witnesses throughout the trial. For example, a crucial piece of the prosecution's case centered around the appearance of Cornell's body following her death. The testimony of the women who had prepared her for burial was therefore of paramount importance. The testimony of Meriba Borden, Ruth Borden, Dorcas Ford, and Susanna Borden revealed that Cornell has been seriously bruised on the lower abdomen (with the bruises from a handprint allegedly still visible) and that she had been lying down when asphyxiated. Ruth Borden, the "middle aged matron," testified that there "was a natural appearance on the clothes behind, as though mashed on by the person lying down."<sup>92</sup> Asked to clarify her answer, Ruth Borden timorously elaborated that she was referring to "the natural discharges of the body."<sup>93</sup> In his analysis of this testimony, Kasserman states that:

The testimony was embarrassing to everyone. One court reporter was sufficiently shaken by hearing such public statements by women that he misspelled two of their names, and got a third entirely wrong. A second condensed the testimony in his transcript so severely that it contained nothing offensive—and very little that was informative. A third solved the problem by simply omitting that section from his published version.<sup>94</sup>

Dorcas Ford's testimony was particularly important, as she had earlier testified in Bristol (behind closed doors) that she thought Cornell had been raped. On the stand, however, Ford's sense of propriety restrained her from answering the counsel's questions in the explicit manner he demanded. This is best illustrated by Randolph's cross-examination:

Q: Did you give your opinion at Bristol you thought she had been violated?

A: I said she had been dreadfully abused, and I think so still.

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89 Hallett, *supra* note 8, at 79.

90 *Id.*

91 *Id.* at 107 (testimony of Dr. William Turner).

92 *Id.* at 47.

93 *Id.* at 47-49.

94 Kasserman, *supra* note 5, at 143 (citations omitted). While the evidence in the *Trial At Large* transcript seems to provide evidence of Kasserman's claim (the reporter notes the names of Meriba Borden, Ruth Borden, Dorcas Ford, and Susanna Borden as, respectively: Penelope Burton, Ruth Burden, Dorcas Ford, and Susanna Burden), there did appear to be some degree of confusion regarding the correct spelling of the witnesses' names. For instance, Staples reports their names as Meribah Burden, Ruth Burden, Dorcas Ford, and Lucy Ann Borden; while Drury's transcript also changes the order as well as the spellings, reporting them as Meribah Borden, Ruth Borden, Dorcas Ford, and Lucy-Ann Borden.

The Staples version is completely sanitized, and Marshall and Brown entirely omit the testimony of these four women. Hildreth's summarized testimony omits only the reference to the "natural discharges." It is interesting to note that of all the other transcripts, only Drury's makes reference to this embarrassing testimony.

Q: What did you say at Bristol? Did you not say you thought she had been forced?

A: (After thinking) I was asked if there had been an attempt to produce abortion, and I said no. My opinion is that she had been dreadfully abused.

Q: I wish to know if you swear it was an attempt to force her?

A: I think she was abused.

Q: Do you think she was violated: I wish you to answer that question.

A: I repeat it, I think she was dreadfully abused.

Q: In what way?

A: Does not the bruise indicate abuse?

[Mr. Randolph here requested the Attorney General to put the question.]

*Attorney General:* Did you mean that she had been forced?

A: I meant she had been abused.

*Mr. Pearce:* Did you believe there had been an attempt by any man at violent connexion?

A: I suppose her life was forced from her, and must judge in what way yourselves.

The Chief Justice proposed the same question, and witness answered as before.

Mr. Randolph proposed it, and requested witness to answer yes or no.

A: I shall give no other answer than I have.

*Mr. Randolph:* The witness says she shall give no other answer, and as I have only two courses to pursue, to move to commit her, or let her go, as she is a woman, I prefer the latter."<sup>95</sup>

The *Trial at Large* transcript, in a delightful bit of understatement, recorded that "Mr. Randolph here purposing to push his inquiries further than was consistent with the lady's ideas of propriety, her cross-examination was brought to an abrupt close by the following observation which she addressed to him. 'I never heard no such questions asked by no person.'"<sup>96</sup>

Prudery also manifested itself in the testimony of Jane Gifford, who testified that Reverend Avery had stopped in the family inn on the night in question, and that he had said he was visiting "the brothers Cook." This testimony seemed to suggest Reverend Avery had lied about his whereabouts, as both Cooks had claimed earlier that Avery had not visited them. Jane Gifford's ordeal in this trial was only just beginning,<sup>97</sup> but her

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<sup>95</sup> Hallett, *supra* note 8, at 48.

<sup>96</sup> *Trial At Large*, *supra* note 35, at 20.

<sup>97</sup> See *supra*, pgs. 29-30.



experiences at the earlier Bristol examination left her fiercely protective of her female modesty during cross-examination.<sup>98</sup> As the trial transcript reflects:

Q: Did you sleep on the lower floor, that night?

A: I do not wish to answer such questions. I do not wish to be treated as I was at Bristol, I was asked what I had been doing, and where I slept, and such questions, that had nothing to do with the case. I have told you all I know. (Mr. Randolph repeated the question).

A: (with some spirit) Mr. Randolph, I have said if I was asked those questions, as I was at Bristol I should not answer. I have told you all I know about it, and I will not be treated as if I was at Bristol.

Q: I should be sorry it was supposed I had treated the young woman, other than kindly. May it please the Court, I wish her to answer the question.

Chief Justice: You must answer the question. It is a proper one. You shall be protected.

A: I slept on the lower floor adjoining my father's room.<sup>99</sup>

What is especially striking about this testimony is both the Chief Justice's remark, "you shall be protected," and the fact that the question regarding where she had slept was the only one reflected in the transcript that could remotely be construed as intrusive.

The testimony of Lucy Hathaway also evidences the importance of female modesty. Hathaway testified that Cornell told her that she had been "unwell" since her outing at the Methodist Church camp a few months previously. In her words, "[s]he said I never will go there again, and then spoke of her health, that she had seen something which occurred there so disgusting, thing which took place between a minister and a church member, and then says, and a married man too, with about as much emphasis as I do."<sup>100</sup>

The notation by the court reporter in response to Hathaway's testimony is singularly telling:

Without intending any reference to the bearing of this testimony on the case, the Reporter cannot here refrain from expressing the respect which was universally felt by all who witnessed the delicate, unaffected and lady-like manner in which this young female acquitted herself, under circumstances so peculiarly trying as a public examination of this description. Polished society might find it not a little difficult to furnish a representative to discharge so painful a duty, with as much of the true dignity of modesty, as was here evinced by a "Factory Girl." Even the

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<sup>98</sup> My analysis of the Bristol examination documents leaves no basis to conclude that her discomfort was triggered by anything other than the questions regarding the location of her bedroom and her activities prior to retiring for the evening.

<sup>99</sup> Hallett, *supra* note 8, at 65.

<sup>100</sup> *Id.* at 68.

sternness of the examining counsellors at the bar, was softened from respect to female delicacy; and the phenomenon in legal practice was exhibited of the mere lawyer (whose greatest merit in cross questions is supposed to consist in brow-beating and confusing witnesses, to prevent their telling the truth, though they may be ever so much inclined to do so, laying aside the quibbles of the profession, for the courtesy of the gentleman. We record with pleasure, this proof, that there are lawyers who can treat this proof, that there are lawyers who can treat witnesses as though they might be allowed to possess some sensibility; and for the honor of the profession to which we belong, regret that such occurrences are so rare in the history of the most learned, but generally the least polite profession among men).<sup>101</sup>

The squeamishness of one of the defense's principal witnesses also proved to hamper their examination. Patty Bacon was called to the stand to testify that she had seen Cornell at a Methodist camp meeting and that her breasts were visibly enlarged due to pregnancy. After being asked what led her to conclude that Cornell was pregnant, Bacon (who, it may be worth noting, had sired no fewer than nine children) responded:

A: Her countenance—her appearance.

Q: What else was there?

A: Nothing more, sir.

Q: Did you see her bosom?

A: I did.

*Chief Justice:* What do you mean by the countenance?

A: I mean her countenance looked as though she was in a state of pregnancy.

Q: What was the appearance of her bosom?

A: I don't know as I can tell in particular. Don't know as I can express it any different from what I have. Her countenance was sickly and looked like a person in the state I have mentioned.

Q: Describe it.

A: A sickly countenance; pale.

Q: Describe her bosom.

A: I noticed nothing but her countenance. I watched her movements, and that was my opinion and it is now.

Q: What led you to think she was in that situation you have mentioned?

A: Why I have told you all I have got to say.

Q: I only want you to describe just how she appeared to you.

*Chief Justice:* Is it worth while to press her any farther?

Q: Was there any unusual prominence?

*Attorney General:* Oh! Mr. Randolph, don't!

On cross examination, Attorney General Greene unwittingly elicited from Bacon the response that Randolph had tried in vain to procure. Greene asked, "[d]o you feel authorised to draw the conclusion from a

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101 *Id.* at 68-69 (emphasis in text).



pale countenance and dull eyes, and not seeming well, that such was her situation?" to which Bacon replied, "I have told you all I have got to say. Her bosoms appeared rather full." When pressed by the Attorney General to state when "that appearance takes place in a female in that situation", Mrs. Bacon's sense of decorum caused her to quickly retract her previous statement: "I have said all I have got to say. I don't know that her bosoms were fuller than usual."<sup>102</sup>

Due to the underlying themes of sexual violence and murder inherent in the nature of the testimony presented in court, it comes as no surprise that the trial fueled both popular fascination as well as revulsion. The evidence of Cornell's physical condition was unusually graphic, prompting one contemporary writer to state that, after exposure to the Avery trial reports, "the next age would have no need for physicians, as every boy capable of reading would be perfectly instructed in all the secrets of the *Materia Medica*."<sup>103</sup>

#### IV.

The Avery trial also offers invaluable insight into the Victorian views on religious piety and its relationship to gender. Several paradoxes emerge from this time period as reflected by the Avery trial. While piety was seen as one of the highest virtues, a central Victorian fear was with hypocrisy, especially in the context of religious leaders masquerading as faithful adherents to moral tenets while secretly succumbing to vice. Furthermore, trials such as this reflected a disquieting concern among many that religiosity was becoming corrupted into fanaticism. The Victorian conception of women held them to be more deeply spiritual and pure than men, yet women were largely excluded from church hierarchies. Women were also considered to be somehow less trustworthy, evidenced most clearly in the treatment of women in legal proceedings such as the Avery trial.

Victorian women were said to have psychological makeups which was extremely sensitive to moral considerations, yet rendered them both irrational and unintellectual. Paradoxically, while women were thus more innately virtuous than men, they were also seen as unfit for leadership positions in organized churches and as inherently less trustworthy. Women's innate moral sensitivity was thought to make them more responsible for upholding Christian ideals.<sup>104</sup> As one contemporary work

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102 *Id.* at 139-140; see also Kasserman, *supra* note 5, at 173 ("Mrs. Bacon was shocked; the man was trying to badger her into a discussion immensely more intimate and repugnant than that she had avoided with Randolph. Clearly it was time to recant, to try to reach the protection of her abandoned defenses.")

103 Williams, *supra* note 39, at 58 (quoted in COHEN, *PILLARS OF SALT*, *supra* note 19, at 35.).

104 See, e.g., COTT, *BONDS OF WOMANHOOD*, *supra* note 70, at 153.

states, "[t]he female breast is the natural soil of Christianity."<sup>105</sup> Church leaders themselves stressed the natural proclivity of women for nurturing morality and religion; they were "fitted by nature for Christian benevolence" as "religion seems almost to have been entrusted by its author to her particular custody."<sup>106</sup>

One central paradox of this view was that while women may have been seen as inherently more spiritual, they were not allowed to retain positions of authority within the church. Interestingly, the Avery trial itself implicated many issues concerning the Methodist Church. One reason that the Methodist Church met with such overt hostility during this time period—and, in all likelihood, one of the primary reasons that Cornell was drawn to the Methodists—was their comparatively liberal policy towards allowing women to undertake positions of responsibility. While women were not allowed to be ministers, they had greater opportunity to participate in the Methodist Church in a non-passive role than elsewhere. As Kasserman writes:

John Wesley himself had led the way toward the practices of the Apostolic church by allowing women to become religious teachers and "even to speak in an assembly of men." He further scandalized some of his contemporaries by creating exclusively female classes with female class leaders and supervisors . . . As the church developed in Europe and America, women were encouraged to speak in class meetings as preparation for more demanding oratory in love feasts and social prayer meetings, where female exhortation became common. Although still subordinate to an exclusively male ministry, Methodist women were not faced with the dull prospect of an unrelentingly passive role in organized religion.<sup>107</sup>

That Cornell was drawn to the Methodists largely for this reason is tacitly supported by her extensive involvement in the church prior to her expulsion by Avery. At least one witness at the trial testified that Cornell prided herself on the fact that she could "pray and exhort, as well as any of them."<sup>108</sup> In addition, as a Methodist clergyman testified, "[i]n Lowell she was a leading member of the classes; considered as having a talent at exhorting and praying."<sup>109</sup>

Another paradox of the traditional Victorian view of women was that while women were viewed as more spiritual and virtuous, they were also seen as less credible than their male counterparts. Ironically, this concept of women as mechanically incapable of telling the truth was a product of their innate moral rectitude. Fox, in explaining the court's decision

<sup>105</sup> JOHN ABBOTT, *THE MOTHER AT HOME, OR THE PRINCIPLES OF MATERNAL DUTY* 159 (1833) (cited in Epstein, *supra* note 69, at 82).

<sup>106</sup> Jonathan Stearns, *Female Influence, and the True Christian Mode of its Exercise: A Discourse Delivered in the First Presbyterian Church in Newburyport, July 30, 1837* (cited in Cott, *BONDS OF WOMANHOOD*, *supra* note 69, at 126).

<sup>107</sup> Kasserman, *supra* note 5, at 38 (citation omitted).

<sup>108</sup> Hallett, *supra* note 8, at 110; see also Kasserman, *supra* note 5, at 38.

<sup>109</sup> Hallett, *supra* note 8, at 135-36; see also Kasserman, *supra* note 5, at 38, Fox, *supra* note 19, at 131.



to prevent Mrs. Tilton from speaking on her behalf in the Beecher-Tilton trial, explained the typical male view of women:

[their] words were not rooted in the sort of controlled discourse that made possible the rational operations of the world of affairs. I may not be pressing the matter too far to suggest that by endorsing the figure of the irrational and irresponsible (however spiritual and vital) female, many bourgeois men reassured themselves that their own workaday web of legal and social conventions was firmly grounded in a natural, not merely a habitual, order of things.<sup>110</sup>

It may also be posited that women were seen as untrustworthy due to their susceptibility to influence. Whatever the reason, the Avery trial lends support to the view that women inherently lacked credibility, in light of the strategy employed by counsel (primarily by the defense) of discrediting key female witnesses.<sup>111</sup>

The unfortunate Jane Gifford exemplifies the extent to which counsel attempted to undermine the testimony of female witnesses. Gifford had earlier given testimony in Bristol that Avery had stated he had visited the Cooks on the night in question.<sup>112</sup> While other male witnesses offered evidence only marginally less damaging, the defense brought in numerous witnesses whose only purpose was to claim that Gifford's character "for truth and veracity" was not good. The first of these, one of the Cook brothers and an ardent Methodist, alleged that she had a reputation for deceit. During the course of the trial, nearly a dozen more witnesses testified, all claiming that her reputation for veracity was bad—although not a single witness could provide a concrete example of her alleged duplicity. The prosecution responded with a larger number of character witnesses, all of whom were neighbors of Gifford. Perhaps realizing that their attempt to demolish Gifford's reputation was not having its desired effect, the defense called one more rebuttal witness, a man of dubious reliability by the name of John Brownell. After contradicting himself several times on the stand, Attorney General Greene disdainfully dismissed him. As he left the stand, Brownell called out, "[y]ou will put it down as a naught, I suppose!" Greene's response: "I should think so," to which his fellow prosecutor added, "[r]ather a blank, we think."<sup>113</sup>

Unfortunately, Gifford's father was in the audience. Incensed at the defense's attempts to sully his daughter's reputation, he leapt to his feet after Brownell left the stand: "I wish they would ask this witness what Jane Gifford has done, to make these people try to ruin her!"<sup>114</sup> After

111 McLoughlin also makes reference to the possibility that sexism affected the manner in which the trial was conducted, albeit with respect to Cornell only. See McLoughlin, *supra* note 5, at 75 ("A case could be made for the claim that sexism played a significant part in the trial. The defense had to show that just because she was a female did not mean [Cornell] was entitled to those tender sympathies which relegated 'the fair sex' to a pedestal in the nineteenth century. The defense lawyers did not portray her as a feminist, but as a woman who had betrayed her sex and thus betrayed all mill girls....").

112 See *supra*, note 97 and accompanying text.

113 Hallett, *supra* note 8, at 31.

114 Hallett, ARGUMENTS OF COUNSEL, *supra* note 31, at 43.

friends of Jeremiah Gifford narrowly managed to prevent the burly farmer from assaulting Brownell, the audience was left to ponder the credibility of the defense's attacks on Jane Gifford's reputation.

While Gifford bore the brunt of the defense's attempts to discredit her (perhaps not surprisingly, given the damaging nature of their testimony), the defense called numerous witnesses to rebut the testimony of four prosecution witnesses, while the prosecution also called witnesses to refute the testimony of one defense witness. It is worth noting that of these five original witnesses, four were female.<sup>115</sup>

In the defense's closing statements, Jeremiah Mason pointed out supposed flaws in the testimony presented by the prosecution. While counsel's statements were sometimes pointed, he saved his most barbed attacks for three female witnesses. About Margaret Hambly, who testified she had seen someone looking like Avery in Fall River on the night in question, Mason said, "[a] witness so perfectly discredited in all her bearings, it seems inhumane to use in a capital trial."<sup>116</sup> Mrs. Jones, who testified that the defense had attempted to subvert her testimony, was herself accused of perjury by the defense in closing arguments:

If I felt at liberty to do so, I would recommend this witness to the kind offices of the Attorney General. She richly deserves it. It is a case of sheer, deliberate perjury, basely perpetrated against the life of a man. It is a base transaction, and charity itself cannot excuse it.<sup>117</sup>

Lastly, perhaps mindful of the fine line between attempting to discredit Gifford on the one hand and alienating the jury on the other — especially in light of Jeremiah Gifford's outburst following the abortive testimony of Brownell — the defense's closing statements regarding Gifford were surprisingly muted in light of the sustained attacks on her character during the trial:

If it occurs to you, gentlemen, that her character is drawn in question, you will perceive that the witnesses who impeach and who sustain her, are about equal in respectability. But it is always easier to sustain than to impeach a witness. Besides, you must have noticed the guarded language of all the witnesses who testified to her good character.—It was good, as far as they *knew*.

The question, I admit, was distressing, in the case of a young female like this. It was natural that the neighbors and relatives, should wish to sustain her character, and it was painful to see the excitement of the father. Perhaps the testimony is not strong enough to impeach the young woman; but take it as it is, the expression she puts into the mouth of the defendant is not material.<sup>118</sup>

The Avery trial suggests that counsel had greater leeway in disparaging the reputations of female witnesses than males due to Victorian atti-

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115 This becomes even more convincing when one factors in Jane Gifford. Furthermore, a substantial majority of the rebuttal witnesses were male.

116 Hallett, *Arguments of Counsel*, *supra* note 3, at 38.

117 Hallett, *supra* note 8, at 41.

118 Hallett, *Arguments of Counsel*, *supra* note 31, at 43.



tudes about women's alleged veracity and character.<sup>119</sup> This observation may not be surprising, especially when one considers the experience of sexual assault victims in the modern-day judicial system, for example.

With few exceptions, even defense counsel never went so far as to claim that these witnesses were consciously uttering falsehoods. As Mason stated:

What is remarkable, in this case, is that the witnesses began with slight impressions, and have gone on testifying, until they have grown stronger and stronger; and these slight impressions have become belief. I do not think they intend to do the defendant injustice. The country was stirred up; the witnesses were importuned; conviction of the guilt of the defendant had been settled; their own impression were strengthened by the common impression; and they went on increasing in faith, until they have confounded belief with knowledge.<sup>120</sup>

In the case of women it was thought that their unintellectual nature left them particularly susceptible to manipulation and influence. While Mason's comments do not explicitly mention gender, his statements taken in context seem to suggest this view of women as untrustworthy.

With respect to men, the view of males as sexually passionate

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<sup>119</sup> Halttunen's work regarding the Chapman murder case is an example of a contemporary case that raises interesting parallels and observations regarding the treatment of female witnesses. In her analysis of the Chapman trial, however, Halttunen asserts that the social status of the female witnesses was the key factor. As Halttunen wrote, "If Lucretia Chapman had to be innocent as charged on the grounds of her virtuous womanhood—a defense that rested more on her status as respectable wife and mother than on her actual conduct during the period in question—other women whose stories were central to the defense's narrative did not fare so well. Essential to this tale of the victimization of a true woman was the destruction of the credibility of those servants who testified to Lucretia Chapman's adultery and her ill-treatment of her [murdered husband]. In destroying that credibility, the defense managed to project onto women of lower social caste the charges of evil leveled against Lucretia Chapman by the prosecution.... Heading the list of vipers was Ellen Shaw, the live-in maid servant who had left the household shortly before William Chapman's death because, as she explained, she could no longer tolerate Lucretia's sexual misconduct.... The defense designated Shaw's story of their sexual alliance as a 'fancy, unrivalled in all the legendary lore of outrageous fiction'.... They went on to ridicule on its face the idea that a woman such as Ellen Shaw might evince 'delicacy.'" Halttunen, *supra* note 2, at 53. With respect to two other female witnesses, one—an outdoor servant—was ridiculed largely on the basis of her race and social class. *Id.* at 54. Another witness, a white seamstress, was dismissed "merely...as trivial and ridiculous." *Id.* Halttunen suggests that the distinguishing feature between the seamstress and the other two witnesses was that "[s]ocial respectability shielded [her] reputation for virtue as much as it did Lucretia Chapman's—at the moral expense of the lower-class [witnesses]." *Id.* The language used by counsel in the Chapman case appears to support this conclusion. While the arguments of counsel in the Avery case make no such explicit statements about the social status of the witnesses, it may be worth noting that Jane Gifford was the daughter of a ferryman and that Margaret Hambly was a bargirl. See generally Kasserman, *supra* note 5. As such, it is at least possible that class was a contributing factor in counsel's disdain for these witnesses in Avery's trial, although I believe the primary factor was more likely gender.

<sup>120</sup> Hallett, *Arguments of Counsel*, *supra* note 31, at 36.

beings, coupled with the reality that they enjoyed a monopoly on positions of religious authority, leaves little surprise that another paradox developed: hypocritical clergymen. A religious leader bore the responsibility of being a moral compass, serving to orient his fellow creatures as they struggled against sin and temptation. Trials such as this were therefore deeply disquieting, suggesting that religious leaders were capable of the worst forms of degeneracy.

In his closing statements for the defense, Mason suggested that the very nature of a clergyman's function somehow insulated him from immorality:

The defendant is a clergyman. That claims for him no exemption, if he be guilty, and it certainly should bind him to be the more amenable to the laws; but such a profession removes him from many temptations to which others are more exposed. So far as I know, a clergyman had not been arraigned at the bar in this country for murder, until now; I doubt if within the two hundred years of our history, a clergyman has been accused of that crime. This, I admit, proves nothing; it only shows the improbability of the commission of such a crime by the defendant, and should call for stronger evidence to convict him than might be required in some other cases.<sup>121</sup>

Despite defense counsel's suggestions to the contrary, however, the Avery trials lent credence to the fears of many that men of the cloth were subject to grievous human failings. The prosecution in its closing stressed what the average Victorian may have already suspected—that religion did not necessarily act as a buffer against the immorality of the outside world. In the words of Attorney General Greene:

The situation of the defendant—the fact that he is a minister of our holy religion—that, until charged with this crime, he had sustained a fair and unblemished character—that he is connected, as one of its teachers, with a religious society, extensive, pious, respectable, to a degree equal to any other religious body in the country;—these considerations not only add to the interest of the case, but render more than usually painful the situation of the prosecuting officer. . . . All experience has shown that religion itself does not exempt its professors from temptation to crime, and experience has also too frequently shown that the cloak of religion may be assumed for other purposes than those of piety.<sup>122</sup>

Indeed, in the opening statements of the prosecution, Attorney General Greene commented on the likelihood that religious critics might relish the conviction of Avery as proof of the hypocrisy of religious figures. As he stated, "there may be another source of excitement . . . on the part of those who are not so religiously disposed as we could wish they were—and who would not (at least) *regret* to see a member of a profession which they charge with hypocrisy, convicted of an odious crime."<sup>123</sup>

Hypocrisy among the outwardly religious, however, was not limited to clergy. One paradox of the Victorian preoccupation with piety was the fear that religion, seen as essential to maintaining the moral fabric of society, was being perverted into fanaticism. Contemporary critics noted with

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121 *Id.* at 54.

122 *Id.* at 55.

123 *Id.* at 17.



alarm the fanatical proclivities of some religious societies and their members. The Methodist church, for example, was looked upon with suspicion by those who noted its elevation of emotionalism over intellectualism. Under the guise of religiosity, critics alleged, fanatics elevated their leader to positions of adoration and succumbed to the dictates of their passions.

The Avery trial evidenced many of the issues regarding fanaticism that constantly resurfaced during this period. For instance, the Methodist camp meetings which ostensibly led to Cornell's downfall were viewed with deep suspicion—and downright revulsion—by those who felt that these meetings were anything but Pious. An especially telling example appeared in Catherine Williams' work, *Fall River, An Authentic Narrative*, which appeared in 1834 in response to the Avery trial. In her book, Williams includes an appendix of her impressions of Methodist camp meetings:

The first object that met our eyes upon coming within the barrier was a young woman of extreme beauty, who was staggering through the camp, with her clothes torn and her locks dishevelled, wringing her hands and mourning that the people were not more engaged. She was a girl of about middling height, rather fat, with large, languishing black eyes, and a profusion of raven hair which floated on her shoulders and reached below her waist, with the fairest complexion that could be imagined. She appeared to excite great attention whenever she moved through the crowd. We observed, as she passed along, that the young men exchanged winks and jogged each other's elbows.<sup>124</sup>

In the context of the Avery trial, Cornell's obsessiveness with respect to the Methodist Church prompted widespread criticism. As one newspaper account stated, Cornell's religious conversion saw her veer from "the plain and simple precepts of the gospel into the mazy regions of fanaticism."<sup>125</sup> The immorality that was believed to take place at these camp meetings prompted one newspaper editor to state that in the case of a woman as susceptible to outside influence as Cornell, it was only a matter of time until she sacrificed her chastity on the altar of misguided zeal." He went on to write that:

There is a degree in religious fanaticism, at which virtue loses its beauty and at this point [Cornell] is supposed to have arrived before the foundation of her virtue gave way. The reins of moral and religious restraint being loosened, and the mirror of the imagination having ceased to reflect the deformity of vice, nothing was left to regulate her connexions and associations in the world, but the impetuosity of her passions.<sup>126</sup>

124 Williams, *supra* note 39, at 177. Accounts such as this bring to mind the contemporary comment that at these church camp meetings "more souls were conceived than were saved."

125 *Norwich Courier*, June 19, 1833 (cited in Kasserman, *supra* note 5, at 222). For a contemporary account of concern over religious fanaticism as it concerned followers of the Methodist church, see generally the appendix in Williams, *supra* note 39.

126 *NEW-HAMPSHIRE SENTINEL*, June 20, 1833 (cited in Kasserman, *supra* note 5 at 222).

While in universal condemnation of fanaticism (unless, of course, it was their religious beliefs that were being derided as fanatical), commentators on the Avery trial were also careful to explain that the concern was not with religion *qua* religion, but rather with its perversion into extremism: "[i]t is not religion of which the people complain; it is the foreign garb in which fanaticism has arrayed her."<sup>127</sup> To many, Christianity was being perverted into a form of "cult of personality," where loyalty to the individual preacher overshadowed piety. The result was an "idolatrous regard for ministers, for preachers of the gospel, which at the present day is a scandal to the cause of Christianity."<sup>128</sup> In one partisan work published decades after the Avery trial, the author emphasized (or, perhaps more accurately, "overemphasized") this concern:

[Avery] had no lack of friends, and the result of the trial showed how well they stood by him. With the majority of them it was not because he was a minister of the Methodist church, and was being wrongfully persecuted that they defended him, for no sane man could have doubted his guilt despite his fervent protestations of innocence; but it was brother Avery the god-like, the saintly, the eloquent, who was accused of murder, and he must be acquitted at any cost, even if perjured testimony was necessary.<sup>129</sup>

Contemporary commentators also raised similar allegations of perjury and subversion of the judicial proceeding. Critics alleged that the trial was tainted from the moment jury selection had begun, as questionable jury selection procedures on the part of the defense had resulted in a jury favorable to the defendant.<sup>130</sup> In addition, critics maintained that the trial was replete with instances of witness tampering and subordination of perjury. At least one Rhode Island newspaper maintained that ministers from the Methodist church had been heard to boast that they had "got him (Avery) clear in spite of them!!!"<sup>131</sup> An anonymous critic, writing under the name "Aristides," was at the forefront of alleged exposes. After a long series of vague criticisms and allegations, several month after the trial he printed the account of Sarah Jones, one of the witnesses. In the words of Kasserman:

She was treated very well, she said, when first brought to confer with Avery and his lawyers, but when her story did not correspond with the minister's, Avery followed her to the entry of his house, laid a hand on her shoulder, and implored, "Can't you recollect it was in the afternoon? Mrs. Jones, my life is worth a thousand worlds to me; but, say nothing about this" (*Republican Herald*, 23 October 1833). Thus, she claimed, began the Methodist campaign to change her testimony . . . . Her unsatisfactory testimony at Bristol brought down upon her the general disdain of her fellow church members, and it was not until the minister had been

127 REPUBLICAN HERALD, October 16, 1833 (cited in Kasserman, *supra* note 5, at 233.)

128 Williams, *supra* note 39, at 4.

129 *Terrible Haystack Murder*, *supra* note 41, at 43.

130 RHODE ISLAND REPUBLICAN, June 26, 1833 (cited in Kasserman, *supra* note 5, at 223).

131 RHODE ISLAND REPUBLICAN, July 10, 1833 (cited in Kasserman, *supra* note 5, at 223).



bound over for trial in Newport, where her testimony would be vital, that the situation changed. Though her legitimate trial expenses at Bristol had been seventy-two cents, suddenly in March Avery's counsel sent her three dollars as "legal fees." The bribe was followed by a summons to appear in Newport, where she was lodged with other Methodist witnesses, among whom was Louisa Whitney, who testified that the clove hitch was commonly used in weaving rooms, diligently trying to learn to make the knot (*Republican Herald*, 23 October 1833). Repelled by the manifest perfidy around her, Mrs. Jones left the Methodist boardinghouse and had since been the subject of continuing Methodist persecution.<sup>132</sup>

It is difficult to account for the strongly negative public sentiment that persisted after Avery's acquittal, except to suggest that perhaps both anti-Methodist sentiment and the questionable testimony of myriad witnesses—many of whom were Methodists (and had been solicited by Methodist ministers to testify)—may have played a part. Long after Avery's acquittal, the Methodist church continued its largely unsuccessful attempt at restoring Avery's reputation. As part of their strategy to marshal support for the beleaguered minister, the church sought out affidavits and statements by individuals to corroborate the testimony of defense witnesses at trial. One of these affidavits in particular is worth noting; known as the "Spencer affidavit", it appeared to involve the unambiguous testimony of Nathan Spencer that he had been handed one of the letters found in Cornell's possession by a stranger who closely resembled—but clearly was not—Reverend Avery. Upon examination, however the testimony was found to be without basis, and in the end achieved little more than to further convince the public at large that this was yet another example of fanaticism rearing its ugly head. As one editorial in the *Rhode Island Republican* stated, "if the Spencer affidavit should not have the intended effect we should not be surprised if some miserable fanatic should come forward and swear that he murdered Miss Cornell—and he would verily believe that he was doing God services in offering himself up a martyr for his priest."<sup>133</sup>

One of the most interesting characteristics of the Avery trial was that its notoriety lasted for many decades after Avery's acquittal. The Avery trial would prove to be only one in a long series of trials which illustrated the grievous repercussions of fanaticism masquerading as piety. The *Terrible Haystack Murder* pamphlet evidences the concern that religious followers were "covering up" the failings of their leaders. As the author wrote:

To every fact that had been proven by the government, the defense offered evidence in rebuttal. Methodist evidence. Good men, who bore excellent characters for honesty and probity, came forward to the stand and swore to anything to save brother Avery; and women, who before had held it to be a cardinal sin to tell a falsehood, swore to undoubted lies, rather than see their beloved fellow-laborer in Christ hung.

<sup>132</sup> Kasserman, *supra* note 5, at 232.

<sup>133</sup> RHODE ISLAND REPUBLICAN, July 24, 1833 (cited in Kasserman, *supra* note 5, at 226).

A reader who thinks it rather improbable that Christian men and women should thus perjure themselves, has evidence, and overwhelming evidence, too, of what man will do under the influence of religion—or shall we call it fanaticism?—in a case of more recent date. The world stood aghast when men and women, holding the highest social positions, and of the very best moral character, came forward in the Beecher-Tilton imbroglio, and perjured themselves unblushingly. Hundreds were found who would not only allow a lie to go down to posterity, as sworn evidence, unchallenged, but were willing, yea, anxious, to fabricate fresh falsehoods to bind the ones already told, and swear to the truth of both.<sup>134</sup>

## V.

In the context of the Avery trial, Victorian concerns over issues such as sexuality, religion and the overriding fear of hypocrisy were manifest. What this trial also illustrates is the paradoxical nature of many Victorian norms guiding social conduct. The ideal of men proved hollow both in light of allegations that men of the cloth were falling victim to the same vices that they exhorted against, and in the face of the sexual double standard. The ideal of women simultaneously portrayed them as pure and yet weak, virtuous and yet disreputable, spiritual and yet incapable of ordination. Most cruelly, it punished women twice over for sexual indiscretions—first, by promoting double standard, and secondly, by ostracizing women who had indulged in sexual relations outside the marital home.

Perhaps the best unintentional statement of the Victorian preoccupation with hypocrisy, fanaticism and passion is offered in Mason's closing statement for the defense, in which he offers this disturbing depiction of Cornell:

In the midst of all these vices of character, her early religious impressions, which seem never to have been entirely obliterated, were strongly mixed up with gross hypocrisy—habitual sensual indulgences, with strong fanaticism—a wild enthusiasm, with morbid sensibility, and strong abstractions of mind . . . [she was] a creature of passion to which she gave unbridled license.<sup>135</sup>

In a time when genteel appearances demanded the appearance of sincerity—even if sincerity was lacking—the end result could not be other than the death of sincerity itself. It is the final irony that in a society often best remembered for its pervasive hypocrisy, hypocrisy was to become the overriding apprehension.

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134 *Terrible Haystack Murder*, *supra* note 41, at 59.

135 Hallett, *Arguments of Counsel*, *supra* note 31, at 27.