

## Telling Tales About the Law

Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel*. Baltimore: Johns Hopkins University Press, 2002. Pp. xii, 202. \$39.95.

Jan-Melissa Schramm, *Testimony and Advocacy in Victorian Law, Literature, and Theology*. Cambridge: Cambridge University Press, 2000. Pp. xvi, 244. \$54.95.

### Sharon Marcus\*

Read in conjunction as contributions to the field of law and literature, these two books initially appear made for each other, since each supplies what the other lacks. Grossman's *The Art of Alibi* gives us literature through literary criticism: subtle readings, precise analyses of narration, and an assured grasp of the novel as a genre. Schramm's *Testimony and Advocacy* gives us law: an internally differentiated set of legal categories and a conceptual framework constructed from legal history. That complementary relationship, however, turns as adversarial as the courtrooms both authors study, since ultimately these two books make incompatible arguments. Grossman emphasizes suspenseful narrative structure as the common ground of law and the novel, while Schramm argues that Victorian law and literature diverged, with law favoring advocacy and literature gravitating to direct testimony.

Both Grossman and Schramm historicize the connections between law and literature, although Schramm links them through legal epistemology and Grossman links them through literary form. Literature has little autonomy or history in Schramm's analysis, but is closely bound to law because it shares law's epistemological commitment to evidentiary realism. By evidentiary realism,

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Schramm means empiricist standards of proof that can be satisfied by probable knowledge and that renounce the certain knowledge that nineteenth-century thought increasingly associated with religious faith. For Grossman, the connection between law and literature depends on their common deployment of narrative in the sense of highly structured, suspenseful plots. Although Grossman usually defines the law as causing changes in literature, his use of the literary term “narrative” to define the historical specificity of nineteenth-century law reassigns primacy to literature.

In addition to sharing an interest in the similarities between law and literature, Grossman and Schramm both study the competition between them, and the differences between law and literature that emerge precisely because each defines itself in relation to the other. Schramm builds her book on the increasing divergence between literature, which depended on testimonial evidence and letting the accused speak in his or her own defense, and law, which after 1836 favored lawyerly advocacy over the defendant’s testimony. During the Victorian period literature and law participated in competing models of how to obtain, report, and determine the truth. As part of that competition, practitioners of the one often cast aspersions on the integrity of the other; “literature’s relation to the law is one of both imitation and the imaginative exploration of its deficiencies.”<sup>1</sup> Grossman underscores what lawyers and authors have in common; both are immersed in “manipulating interpretations . . . in reading and writing, in orchestrating discourses, and . . . in telling stories for money.”<sup>2</sup> Attempting to avoid that similarity, which exposes the less flattering aspects of authorship, Charles Dickens in *The Pickwick Papers* initially distracts attention from professional authorship by caricaturing lawyers as mercenary liars. Ultimately, however, the similarity between his task and theirs causes Dickens to present lawyers in a better light, and his novel concludes by making every character a “harmonious subject . . . of the civil courts.”<sup>3</sup>

Despite their shared interest in the conjunction of Victorian law and literature, these books diverge significantly. Grossman focuses on the social and cultural history of the law, on how the law was integrated into everyday life, print culture, and urban space. He argues that by the nineteenth century there was a major shift in people’s experience of the law. Rather than encounter the law during executions, at the moment when a criminal had already been

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1. JAN-MELISSA SCHRAMM, TESTIMONY AND ADVOCACY IN VICTORIAN LAW, LITERATURE, AND THEOLOGY 99 (2000).

2. JONATHAN H. GROSSMAN, THE ART OF ALIBI: ENGLISH LAW COURTS AND THE NOVEL 89 (2002).

3. *Id.* at 102.

sentenced and was spectacularly punished, people began to encounter the law as readers of newspaper accounts of trials. This shift made law depend on suspenseful narratives that were usually encountered in print form. Even when people were spectators in courts rather than readers of court reports, the trial spectacle was subordinated to narrative: Although witnesses and lawyers spoke, they did not do so as agents or actors but as narrators.<sup>4</sup> Trials became like novels, “responsible for producing the full story” by gathering together the “multiply authoritative voices” that Bakhtin considered the hallmark of the novel as a genre.<sup>5</sup> Because defendants could not testify directly on their own behalf, lawyers had to represent them. In their combined separateness from and proximity to their clients, lawyers became like third-person narrators who mimed their characters’ thoughts in free indirect discourse.<sup>6</sup>

All of Grossman’s chapters show literature not simply reflecting but responding to the increasing prevalence of the courtroom. If trials become like novels, novels also become like trials, though not identical to them. William Godwin’s *Caleb Williams* enacts a shift from spectacular punishment to juridical narrative generically, by attempting to free its protagonist from entrapment in the conventions of the criminal biography associated with the regime of punishment. Godwin instead demonstrates the inescapable power of a justice system based on competing testimony and self-justifying narration.<sup>7</sup> Mary Shelley’s *Frankenstein* illustrates the reach of the law by attending both to the law’s unjust operations and to the predicament of being outside the law. *The Pickwick Papers* depicts the novelist’s encounter with the court as an encounter with “another structure for storytelling,” since the introduction of a trial allows Dickens to move from a loosely episodic structure to an organized, suspenseful plot.<sup>8</sup> Elizabeth Gaskell’s *Mary Barton* appropriates the ethical and mimetic energies of the courtroom for the novel; the court offers a model of turning text into evidence, paper into reality, reading into action. A final chapter discusses Newgate novels, which recounted criminals’ life stories with a degree of sympathy many reviewers found troubling. The innovative perspective of the Newgate novel depended on a “forensic narrative paradigm focused on the criminal’s viewpoint and defense.”<sup>9</sup> The shift from punishment to trial is complete when lawyers and

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4. *Id.* at 24.

5. *Id.* at 20.

6. *Id.* at 23.

7. *Id.* at 61.

8. *Id.* at 95.

9. *Id.* at 138.

narrators alike no longer establish the identity of wrongdoers but instead create grounds for identification with criminals.

Where Grossman sees literary changes following legal ones, Schramm sees literature maintaining a commitment to testimony well after courtrooms had shifted to advocacy. Where Grossman emphasizes courtroom narratives deploying the literary technique of suspenseful narration, Schramm focuses on personal testimony and its fluctuating relation to truthfulness. As its title suggests, *Testimony and Advocacy in Victorian Law, Literature, and Theology* announces multiple concerns that it never fully integrates, and in its care to focus on both sides of a cultural story, the book often contradicts itself. For example, the witness is opposed to the martyr but also compared to the martyr, since both testify directly.<sup>10</sup> Schramm argues that law prevailed over religion because empiricist rationality deprived religion of authority and turned it into myth, but she also demonstrates the persistent charisma of “the martyr on trial for her life” whose faith gestures towards a realm of truth higher than that of courtroom rules.<sup>11</sup> Similarly, the book’s most consistent point is that “the oral presentation of narrative in the courtroom [was] at the heart of the criminal trial.”<sup>12</sup> But here again contradictions emerge when the “oral presentation of narrative” is broken down into its constituent parts. Sometimes testimony is opposed to lawyerly advocacy as plain fact is opposed to artful rhetoric and sometimes testimony and advocacy are alike because both differ from religious revelation.<sup>13</sup> Interesting topics proliferate—natural law, martyrdom, the oath, circumstantial evidence, testimony, hearsay, credit and credibility—but they do not form links in a clear and consistent argument. Schramm cites an excellent spectrum of texts, including legal theory by Bentham, Stephen, and Mansel, and essays, novels, and poems by Fielding, Richardson, Eliot, Newman, and Browning. But the legal texts, though well chosen, are rarely subject to analysis, and the literary interpretations are uneven. Many of Schramm’s readings threaten to become assessments of how well a literary text reflects a point of law,<sup>14</sup> which dubiously establishes the law as the referential standard by which to judge a literary text’s verisimilitude. Finally, Schramm’s central literary point, that novels differed from courtrooms because in novels those accused spoke for themselves, but in courtrooms expert lawyers spoke for them, depends on identifying third-person

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10. SCHRAMM, *supra* note 1, at 42.

11. *Id.* at 22.

12. *Id.* at 61.

13. *Id.* at 94.

14. *See, e.g., id.* at 132.

narrators exclusively with witnesses/defendants, and ignores the much more salient affinities between third-person narrators and lawyers.<sup>15</sup>

Summarizing what is best in each book identifies a basis for future research into post-Enlightenment law and literature. Grossman argues for the shift from the scaffold to the courtroom, while Schramm provides a much more detailed analysis of what happened inside the courtroom. Schramm talks about literature in very general terms, while Grossman breaks literature down into narration, genre, reader-response, mimetic reality effects, and ideological intervention. It would be interesting to read work that used Schramm's legal categories to understand literature and Grossman's literary categories to understand law. Both books assume realism dominated nineteenth-century law and literature, with law emphasizing empirical standards of proof and literature stressing probabilistic standards of plausibility. But both books also invite some skepticism about realism's sole dominance, since each cites evidence that in the nineteenth century, law and literature could also easily invoke moral standards, not empirical ones, as bases for a verdict or a literary representation. Thus reviewers objected to Newgate novels, Grossman tells us, not because they contested those novels' plausibility but because they contested their narrators' moral stance towards the crimes they recounted. Similarly, Schramm cites T.H. Green's critique of the novel's circumstantial realism and identifies its "ethical" thrust.<sup>16</sup> Literary scholars tend to interpret such moments as anomalous exceptions to the realist rule, but the sheer number of such anomalies suggests that throughout the nineteenth century, realism was sometimes blended with, sometimes subordinated to the sentimentalism and moral idealism to which we now oppose it. As our understanding of the history of those other aesthetics improves, fresh research questions will emerge for scholars of law and literature.

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15. *Id.* at 122.

16. *Id.* at 25.

