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Boxes in Boxes: Julian Barnes, Conan Doyle, Sherlock Holmes and the Edalji Case

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Abstract

The topic of this symposium has allowed me to indulge myself in addressing a number of pet complaints, ranging from the pernicious effects of Sherlock Holmes on the self-image of forensic scientists, to the dangers of relying on fiction in the teaching of evidence. It is not often that one has the opportunity to deal with such a diverse catalogue of peeves in a single piece, and still claim that they are central to the topic set out by a symposium organizer. We owe this to the special nature of the subject for this symposium: A novel about the actual investigation of a real criminal case by Sir Arthur Conan Doyle, who of course is best remembered as the writer who created Sherlock Holmes, a fictional character (for those of you who were unsure). What we are to examine is art imitating life imitating art imitating life.

The first “art” in that sentence is the art brought to bear by the novelist Julian Barnes in the creation of his 2005 novel *Arthur & George*. This novel is a novel of a particular sort. It is based on an actual episode of crime and punishment, and is peopled dominantly with characters who had real historical existence. If all fictional art must imitate life in some broad sense, in order to be intelligible as fiction about worlds bearing on our own, such a work as *Arthur & George* promises to “imitate life” in a special way not applicable to other fiction. Thus, such a novel is a creative exercise under the special constraint of staying reasonably close to the historical record, and we will have occasion to examine how well Barnes performs under this constraint.

In order to know how well Barnes’ art imitates life in this special way, we will have to know something about the lives being imitated, and their relevant factual details and contexts.

The central characters to be examined are, of course, Arthur Conan Doyle and George Edalji, George was the elder son of an unlikely couple in Victorian rural Staffordshire. His father, Shapurji Edalji, was a Bombay-born Parsi convert to Christianity who became a minister of the Church of England, found himself essentially stranded in England after his ordination, and in 1874 married a twenty-nine-year-old Englishwoman named Charlotte Stoneham. As a wedding gift, one of Charlotte’s clergyman uncles arranged for the appointment of Shapurji to be his replacement as vicar of St. Mark’s parish in the village of Great Wyrley, Staffordshire, upon the uncle’s retirement. Shapurji became vicar in December of 1875 when Charlotte was nearing the end of her first pregnancy. George was born in the vicarage of St. Mark’s on January 22, 1876. The story of the

*I would like to thank Charles A. Sullivan for helpful comments on the text, and Lesley Chenoweth Risinger for a thousand things analytical and editorial.

Edalji family, from George's childhood to his conviction in connection with a series of nocturnal animal maimings in 1903, is in some ways almost literally incredible, and it is one of two main foci of Barnes' novel. Of necessity, the day-to-day details of the lives of George and his family, and the community in which they were embedded, are less well-known and well-documented than those of the much more famous Sir Arthur Conan Doyle. As might be expected, the relative paucity of information seems to have tempted Barnes to give himself wide latitude in portraying those lives and that community. Whether Barnes yielded too far to that temptation in ways that violate the special constraints of such a work, by failing to investigate and take into account the actual details of what is known, is a subject to which the article devotes considerable examination.

Conan Doyle next. And Holmes. The special popular allure of the Edalji case arises from the fact that Conan Doyle decided that George had been the victim of a miscarriage of justice, and set out to right it by investigating the "real facts" of the case. In essence, the creator of Sherlock Holmes set out to play Sherlock Holmes in real life. So if Conan Doyle's fictional Holmes himself in some way claimed to imitate life (as I have already said all fiction in some sense must), now Conan Doyle was setting out to imitate the product of his literary art, Sherlock Holmes, in real life. In order to see the significance of these characters, real and fictional, (whichever is which in the given context), the article examines at length the meaning of Holmes in late Victorian culture and thereafter, and also examines Conan Doyle at length, to see how he compares to Holmes, and to the Conan Doyle of *Arthur & George*.

Erratum

On page 71, the second sentence of the third full paragraph currently reads: "Four times each year, a judge from one of the three common law courts (King's Bench, Common Pleas or Exchequer) would ride through each of the eight designated circuits . . ." The text should read: "Two times each year, two judges from one of the three common law courts (King's Bench, Common Pleas or Exchequer) would ride through each of the six designated circuits . . ."

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Cynthia Nye doesn't stock true crime books at the High Crimes Mystery Bookshop. Not even books about JonBenet Ramsey's 1996 slaying, the hometown mystery that won't go away.

"It's easy to read about a fictional person being killed, or a mystery serial killer, because you know the bad guy is going to get his justice," she said. "There is so little resolution in real life."

—AP wire story, September 4, 2006

INTRODUCTION

I would like to thank Craig Callen for inviting me to participate in this undertaking. The topic of this symposium has allowed me to indulge myself in addressing a number of pet complaints, ranging from the pernicious effects of Sherlock Holmes on the self-image of forensic scientists, to the questionable reliability of handwriting identification expertise, to the dangers of relying on fiction in the teaching of evidence. It is not often that one has the opportunity to deal with such a wide-ranging catalogue of peeves in a single piece, and still claim that they are central to the topic set out by the symposium organizer. We owe this to the special nature of the subject for this symposium: a novel about the actual investigation of a real criminal case by Sir Arthur Conan Doyle, who of course is best remembered as the writer who created Sherlock Holmes, a fictional character (for those of you who were unsure). What we are to examine is art imitating life imitating art imitating life.

The first "art" in that sentence is the art brought to bear by the novelist Julian Barnes in the creation of his 2005 novel *Arthur & George*.¹ It is this novel that our Master of the Revels, Professor Callen, has set as the immediate stimulus for our reflection on fiction, fact, evidence, inference, and law. This novel is a novel of a particular sort. It is based on an actual episode of crime and punishment, and is peopled dominantly with characters who had real historical existence. As such, it implies, at least initially, certain claims that place it somewhere between the purely fictional worlds of other kinds of novels, and the (rightly or wrongly warranted to be) factual worlds of non-fiction history writing. At the least, in a novel of this hybrid type, actual assertions of the details of historical facts in the world (as opposed to the mental life of the participants) are presumably supposed to be accurate (at least if they are important to the story), in the sense that they do not conflict with available sources of reliable evidence

¹ JULIAN BARNES, *ARTHUR & GEORGE* (Alfred A. Knopf 2006) (2005).).

concerning such facts.² In addition, other episodes involving encounters, reveries, and dialogues of the real characters should present a tenable interpretation of them as they are otherwise known to have existed.

So if all fictional art must imitate life in some broad sense, in order to be intelligible as fiction about worlds bearing on our own, such a work as *Arthur & George* promises to “imitate life” in a special way not applicable to other fiction. Thus, such a novel is a creative exercise under the special constraint of staying reasonably close to the historical record, and we will have occasion to examine how well Barnes performs under this constraint.

In order to know how well Barnes’s art imitates life in this special way, we will have to know something about the lives being imitated, and their relevant factual details and contexts.

The central characters to be examined are, of course, Arthur Conan Doyle and George Edalji. George was the elder son of an unlikely couple in Victorian rural Staffordshire. His father, Shapurji Edalji, was a Bombay-born Parsi convert to Christianity who became a minister of the Church of England,³ found himself essentially stranded in England after his ordination,⁴ and in 1874 married a twenty-nine-year-old Englishwoman named Charlotte Stoneham.⁵ Charlotte was the daughter of one of a whole family of ministers of the Church of England.⁶ As a wedding gift, one of her clergyman uncles arranged for the appointment of Shapurji to be his replacement as vicar of St. Mark’s parish in the village of Great Wyrley, Staffordshire, upon the uncle’s retirement.⁷ Shapurji became vicar in

² My friend Charlie Sullivan says I am very old-fashioned to think such a thing. There you have it. I am very old-fashioned.

³ Shapurji was born a Parsi in Bombay in 1841, converted to Christianity while attending a Christian school in Bombay, and was selected to be sent to England to train for the ministry, with the intent that he would return and minister to the Indians. GORDON WEAVER, *CONAN DOYLE AND THE PARSON’S SON: THE GEORGE EDALJI CASE* 21 (2006) (citing various letters of Charlotte Stoneham Edalji in the Home Office Records.) Incidentally, both “Shapurji” and “Edalji” are pronounced, after the Parsi manner, with the accent on the first syllable: Sha’ purji E’ dalji (not E dal’ ji).

⁴ After the Indian Mutiny of 1857, the attitude of the Church of England began to change regarding the advisability of native priests, and as a result Shapurji was forced to remain in England after his ordination, taking a variety of temporary posts in English parishes. *Id.* at 21–22.

⁵ *Id.*

⁶ Charlotte was the younger of the two unmarried daughters of the Reverend Thompson Stoneham, vicar of Ketley Parish in Shropshire. She was introduced to Shapurji through the good offices of a family friend, the Reverend G. A. Sandberg, vicar of St. Clement’s Parish in Textoth, Liverpool, for whom Shapurji acted as curate. Two of Charlotte’s uncles (brothers of her mother) were also Church of England clergy: the Reverend E. B. Compson, vicar of Hillesley parish in Gloucestershire, and, more importantly, the Reverend J. Compson, vicar of St. Mark’s Parish in Great Wyrley, Staffordshire. *Id.*

⁷ This was a huge wedding gift. The vicar of a parish was entitled to a share of the income that the parish derived through legally mandated tithes. Some parishes therefore were better “livings” than

December of 1875 when Charlotte was nearing the end of her first pregnancy.⁸ George was born in the vicarage of St. Mark's on January 22, 1876.⁹ The story of the Edalji family, from George's childhood to his conviction in connection with a series of nocturnal animal maimings in 1903, is in some ways almost literally incredible, and it is one of two main foci of Barnes's novel. Of necessity, the day-to-day details of the lives of George and his family, and the community in which they were embedded, are less well-known and well-documented than those of the much more famous Sir Arthur Conan Doyle. As might be expected, the relative paucity of information seems to have tempted Barnes to give himself wide latitude in portraying those lives and that community.¹⁰ Whether Barnes yielded too far to that temptation in ways that violate the special constraints of such a work, by failing to investigate and take into account the actual details of what is known, is a subject to which we shall return in detail below.

Conan Doyle next. The special popular allure of the Edalji case arises from the fact that Conan Doyle decided that George had been the victim of a miscarriage of justice, and set out to right it by investigating the "real facts" of the case. In essence, the creator of Sherlock Holmes set out to play Sherlock Holmes in real life. So if Conan Doyle's fictional Holmes himself in some way imitated

others (and might even generate sufficient income for the incumbent vicar to be able to hire curates to do all the work, and live in London). A village parish in a reasonably prosperous areas, like St. Mark's, while not so grand, was a comfortable, stable and prestigious position virtually guaranteed for life once appointed. (Barnes gives the yearly income at £265, plus the vicarage, BARNES, *supra* note 1, at 237, and while I have found no corroboration and one must be wary of Barnes in regard to such details, it seems reasonable. As the reader will see, taking into account the value of the vicarage as housing and the various other perquisites of the position, it is an income of roughly the same magnitude in the 1870s that Conan Doyle's parents and their rather more numerous family got by on in Edinburgh. See *infra* note 68).

Getting appointed was the problem, since there were many more ordained priests than parishes. In addition, when one vicar vacated a parish, the right to appoint the successor vicar was often held, not directly by church authorities, but by lay holders of the land that carried with it the right (called an "advowson") to nominate the vicar. In the case of St. Mark's it seems likely that the local bishop, Bishop Hobhouse of the Lichfield Diocese, of which Great Wyrley was a part, had the right of appointment sans advowson, at least in practice, for that is the best explanation for why Reverend Compson was able to arrange for Shapurji to succeed him. Whatever the arrangements, in the event Compson accomplished the appointment. *Id.* at 22–23.

⁸ *Id.* at 23.

⁹ *Id.* George's full name was George Ernest Thompson Edalji.

¹⁰ Barnes admitted as much: "The hardest parts to write were when I had to make the historical record about such facts as Doyle's schooling part of my own fiction. It was a lot easier with George, when there were so few facts to go on. It's much easier to imagine his whole inner life when all you've got is his book on railway law." Julian Barnes, *quoted in* David Robinson, *Ideal Holmes Exhibition*, SCOTSMAN, July 2, 2005, available at <http://living.scotsman.com/books.cfm?id=726232005>. Perhaps the attraction of this freedom made Mr. Barnes less eager than he should have been to investigate the realities of George's situation more thoroughly.

life (as I have already said all fiction in some sense must), now Conan Doyle was setting out to imitate the product of his literary art, Sherlock Holmes, in real life. So Conan Doyle's investigation was an example of life imitating art imitating life, and Barnes's novelistic account of it is, as I earlier said, art imitating life imitating art imitating life.

I. ART IMITATING LIFE? SHERLOCK HOLMES

We shall first consider Mr. Sherlock Holmes. Conan Doyle masterfully used a variety of narrative devices to create the durable illusion that this fictional character was real. That dream shadow of reality, unusually persistent in the fickle world of popular culture both contemporaneously and posthumously, may have contributed to the fact that the wider and more stable culture adopted Holmes, or the Holmesian ideal, as something to be striven for in real life. What did art present and the culture accept as imitating, at the least, a real possibility of life?

Like most red-blooded American boys of my generation (and a great number of similarly inclined American girls, including my own beloved wife), I first encountered, then devoured, the Holmes stories sometime between the end of childhood and the full flower of adolescence. I can just remember the delight with which I initially followed Holmes's exploits. Here was a hero to engage the heart of someone who fancied himself to have a mind. In fact, reflecting on it now with a greater breadth of knowledge about Holmes's place in Anglo-American literature and culture, I see Holmes as the first modern superhero, and the first great literary superhero since King Arthur or Robin Hood, but with a difference. Holmes was a superhero of the mind.¹¹

It was sometime near the dawning of adulthood when the enthusiasm began to pall. It began to seem to me that Holmes's very success in conclusions drawn from small details seemed to undermine him as a proper hero of the mind. Something began to nag at me, something to the effect that it was all too pat, that

¹¹ Holmes had his physical superiorities too. Remarkable visual acuity: He makes out a blue anchor tattooed on the back of a hand from across the street—A STUDY IN SCARLET 16. Unusually acute hearing: "But suddenly I was aware of that which his keener senses had already distinguished. A low stealthy sound came to my ears..." *Adventure of the Empty House* 569; "It was only when I had joined him that I heard what had alarmed his quicker senses." *The Adventure of Charles Augustus Milverton* 675. Power to see in the dark: "Holmes had remarkable powers, carefully cultivated, of seeing in the dark." *Id.* at 674. (No record of X-ray vision, but the last example comes close). All citations to pages in the stories are to A. CONAN DOYLE, THE COMPLETE SHERLOCK HOLMES (1938) [hereinafter COMPLETE HOLMES]. For these, and for many examples throughout the paper, I am indebted to Lesley Chenoweth Risinger, *A Turn for Observation and for Deduction: A Taxonomy of Sherlock Holmes's Reasoning Process (Really Just a List of Examples, Loosely Categorized, with Random Observations [2006])* (unpublished manuscript on file with author).

he was all too successful in drawing to inside straights. I put him aside, and did not return for decades.

What revived my interest in Holmes was my examination of the reliability of what we might call the traditional forensic identification sciences, such as handwriting identification, fingerprint identification, and so forth. When I turned my attention to these areas, I discovered that their practitioners often took their self-image, their ideals, and their mission, not from a flesh-and-blood human who had advanced the science of their enterprise in some empirically reliable way, but from an imaginary person—Sherlock Holmes.

Embracing Holmes in this way is perhaps understandable. Many of these areas of forensic practice and claimed expertise grew up in the same late-Victorian period in which Holmes held forth from the imaginary address of 221B Baker Street, and some credibility was bestowed upon them directly by Holmes himself, through references in the stories regarding applications of their claimed competences which were assumed to be valid.¹² So it is easy to see how those interested and involved in developing these emerging forensic specialties might view Holmes as a kind of avatar of their enterprise, and an ideal toward which to direct their efforts. This identification with Holmes had some good effects perhaps, but it also trapped these “forensic sciences” in a late-Victorian model of thought, which stunted their growth and limited their reliability, while at the same time providing an explanatory account of their claims to expertise which would be embraced by courts, and (given the conservative nature of the legal system and the judges within it) be retained by courts as their world view long after its proper expiration date.

In order to flesh out these theses, it is necessary to delve a little more deeply into the nature of the Holmesian ideal, and the ironies represented by the characteristics of its creator (or at any rate its dominant popularizer), Sir Arthur Conan Doyle.

¹² Handwriting identification—*THE SIGN OF THE FOUR* (1890); fingerprint identification (and the possibility of forged fingerprints)—*Adventure of the Norwood Builder* (1903); firearms analysis (gunshot residue)—*Adventure of the Reigate Squires* (1893), *The Adventure of the Dancing Men* (1903); airgun and bullet analysis—*The Adventure of the Empty House* (1903). A wide variety of “criminalistics” (footprints, tire tracks, etc.)—various stories, beginning with *A STUDY IN SCARLET* (1887). Recognition of the uses of Bertillon’s anthropometry for identification, and Holmes’s “enthusiastic admiration for the French savant”—*The Adventure of the Naval Treaty* (1893). Note: Holmes also seems to accept graphology (inference of character traits from handwriting)—*THE SIGN OF THE FOUR* (1890), *The Reigate Puzzle* (1893). Original publication dates for the stories taken from DICK RILEY & PAM MCALLISTER, *THE BEDSIDE COMPANION TO SHERLOCK HOLMES* (1998).

The Holmes presented in the Canon (as Sherlockians in deadpan refer to the complete Holmes stories) is the superman of 19th century positivism.¹³ He is embedded in a world in which certain knowledge of an event is in principle always attainable from later circumstances, if only a person gathers enough available knowledge, and can process what is known correctly. This is the fundamental position first given voice in the early 19th century by, ironically, the probability theorist Pierre-Simon Laplace¹⁴ (and still embraced by some). It was so congenial to 19th century materialist determinism (positivism) that it became the dominant lens of the scientifically minded for all phenomena, including human motivation. As Stephen Kern explains in the introduction to his recent book *A Cultural History of Causality*:

A materialist determinism applied to mental life peaked with the “mental physiologists,” such as Henry Maudsley, who, in 1874, argued that “lunatics and criminals are as much manufactured articles as are steam-engines and calico printing machines.” The French essayist and fictionist Paul Bourget elaborated such thinking in his novel *The Disciple* (1889), which ridiculed the extreme positivism of one arrogant character, who updated Pierre Laplace’s famous determinist hypothesis of 1814 in speculating, “If we could know correctly the relative position of all the phenomena which constitute the actual universe, we could, from the present, calculate with certainty equal to that of the astronomers the day, the hour and the minute when England will

¹³ The foundational theorist of 19th-century positivism was Auguste Comte (1798–1857), who was, among many other things, dedicated to the proposition that the methods of science could be extended to give sure predictive knowledge to human social actions. *See generally* THE POSITIVE PHILOSOPHY OF AUGUSTE COMTE FREELY TRANSLATED AND CONDENSED BY HARRIET MARTINEAU (1855); *see also* JOHN H. ZAMMITO, A NICE DERANGEMENT OF EPISTEMES: POST-POSITIVISM FROM QUINE TO LATOUR 6–8 (2004). Comte, like Marx, was an enemy of religion who rather paradoxically founded a sort of social religion. While Comte’s positions are looked upon as foundational to the social sciences, his views influenced popular views of science more than they influenced science itself. Ironically, he wrote at a time when the switch among natural scientists from certain knowledge goals to probabilistic goals was just beginning to take hold. *See* LARRY LAUDAN, SCIENCE AND VALUES 83–85 (1984).

¹⁴ “We may regard the present state of the universe as the effect of its past and the cause of its future. An intellect which at a certain moment would know all forces that set nature in motion, and all positions of all items of which nature is composed, if this intellect were also vast enough to submit these data to analysis, it would embrace in a single formula the movements of the greatest bodies of the universe and those of the tiniest atom; for such an intellect nothing would be uncertain and the future just like the past would be present before its eyes.” PIERRE-SIMON LAPLACE, ESSAI PHILOSOPHIQUE SUR LES PROBABILITÉS (1814).

evacuate India ...or when a criminal, still unborn, will murder his father.”¹⁵

What Bourget intended as caricature, Conan Doyle depicted as ideal in one of the early Holmes stories, “The Five Orange Pips”:

Sherlock Holmes closed his eyes and placed his elbows upon the arms of his chair, with his finger-tips together. “The ideal reasoner,” he remarked, “would, when he had once been shown a single fact in all its bearings, deduce from it not only all the chain of events which led up to it but also all the results which would follow from it. As Cuvier could correctly describe a whole animal by the contemplation of a single bone, so the observer who has thoroughly understood one link in a series of incidents should be able to accurately state all the other ones, both before and after. We have not yet grasped the results which the reason alone can attain to. Problems may be solved in the study which have baffled all those who have sought a solution by the aid of their senses. To carry the art, however, to its highest pitch, it is necessary that the reasoner should be able to utilize all the facts which have come to his knowledge, and this implies, as you will readily see, the possession of all knowledge, which, even in these days of free education and encyclopedias, is a somewhat rare accomplishment; it is not so impossible, however, that a man should possess all knowledge which is likely to be useful to him in his work, and this I have endeavored to do.”¹⁶

There are two ways to take this Laplacian theoretical statement. One is to accept it as some near-metaphysical statement of a state of knowledge unattainable in practice, then operationally disregard it when going about the pragmatic job of assembling and evaluating very imperfect “best available” information. The other is to accept the account, *à la* Holmes, as something surprisingly close at hand, at least for some kinds of knowledge, if we but attend. The first construction leaves actual knowledge to approach the unattainable ideal as near as claimants may establish by empirical evidence, accepting that it will often be not very close at all, given the limitations of the human condition. The second construction both accepts as likely the attainability of such knowledge, and accepts as strongly plausible those who make claims to it based on their

¹⁵ STEPHEN KERN, A CULTURAL HISTORY OF CAUSALITY 7 (2004).

¹⁶ *The Five Orange Pips* (1891), in CONAN DOYLE, COMPLETE HOLMES, *supra* note 11, at 244, 253.

personal magic over such observational data as they gather. The latter attitude we may refer to as pathological positivism. And it is clear from the quotation—and from many others in the Sherlockian Canon—that it is this form of pathological positivism that is represented by both Holmes’s attitudes and Holmes’s performances. Holmes is the Wizard of inference. He does not practice science, he practices magic.¹⁷

Holmes speaks of science, and when we are first introduced to him in *A Study in Scarlet* he appears to be doing something that would count as “doing science.” Watson is introduced to him by a mutual acquaintance, a young physician named Stamford, in the chemical laboratory at St. Bartholomew’s Hospital. “At the sound of our steps he glanced round and sprang to his feet with a cry of pleasure. ‘I’ve found it! I’ve found it,’ he shouted to my companion, running towards us with a test tube in his hand. ‘I have found a re-agent which is precipitated by haemoglobin, and by nothing else.’”¹⁸

Notice the curiously absolute assertion so typical of at least the popular 19th-century view of the power of science. “By haemoglobin, and by nothing else.” This could be backed up in principle either by “covering laws” from a well-warranted theory excluding reaction with any other compound, based upon extensive, formally-derived empirical data (no such is asserted, and indeed, no such existed), or by testing against all or virtually all the potential precipitants in the world (vanishingly unlikely). In reality, had the Holmes test been real, the most that could have been asserted was that the Holmes test was an improvement on existing tests, either because it was simpler to perform, more sensitive under more conditions, or more specific in that it did not respond to common agents which other tests were known to respond to, potentially yielding false positives.¹⁹

¹⁷ Now, I do not want to claim that this is the sole construction that can be put on the Holmes of the Canon, nor do I wish to say that Conan Doyle himself believed in this version of the Holmesian vision in any complete and stable sense. See OWEN DUDLEY EDWARDS, *THE QUEST FOR SHERLOCK HOLMES* 200–201 (1983). Indeed, as is well known, Conan Doyle grew tired of Holmes and killed him off in *The Adventure of the Final Problem* in 1893 so that he could concentrate on more congenial writing, only to be forced to bring him back eight years later as a result of both popular and financial pressure. In his autobiography Conan Doyle said, “If I have sometimes been inclined to weary of him it is because his character admits of no light or shade. He is a calculating machine, and anything you add to that simply weakens the effect.” ARTHUR CONAN DOYLE, *MEMORIES AND ADVENTURES* 103 (1924).

So it seems that for Conan Doyle, Holmes did not consistently represent an ideal, but often something just short of a parody. But, whatever Conan Doyle himself believed, I think the magician of science described in the text is the dominant message the culture received from Holmes, and, I believe, the dominant notion with which those with average, or even above average, familiarity associate him.

¹⁸ *A STUDY IN SCARLET* (1887), in CONAN DOYLE, *COMPLETE HOLMES*, *supra* note 11, at 6.

¹⁹ Putting aside the fact that Holmes vastly overstated the dilution of blood in the beaker of water he was using, Holmes is rather too hard on the existing tests when trying to make his test seem

But instead, Holmes declares that “it gives us an infallible test for bloodstains.” Note the word “infallible,” a word rarely invoked in any branch of “real” science, even at the end of the 19th century.²⁰

After this first foray, however unconvincing, into the practice of science in its more modern sense, Holmes never again practices science,²¹ nor does he apply

like a great advance. The guaiacum test appears to have been rather more sensitive and certain than he made it out to be. See ALFRED SWAIN TAYLOR, *A MANUAL OF MEDICAL JURISPRUDENCE* 303–304 (John J. Reese ed., 8th American ed. from 10th London ed. 1880). Professor Tidy has more reservations about the guaiacum test, but he points out that in 1871 Dr. Sorby had developed and published the spectroscopic properties of blood in various forms, which Tidy took to be such a definitive test that plates of those spectra constituted the frontispiece to his treatise. See 1 CHARLES MEYMOTT TIDY, *LEGAL MEDICINE* 192–93 and frontispiece (1882). Holmes (well, Conan Doyle, actually) had apparently overlooked this. (A similar point might be made in regard to Holmes’s “experiment” reported to Watson by Stamford just prior to Watson meeting Holmes, where Holmes had been observed by Stamford “beating the subjects in the dissecting room with a stick...to verify how far bruises may be produced after death.” Those studies had already been done by Sir R. Christianson and others, see TAYLOR, *supra* at 264–65, and Holmes’s replication was unlikely to produce anything of value, since the ability to induce bruising ceased after about two hours, and Holmes was unlikely to find any subjects quite so fresh in the dissecting room.)

²⁰ See *supra* note 13.

²¹ A similar observation was made by the eminent forensic pathologist Sir Sidney Smith in his autobiography:

[Holmes’s] addiction to chemical science is, then, emphasized. Yet in not one of the detailed stories does he use his laboratory skill; in not one of these cases does he make a chemical test. His infallible test for bloodstains—discovered at the beginning of his career—was never called into action. All his cases were solved by quite other methods. Conan Doyle seems, indeed, curiously casual about scientific tests.

SIR SIDNEY SMITH, *MOSTLY MURDER* 31 (1959). *Accord*, Judge Richard A. Posner: “Actually, Holmes’s methods are not scientific or logical...He employs none of the scientific tools of criminal investigation that were available in his time....” Richard A. Posner, *CSI Baker Street*, *THE NEW REPUBLIC*, Oct. 11, 1904 (reviewing *THE NEW ANNOTATED SHERLOCK HOLMES: THE COMPLETE STORIES* [Leslie S. Klinger ed., 2004]). (My attention was called to this review by Professor Callen after I had finished this article. I must say that, while I have some minor reservations, I have never before been so close to agreement with Judge Posner.)

Sometimes Conan Doyle implies that Holmes is doing science, but clearly he is not, even in a 19th-century technical sense. One example will do for all. In the very last Holmes story Watson recounts the following :

Sherlock Holmes had been bending for a long time over a low-power microscope. Now he straightened himself up and looked round at me in triumph.

“It is glue, Watson,” said he. “Unquestionably it is glue. Have a look at those scattered objects in the field.”

I stooped to the eyepiece and focused my vision.

“Those hairs are threads from a tweed coat. The irregular gray masses are dust. There are epithelial scales on the left. Those brown blobs in the centre are undoubtedly glue.”

“Well,” I said, laughing, “I am prepared to take your word for it. Does anything depend upon it?”

science in this sense to the solution of any problem in any case.²² Instead, he practices what he calls “the Science of Deduction.”²³ According to this branch of “science,” one observes details of the everyday world, details available to, but unobserved by, others. One then brings to bear on those details a vast store of knowledge about the world which renders the implications of those details clear. One then has certain knowledge. Consider this exchange between Holmes and Watson:

“You appeared to be surprised when I told you, on our first meeting, that you had come from Afghanistan.”

“It is a very fine demonstration,” he answered. “In the St. Pancras case you may remember that a cap was found beside the dead policeman. The accused man denies that it is his. But he is a picture framer who habitually handles glue.”

“Is it one of your cases?”

“No; my friend Merivale, of the Yard, asked me to look into the case. Since I ran down the coiner by the zinc and copper fillings in the seam of his cuff they have begun to realize the importance of the microscope.”

The Adventure of Shoscombe Old Place (1927), CONAN DOYLE, COMPLETE HOLMES, *supra* note 11, at 1299. Watson is prepared to take Holmes’s word for it. But why should we believe that Holmes can accurately characterize those blobs as “unquestionably” glue by sight in this incredibly non-blind exercise, and what has it to do with science? And this from the Holmes who said “It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.” *A Scandal in Bohemia* (1891), CONAN DOYLE, COMPLETE HOLMES, *supra* note 11, at 179.

²² See note 21 *supra*. Considering this, the Royal Society of Chemistry seems to have gone a bit far when, in 2002, it bestowed an Extraordinary Honorary Fellowship on Holmes, calling him “the first detective to exploit chemical science as a means of detection.” Wikipedia entry on Sherlock Holmes, http://en.wikipedia.org/wiki/Sherlock_Holmes. My objection is not that Holmes is fictional, but that he never “exploited chemical science as a means of detection,” anywhere in the Canon.

²³ See “The Science of Deduction,” Chapter Two in *A STUDY IN SCARLET* (1887), CONAN DOYLE, COMPLETE HOLMES, *supra* note 11, at 8. At page 13 Holmes then refers to “the science of deduction and analysis.” This passage also contains Holmes’s earliest Laplacian assertion: “From a drop of water ... a logician could infer the possibility of an Atlantic or a Niagara without having seen or heard of one or the other. So all life is a great chain, the nature of which is known whenever we are shown a single link.” Other Laplacian statements occur later, particularly the famous passage in *The Five Orange Pips* set out in the text *supra* at note 16. Sherlockians have taken the trouble to discover that the first part of this is a virtual quotation from an 1851 work by Schopenhauer: “Just as a botanist recognizes the whole plant from one leaf and Cuvier constructed the entire animal from one bone, so from one characteristic action of a man we can arrive at a correct knowledge of his character.” II *Parerga and Paralipomena* § 118). See Wikipedia entry for Sherlock Holmes, *supra* note 22. Maybe that’s where all that “air of a military man” stuff came from, in the stories and in Conan Doyle’s own attitudes.

Conan Doyle apparently thought this “Science of Deduction” so important that he used the phrase again as the title to Chapter One of *THE SIGN OF THE FOUR*. *Id.* at 91. (Note: I prefer the original title used in the Lippencott’s MONTHLY MAGAZINE serialization, “The Sign of the Four,” to the later title used in the first book publication, “The Sign of Four,” since the former phrase is used in the text of the story throughout in all publications.)

“You were told, no doubt.”

“Nothing of the sort. I *knew* you came from Afghanistan. From long habit the train of thoughts ran so swiftly through my mind that I arrived at the conclusion without being conscious of intermediate steps. There were such steps, however. The train of reasoning ran, ‘Here is a gentleman of a medical type, but with the air of a military man. Clearly an army doctor, then. He just came from the tropics, for his face is dark, and that is not the natural tint of his skin, for his wrists are fair. He has undergone hardship and sickness, as his haggard face says clearly. His left arm has been injured. He holds it in a stiff unnatural manner. Where in the tropics could an English army doctor have seen much hardship and got his arm wounded? Clearly in Afghanistan.’ The whole train of thought did not occupy a second.”²⁴

One must accept this as a possible and desirable performance for a human being, at least one of perhaps rare but not impossible talents, in order to become a fan of Holmes. If one rejects it, one rejects Holmes. But it is actually ludicrous. “Here is a gentleman of a medical type,” indeed. What distinguished “a medical type”? Has Holmes left out diagnostic details, such as the stain of silver nitrate on Watson’s thumb to which Holmes refers in a later story? That in itself would seem to be an inappropriate lapse. No, it seems we are to believe that Holmes is attuned to a congeries of subliminal details which inevitably indicate “a medical type.” But Watson has, after all, been away from any actual practice of medicine for an extended period (the period from receiving his wound at the battle of Maiwand (July 27–28, 1880), a period of at least five or six months, or more, given his descriptions). And the emaciation resulting from Watson’s bout of enteric fever would seem likely to have disguised most indications of whatever is meant by a “medical type,” a characterization which in itself would seem to bring with it a high risk of false positives if it came from a lesser man (that is, anyone real). Was Holmes overvaluing the fact that they were introduced on the premises of St. Bart’s by a physician whom he knew?

Holmes’s next point is that Watson had “the air of a military man.” Did a period of training as a military surgeon at Netley and two years’ service as an assistant surgeon with the Fifth Northumberland Fusiliers²⁵ stamp one’s air as “military” so unmistakably even in Watson’s emaciated state? Finally, Watson’s deep facial tan indicates “he had just come from the tropics,” the way he holds his arm indicates some combat injury, and, *voilà*, Afghanistan. Here, even some Sherlockians have pointed out that Watson could have well come from South

²⁴ A STUDY IN SCARLET, in CONAN DOYLE, COMPLETE HOLMES, *supra* note 11, at 14–15.

²⁵ *Id.* at 3.

Africa, where there was available sun and colonial combat.²⁶ But why a combat wound instead of some other injury? Watson could easily have been a botanist friend of young Stamford's from public school, who had gone out to the colonies to collect specimens, hurt his arm falling off his horse, and then come down with enteric (it did not restrict itself to the Army). No wonder Gene Wilder's character Sigerson "Siggy" Holmes in the 1975 movie *THE ADVENTURE OF SHERLOCK HOLMES' SMARTER BROTHER* refers to his brother as "not Sherlock, but 'Sheer Luck.'"²⁷

Holmes probably should have been wrong, but he wasn't. In fact, there are many similar times when he probably should be wrong and he isn't. The fact that Conan Doyle, over the course of Holmes's career in fiction, made Holmes on occasion wrong, is only a cunning fig leaf covering the underlying fantasy—a fantasy of virtually certain knowledge coming to those who want it badly enough and have the talent to conjure it magically out of materials that leave lesser mortals only with uncertainty and error.

The real question, to me, is not what Holmes represents, but why his way of viewing the enterprise of science was so wildly popular, especially since it was becoming outmoded at the very time Holmes was accepted as the cultural icon representing its tenability, nay, desirability.

My notions are twofold. First, there is always something of a lag between how science accounts for itself at the edge of current practice and theory, and the popular notion of science, a lag that can be decades long.²⁸ More importantly, the Holmesian view appealed to late Victorian and Edwardian middle-class hopes and ideals: progress, individualism, and the elimination, through the use of expertise, of any uncomfortable lack of knowledge. The same attitudes and aspirations concerning expertism that Holmes represents, were, in a somewhat dilute form, embraced by the Progressive movement in general, and lie behind such mundane phenomena as the Interstate Commerce Commission.

Perhaps those who found such attitudes most appealing were the people attempting to realize the Holmesian ideal in the actual practice of Holmes's own

²⁶ Samuel F. Howard, *More About Maiwand*, quoted in 1 *THE ANNOTATED SHERLOCK HOLMES* 162 (William S. Barrington-Gould ed., 1967). The battle of Maiwand took place on July 27, 1880, placing the date of the first meeting between Holmes and Watson in late 1880 or early 1881.

²⁷ This was Gene Wilder's first film as writer and director as well as star. LEONARD MALTIN'S 2007 MOVIE GUIDE 8. "Sigerson" was of course the Norwegian surname Holmes assumed for part of the time he was in hiding after his apparent death at Reichenbach Falls. *The Adventure of the Empty House* (1903), in CONAN DOYLE, *COMPLETE HOLMES*, *supra* note 11, at 565.

²⁸ "...a good part of the explanation [for why philosophy of science is not of more help to scientists] must be that science is a moving target, that the standards for successful scientific theories shift with time. It is not just our view of the universe that shifts, but our view of what kinds of views we should have or can have." STEVEN WEINBERG, *FACING UP: SCIENCE AND ITS CULTURAL ADVERSARIES* 84 (2001).

field, criminal investigation—i.e., the practitioners of the budding branches of forensic identification “science” previously referred to.

I am here using the term “identification” in two separable but intimately linked ways. The first notion of identification deals with the search for characteristics of a thing that are stable over time, and that are sufficiently particularized, such that one can record them at time T , and by observing them, be sure that the thing observed at time $T+1$ is the same thing that was observed at time T . The second notion deals with the ability to determine characteristics of an object which are stable over time and which leave residues in their passage through the world (marks, traces), residues that are somehow encoded with information from the residue-causing object, such that one can be confident in attributing these “tagged” residues to the particular object. Bertillon’s system of corporeal measurements for humans served the first purpose, but not the second.²⁹ Handwriting identification, when and if accurate, would serve the second purpose, but rarely if ever the first. Some phenomena, such as fingerprints or DNA, may under some conditions serve both purposes.

There is little doubt that the first variety of the problem of identification applied to humans had reached crisis proportions in the late 19th century.³⁰ The problem had existed to some extent in earlier ages of smaller and less mobile populations, but since most people in those times were largely embedded in social circumstances where they were familiarly known, it was perhaps marginal and of tolerable proportions.³¹ But the rapid growth of population and massive shift from rural to more anonymous urban settings exacerbated the problem of identification as applied to those charged with crime,³² especially in an age when capital punishment had been reduced (and branding was falling out of fashion), and recidivism was become increasingly recognized as a proper basis for enhanced sentencing. In England, the dimensions of the problem were dramatically brought before the public by the notorious “Tichborne Claimant” case, with the attendant lingering inability to put to rest once and for all whether the person claiming the Tichborne baronetcy was in fact Roger Tichborne, or Arthur Orton, the son of a Cockney butcher.³³ It is not surprising that this

²⁹ SIMON COLE, SUSPECT IDENTITIES: A HISTORY OF FINGERPRINTING AND CRIMINAL IDENTIFICATION 32–59 (2001).

³⁰ *Id.* at 6–18.

³¹ *Id.* at 8–10.

³² *Id.*

³³ *Id.* at 13. Roger Tichborne, heir to the Tichborne baronetcy and fortune, disappeared while traveling in South America in April of 1854. He was said to have left Rio de Janeiro on the *Bella*, a ship lost with all hands. A man going under the name of Thomas Castro and claiming to be Tichborne surfaced in 1865 in Australia (where he was married, in debt, startlingly fat, and operating a small butcher’s stall in Wagga Wagga). The “Claimant” went to England and was “recognized” (in both senses) by Roger’s mother. Other members of the family rejected him.

problem of identification was a problem to which many turned their “scientific” attention.

It was, however, the second branch of the problem of identification, the tagged residue problem, which had generated the oldest claims to forensic expertise, and still presented some of the most important problems in the late 19th and early 20th centuries.

The oldest forensic expertise, at least in criminal cases, was that of various witnesses (physicians, surgeons, apothecaries, midwives) whom we would today lump under the heading of “medical” witnesses.³⁴ A moment’s reflection will show that, while most of this claimed expertise in the criminal setting (however reliable or unreliable it may have been at any given time) related to diagnosis through signs and symptoms, usually on the issue of the cause of death in murder trials, some of it in the forensic setting would be “tagged residue” evidence, because occasionally what was of most importance was the characteristics of causal agencies. Wounds of a certain type in the body imply certain types of encounters with weapons of a certain type, etc.³⁵

Here you will note that there is no claim to perfect particularization in these early cases. The wounds indicate categories or sets of things, and anything in the set is consistent with the wound. Obviously, for forensic purposes, the smaller you can make the set, the more useful the information.

The first branch of expertise to claim that it could trace a source to a set with a single member (perfect individualization) was handwriting identification,

Civil litigation over his claim was begun and legal maneuvering of various sorts dragged on until May 1871, when the trial began. Then the trial dragged on until March of 1872, making it one of the longest civil jury trials on record up to that time. The Claimant lost and was promptly indicted for perjury and forgery in April 1872. Trial began April 23, 1873, and ended with a conviction on Feb. 28, 1874, making it the longest criminal trial in English history up to that time. After the trial many of the Claimant’s supporters continued to believe that he was in fact Tichborne. The best book-length treatment of the affair remains DOUGLAS WOODRUFF, *THE TICHBORNE CLAIMANT: A VICTORIAN MYSTERY* (1957). Handwriting identification testimony, particularly that of Charles Chabot, the pioneer of the English professional handwriting identification fraternity, figured prominently against the Claimant, which may account for why Chabot was considered important enough to deserve an entry in the Dictionary of National Biography.

³⁴ See D. Michael Risinger, with Michael J. Saks, *Science and Nonscience in the Courts: Daubert Meets Handwriting Identification Expertise*, 82 IOWA L. REV. 21, 23 (1996) and authorities there cited.

³⁵ If you go to Oldbaileyonline.org and enter the search term “surgeon” in the search engine of this marvelous electronic version of the Old Bailey Sessions Papers (surgeons appear to have testified much more commonly in ordinary criminal trials than any other “medical” professional), and read a hundred or so random examples of surgeon testimony, you will see that the vast bulk of such testimony was “cause of death” testimony. Examples of testimony giving opinions as to the characteristics of weapons which inflicted particular wounds include *R. v. Elizabeth Symbole*, ref. # t16950220-18 (1695); *R. v. Jane Griffen*, t17200115-35 (1720); and *R. v. Frederick Wilkie*, t17711023-41 (1770).

which made its way into English courts in the late 18th century, and was not fully accepted as a basis for testimony until the middle of the 19th century. I have written at length on the history of handwriting identification elsewhere, and do not propose to repeat the story here.³⁶ Suffice it to say the following:

1. The process by which such experts determined the author of handwriting was not based on any defensible notion of science.³⁷ At most it was a semi-standardized process of analysis coupled with a skill claim that this process led human practitioners to become reliable decoders of the hypothesized unique signal that was claimed (but not empirically shown) to be present.³⁸ No empirical testing to establish the reliability of such practitioners either under controlled conditions or, more importantly, under the often non-blind conditions of forensic work, was ever undertaken (and precious little has been undertaken to this day).³⁹
2. The characteristics of the model established by handwriting identification provided the model for all the early forensic identification “sciences,” including fingerprints, firearms identification, tool mark identification, visual hair and fiber identification, etc., and even for later exercises when people should have known better, like bite mark identification. The main characteristics of this model are: the reliance on human interpreters whose accuracy is unvalidated; the weakness of the empirical basis of other foundational claims; a stunted taxonomy dividing between “class characteristics” and “individual characteristics”⁴⁰; and the reliance on the claimed reality of a near-metaphysical kind of uniqueness generally foreign to real

³⁶ D. Michael Risinger, Mark P. Denbeaux, & Michael J. Saks, *Exorcism of Ignorance as a Proxy for Rational Knowledge: The Lessons of Handwriting Identification* “Expertise,” 137 U. PA. L. REV. 731, 751–71 (1989); Risinger with Saks, *supra* note 34, at 22–27; D. Michael Risinger, *Handwriting Identification*, ch. 35 in 4 DAVID L. FAIGMAN, DAVID H. KAYE, MICHAEL J. SAKS & JOSEPH SANDERS, *MODERN SCIENTIFIC EVIDENCE* 277, 279–83 (2000, 2005) [hereinafter Risinger, *Handwriting Identification*]. The other essential modern source examining the history of handwriting expertise is Jennifer L. Mnookin, *Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability*, 87 U. VA. L. REV. 1723 (2001).

³⁷ Risinger, *Handwriting Identification*, *supra* note 37, at 330–32.

³⁸ *Id.* at 330–43.

³⁹ *Id.* at 343–86.

⁴⁰ See John I. Thornton and Joseph L. Peterson, *The General Assumptions and Rationale of Forensic Identification*, ch. 31 in 4 FAIGMAN ET AL., *supra* note 36, at 7–11.

science.⁴¹ In this model, the forensic scientist is a shaman, working through the ritually prescribed analysis, which enables discovery of ultimate truth—the establishment of source identity “to the exclusion of all other possible sources.” In this model, the theory can never be at fault. If a mistake is discovered, it is entirely attributable to bad individual practice—an insufficiently powerful shaman. This is still the model put forth by the FBI to defend its “ACE-V” fingerprint identification method as both “scientific”⁴² and “in theory” infallible.⁴³ It was also the model of “scientific” investigation promoted by the Sherlock Holmes stories.

It is my contention that the Holmes stories contributed to solidifying this model as the proper respectable model for forensic science among pioneer developers of forensic science, and to selling judges on the view that it was proper to regard such practice as “scientific,” and therefore sufficiently reliable for use by the courts as long as there was a respectable group who stood behind its “scientific reliability.”

⁴¹ *Id.* at 11–12. See also Simon Cole, *Is Fingerprint Identification Valid? Rhetorics of Reliability in Fingerprint Proponents’ Discourse*, 28 LAW & POL’Y 109, 116–23 (2006).

⁴² See Mark P. Denbeaux & D. Michael Risinger, *Kumho Tire and Expert Reliability: How the Question You Ask Gives the Answer You Get*, 34 SETON HALL L. REV. 15, 70–71 n.15. As we said there:

[What is] now billed as the “ACE-V” methodology [is] a “methodology” so lacking in methodological detail as to be, upon reflection, nearly hilarious. The A stands for “assess,” that is, look at a latent print and decide whether it is too smudged or small even to try to analyze it, and whether any apparent detail ought to be ignored because it represents a “double tapped” or overlapping print. The C stands for “comparison,” and that means, well, the examiner is to compare the known and the latent print, though there are apparently no fixed standards for performing such a comparison. Rather, it is based “on the training and experience of the examiner.” The E stands for “evaluation,” which means that the examiner decides if the two are similar enough to declare that they are a match, without reference to any particular notion of minimum points of correspondence, and V stands for “validation,” which is a non-blind checking of the first examiner’s work by a second examiner. This is the “scientific technique” which the government in *Llera Plaza* argued “met all four of the *Daubert* guidelines.” *Llera Plaza II*, 188 F. Supp. 2d at 560. Judge Pollak found ACE-V not to be “scientific,” but appears to have taken it seriously as a “methodology.” *Id.* at 561–69.

⁴³ See Simon Cole, *More than Zero: Accounting for Error in Latent Fingerprint Identification*, 95 J. CRIM. L. & CRIMINOLOGY 985, 1034–54 (2005).

It turns out that I am not totally alone in suspecting this. Consider the following, from Ronald Thomas's 1999 book *Detective Fiction and the Rise of Forensic Science*:

Detective fiction as a form is generally recognized as an invention of the nineteenth century, coincident with the development of the modern police force and the creation of the modern bureaucratic state. This context was crucial in shaping the way detective fiction developed and in determining the kind of cultural work it performed for societies that were increasingly preoccupied with systematically bringing under control the potentially anarchic forces unleashed by democratic reform, urban growth, national expansion and imperial engagement....While the narratives of writers like Poe, Dickens, and Conan Doyle often reflected and popularized contemporary scientific theories of law enforcement, the detective stories they wrote sometimes anticipated actual procedures in scientific police practice by offering fantasies of social control and knowledge before the actual technology to achieve either was available. At times, these texts seemed to call the technologies into being. It became commonplace for early criminologists to attribute inspiration for their theories to the methods of a Sherlock Holmes or an Auguste Dupin. In developing what he called "a new police science" which focused on the examination of microscopic particles on the criminal body, the pioneering French forensic scientist Edmond Locard went so far as to instruct his colleagues and students "to read over such stories as 'A Study in Scarlet' and 'The Sign of the Four' in order to understand the basis of the principles he was recommending."⁴⁴

And Albert S. Osborn, the conceded father of modern handwriting identification methods, included a critical bibliography in his 1922 book *The Problem of Proof*. In it you will find an entry for: "Conan Doyle, Arthur, Sherlock Holmes stories, London, Famous tales emphasizing the development of inference from intelligent observation." Examples could be multiplied.⁴⁵

⁴⁴ RONALD R. THOMAS, *DETECTIVE FICTION AND THE RISE OF FORENSIC SCIENCE* 5 (1999).

⁴⁵ Occasionally it is Holmes's Holmes-like successors who are invoked. See, e.g., the jaw-dropping invocation of Agatha Christie's Hercule Poirot, embracing a quotation describing Poirot's explanation of his conclusions (from AGATHA CHRISTIE, *THE CLOCKS* [1963]) as an example of the certainty yielded by offender profiling, set out in this field's leading textbook, ROBERT K. RESSLER, ANN W. BURGESS & JOHN E. DOUGLAS, *SEXUAL HOMICIDE: PATTERNS AND MOTIVES* 135 (1988). This passage is discussed in D. Michael Risinger & Jeffrey C. Loop, *Three*

Not only were forensic science practitioners influenced by the Holmesian vision, so, I believe, were courts—but here I must be a bit more circumspect. Courts are perhaps less likely than “forensic scientists” to cite fictional characters as providing justification for their rulings. Nevertheless, there are actually numerous reported opinions in which the image of Sherlock Holmes is invoked, usually when investigators have either fallen far short, or when Holmes’s special gifts were not required.⁴⁶ But I do not claim that much should be made of that. What I do claim is that the wretched record of the courts in examining the tenability of various claims of the forensic identification “sciences” evidences an adoption of the Holmesian view. This 19th century view continues to exercise a remarkable hold, not only over the courts, but over much of popular culture, vide television shows like the various *CSI*’s and *Profiler*.⁴⁷ We seem to want to believe in shamans who can exorcise the lack of perfect knowledge we cannot bear. Perhaps popular culture is hopeless, but it is, after all, now the 21st century, and so perhaps it is time the courts grew up.

II. LIFE IMITATING ART: CONAN DOYLE

I have tried to elucidate the main thrust of the Holmesian view, what I (and others) take him to stand for culturally, though of course in such a large corpus of prose, written, it must be said, with great panache but without much care as to consistency of detail, there are plenty of individual passages that show Holmes for fleeting moments in other lights. If the fictional Holmes presents a few problems of personality consistency, his creator presents both more and fewer. There is a large amount of material documenting much of Conan Doyle’s life, and (besides whatever evidence might reliably be drawn from his fiction) a mountain of his non-fiction writings and memoirs, as well as those of people who knew him, to provide a tolerably good record on which to erect a reconstruction of the man.

I am not going to attempt to pass myself off as a true expert, whatever that might mean. There are somewhere in the neighborhood of eighteen more or less full-scale biographies, including Conan Doyle’s own rather anecdotal 1924

Card Monte, Monty Hall, Modus Operandi and Offender Profiling: Some Lessons of Modern Cognitive Science for the Law of Evidence, 24 CARDOZO L. REV. 193, 238–39 (2002).

⁴⁶ See, e.g., *People v. Buckley*, 87 N.Y.S. 191 (2nd Dep’t 1904); *State v. Claybaugh*, 122 S. W. 2d 319 (Kansas City Ct. App., Mo. 1909); *State v. Rose*, 106 N.E. 50 (Ohio 1914).

⁴⁷ Various popular television shows have been based on the fictional adventures of “Crime Scene Investigators” (CSI’s) (*CSI*; *CSI Miami*; *CSI New York*), which are vaguely related to the functions of criminalists whose specialty is “crime scene” under the accreditation standards of the American Society of Crime Laboratory Directors Standard 2.11. One should note that the Emmy-winning original *CSI* received a nomination for the Saturn Award for Science Fiction in 2004. There have also been shows based on fantasy versions of the function filled by offender profilers (*Profiler: Mind over Murder* and others). For a more sober assessment of the empirical evidence concerning the abilities of offender profilers, see generally Risinger & Loop, *supra* note 45, 228–70.

autobiography, *Memories and Adventures*.⁴⁸ The first fourteen of these biographies are the subject of scholarly summaries and evaluations in *The Quest for Sir Arthur Conan Doyle*, edited by John L. Lellenberg in 1987.⁴⁹ I have relied heavily on that book, and have read in addition *Memories and Adventures*; the first “authorized” biography, by the American expatriate mystery writer John Dickson Carr, *The Life of Sir Arthur Conan Doyle*⁵⁰; Pierre Norden’s biography, *Conan Doyle*⁵¹ (that work by an author with access to the Conan Doyle family papers⁵²); and the pioneering research of Owen Dudley Edwards on Conan Doyle’s early years in Edinburgh, *The Quest for Sherlock Holmes*.⁵³ I have also read the two most recent biographies, *The Doctor and the Detective* by Martin Booth⁵⁴ and *Teller of Tales* by Daniel Stashower.⁵⁵ What follows are my own reflections upon Conan Doyle stimulated by this and other reading.

Even more than most of us, Conan Doyle appears to have contained multitudes, a condition of which, like most of us, he was in some ways aware,⁵⁶ and in some ways perhaps not. It is not surprising, given his background. His life through early adulthood had more points of uniqueness than most. He was born in Edinburgh in an apartment in a shabby genteel area.⁵⁷ His father, Charles

⁴⁸ CONAN DOYLE, *supra* note 17.

⁴⁹ THE QUEST FOR SIR ARTHUR CONAN DOYLE (John L. Lellenberg ed., 1987).

⁵⁰ JOHN DICKSON CARR, THE LIFE OF SIR ARTHUR CONAN DOYLE (1949).

⁵¹ PIERRE NORDEN, CONAN DOYLE (1966), a somewhat condensed translation of a 1964 original in French.

⁵² Because of family disputes over ownership and control, Conan Doyle’s private papers became almost totally unavailable to researchers in the 1960s. MARTIN BOOTH, THE DOCTOR AND THE DETECTIVE: A BIOGRAPHY OF SIR ARTHUR CONAN DOYLE xii (1997). The impasse was finally broken, and the bulk of the papers were sold at auction in 2004. See *Christie’s 2004 Sale: The Lost Papers of Sir Arthur Conan Doyle*, at <http://members.aol.com/shbest/ref/200405christies.htm>. Unfortunately, this means that the papers were dispersed, and although institutional purchasers were presumably well represented, the dispersal and subsequent necessity of cataloguing, plus the losses to private collectors, will certainly make Conan Doyle research a challenge in the future, though less of a challenge than when the papers were all locked in a solicitor’s office for forty years.

⁵³ EDWARDS, *supra* note 17.

⁵⁴ BOOTH, *supra* note 52.

⁵⁵ DANIEL STASHOWER, TELLER OF TALES: THE LIFE OF ARTHUR CONAN DOYLE (1999).

⁵⁶ On his awareness of his “multiplex personality” (his words), see CONAN DOYLE, *supra* note 17, at 94–95.

⁵⁷ BOOTH, *supra* note 52, at 7–8. The address was 11 Picardy Place, hard by the Catholic cathedral. The DoYLES lived at that address from 1858 until late 1861. EDWARDS, *supra* note 17, at 46. His birth-given name was Arthur Ignatius Conan Doyle, the Conan for his prosperous great uncle on his father’s side, Michael Conan, who was his godfather. As Martin Booth recounts: “For all his adult life, Arthur was known as Arthur Conan Doyle, but he neither legally nor formally established a double surname. In official lists, such as the DICTIONARY OF NATIONAL BIOGRAPHY, he is most often listed under D, but in many other references he is frequently listed under C. Arthur sometimes signed himself A. C. Doyle, so what seems most likely is that, as he

Doyle, had grown up in a very prosperous household. Conan Doyle's paternal grandfather, John Doyle, was an Irish Catholic artist who moved to London in 1817 when he was twenty, and later became the leading political cartoonist of late Hanoverian and Early Victorian England⁵⁸ (generating a large income as a result).⁵⁹ Unfortunately, he "lived up to" his income, and left very little to his children besides their educations.⁶⁰ His wife, Marianna Conan, whom he married in 1820, was also an Irish Catholic⁶¹ (though she apparently insisted on her historically noble Breton background). She bore John seven children, two girls and five boys.⁶² Charles, born in 1832, was the youngest. His childhood was marked by sorrow and loss. When he was seven his mother died. When he was eleven his fourteen-year-old brother Frank died. When he was twelve, his thirteen-year-old sister Adelaide died.⁶³ His older siblings seem to have escaped the crippling impact of these deaths, perhaps because of their more advanced ages. His three brothers all grew up to be successful and famous in their spheres.⁶⁴ Charles grew up to be devout, gentle, courteous, unmotivated, and drawn to drink. A position as assistant to the Surveyor of Works in Her Majesty's Office of Works in Edinburgh was obtained for him in 1849. It was thought to have prospects for advancement. Here Charles stayed for the rest of his working life.

When Charles arrived in Edinburgh, he found lodgings in the home of Catherine Foley née Pack, an Irish Catholic widow of noble antecedents now down on her luck. Mrs. Foley had a daughter, Mary, who was twelve when Charles moved in. Mary was later sent away to France for a proper Catholic

reached adulthood, he took to using his third given name, partly to perpetuate the family name, partly out of deference to his uncle, and partly to give himself a more imposing name. Plain Arthur Doyle hardly had a ring to it." *Id.* I have referred to him throughout as "Conan Doyle" in deference both to common usage and to what I believe he would have preferred.

⁵⁸ Doyle's *Political Sketches by HB* series, both as individual prints published by Thomas McClean and as a feature of the *Times* of London, ran from 1829 until 1849. See DICTIONARY OF NATIONAL BIOGRAPHY entry for John Doyle.

⁵⁹ BOOTH, *supra* note 52, at 2–3.

⁶⁰ *Id.* at 4.

⁶¹ *Id.* at 3. See also <http://www.theweald.org> genealogy entries for both John Doyle, Marianna Conan, and all of their children.

⁶² BOOTH, *supra* note 52, at 4. The children were Annette (b. 1821), James (b. 1822), Richard (b. 1824), Henry (b. 1827), Frank (b. 1829), Adelaide (b. 1831) and Charles (b. 1832). <http://www.theweald.org>.

⁶³ <http://www.theweald.org>. Both Frank and Adelaide succumbed to disease, Frank to "typhoid" and Adelaide to "consumption." BOOTH, *supra* note 52, at 4.

⁶⁴ James became a scholar and authority on genealogy and heraldry who published a number of important works, including *The Official Baronage of England* (1886). Richard, a leading light in the early history of *Punch*, was one of the preeminent illustrators of the 19th century. Henry was a portrait painter, a friend of Cardinal Newman, a leading figure in the Oxford Movement, and later Director of the National Gallery of Ireland. BOOTH, *supra* note 52, at 4–5.

education.⁶⁵ She returned when she was around seventeen, and a year later she married Charles.

The couple wasted no time in starting a family. Anne Francis, known as Annette, was born in 1856. Catherine was born in 1858, but survived less than a year. Arthur Ignatius Conan was born on May 22, 1859, in a flat at 11 Picardy Place. Not long afterward, the family moved to another apartment at Tower Bank House in Portobello, where Arthur grew up.

What is often overlooked in Conan Doyle biographies is the timing of births in the Doyle household. Arthur was born in 1859. Another child, Mary, was born in 1861, but died soon after her second birthday in 1863, just as Arthur turned four.⁶⁶ His first surviving younger sibling (Lottie) was born six and a half years after Arthur, in February 1866. Thus, the formative years from four to nearly seven were spent in a family of four, with an older sister who was apparently trained up early in her duty to the firstborn male. There is no reason to doubt that he was the total center of attention during this period. In addition, it appears that in this period his father's alcoholism had not yet become dysfunctionally serious.⁶⁷

Nor would money have been a particular problem in those years. His father brought in some £350 a year, including money made from his drawings and watercolors,⁶⁸ and Arthur's Mam (which is what he always called Mary Doyle⁶⁹)

⁶⁵ Norden says Mary spent five years at French schools. NORDEN, *supra* note 51, at 14. Edwards says it was only a year. EDWARDS, *supra* note 17, at 49.

⁶⁶ This child is almost never mentioned. Conan Doyle himself counts as his first memory, and certainly his first significant memory, the sight of the corpse of his grandmother Catherine Pack Foley, "the white waxen thing which lay on the bed," who died on June 7, 1862. EDWARDS, *supra* note 17, at 46. This was a year before the death of Mary, but the death of little Mary is never mentioned. The "white waxen thing" language was lifted by Barnes, incidentally, *see* BARNES, *supra* note 1, and was one of the most widely quoted phrases by reviewers, perhaps because it is striking, and perhaps in part because it occurs on page 1 of the book.

⁶⁷ Edwards describes Charles as "still manfully coping" in the 1861–1864 period. EDWARDS, *supra* note 17, at 48. Stashower notes that Charles was getting high-class lithographic commissions in "the 1860's." STASHOWER, *supra* note 55, at 21. Booth estimates that Charles's slide into full dependency was not complete until around 1867. BOOTH, *supra* note 52, at 15. Carr suggests it was tied to the death of Charles's father in 1868. CARR, *supra* note 50, at 8–9.

⁶⁸ Estimating the Doyle family income in the 1860s and 1870s is a delicate business. Charles had started at the Works department in 1849 at a salary of £220. CARR, *supra* note 50, at 1. In *Memories and Adventures*, Conan Doyle estimated that his mother "could never have averaged more than £300 a year on which to educate a large family." CONAN DOYLE, *MEMORIES*, *supra* note 17, at 5. However, it seems relatively clear that there was more money and less family in the 1860s, when Arthur was actually at home, than in the 1870s when he was generally away at school. Martin Booth puts Charles's salary at £250 and his outside income at £80 during the mid 1860s, BOOTH, *supra* note 52, at 8, and I have used that salary figure. (Conan Doyle puts Charles's salary at £240. CONAN DOYLE, *MEMORIES*, *supra* note 17, at 4.) Carr puts his outside income in a good year at £100, CARR, *supra* note 50, at 8, and I have adopted that. Most of the

had a small income from an inheritance. It is not known how much, but £20 to £30 pounds a year would be a conservative guess. Then there was almost certainly the odd gift from wealthy relatives on both sides of the family. Three hundred fifty to four hundred pounds a year in 1860s Edinburgh was a decent income for a family of four. Money comparisons for historical periods are tricky things, but this was probably well above the median income (things being even more skewed toward the low end than today) and might be best thought of as \$55,000 to \$60,000 in today's money⁷⁰ (and more in disposable income, given the low rates of taxation)—not wealth, but a decent living.⁷¹ Things would only get really bad later as more children arrived, less art money came in, and more alcohol money went out.

So Arthur likely had in some ways an idyllic early childhood. He certainly would not have perceived any immediate poverty, and he was the center of his mother's attention, for some years sharing it only with a devoted older sister.⁷² On him, his mother focused her considerable intelligence and all of her

outside income seems to have dried up in the 1870s. However, until he was sacked (forced to retire at age 44 with 27 years' service) in June 1876, his salary seems to have risen to £300, since his pension was £150 (half pay, as I understand it, being usual). See BOOTH, *supra* note 52, at 45.

⁶⁹ Mam, or Mamma, or Mammie being typical Irishisms not unexpected in a culturally Irish household. It is clear from both his letters and his memoir that one of these variants was what Conan Doyle called his mother. See CONAN DOYLE, *MEMORIES*, *supra* note 17, at 5 ("Mammie"). See also 1891 letter facsimile following page 148 in CARR, *supra* note 50 ("Mam"), and the salutation of the letter to his mother sent from Hodder in 1869, quoted in NORDEN, *supra* note 51, at 20–21 ("Mamma"). It was Carr, perhaps under the influence of Conan Doyle's son Adrian Conan Doyle, who changed this to the more sententious "Ma'am," either because that was how Queen Victoria was addressed, or because that was the form expected of children in Carr's Midwestern upbringing. See BOOTH, *supra* note 52, at 33. Blessedly, Barnes gets this right.

⁷⁰ Converting 19th century incomes to modern money is notoriously tricky. For much useful information and reflection upon the problem see [www://victorianweb.org/economics/wages.html](http://www.victorianweb.org/economics/wages.html). Suffice it to say that it seems clear to me that most sources tend to underestimate the value of the pound at various times in the 19th century. For instance, the Picardy Place apartment, among the Doyles' best accommodations, cost £30 9s a year. EDWARDS, *supra* note 48, at 59. Even a \$150 pound would signify that to be a rental of only \$4,567.50 per year, or just over \$380 a month. The main web source for such conversions, [www://measuringworth.com](http://www.measuringworth.com), generates numbers that equate roughly to a \$125 pound for the 1860s, and a \$100 pound for the period circa 1900, but for a variety of reasons I think the former figure is still low, and I have used a \$150 pound for the 1860s. Considering that a skilled workman could (just barely) keep a family on a wage resulting in significantly less than £100 a year, the \$150 pound is probably conservative.

⁷¹ Conan Doyle referred to his childhood as "Spartan" and as reflecting "the hardy and bracing atmosphere of poverty," CONAN DOYLE, *MEMORIES*, *supra* note 17, at 5, but it was in truth not real poverty, but the sometimes more galling perception of poverty arising from the family's déclassé circumstances and the lack of the normal luxuries of the upper middle class, enjoyed as a matter of course by many of their prosperous relatives.

⁷² Although his father may have been aloof, there is not much reason to believe that he was in any way abusive during Conan Doyle's youth, at least not until the late 1870s, and then only

hopes.⁷³ She felt that she herself was a noblewoman thrown into diminished circumstances by a turn of fate that could be reversed when the nobility of her son, like that of the King for whom he was named, revealed itself upon his grasping the hilt of whatever Excalibur he was destined to encounter. She filled him with stories of noble ancestors, heraldry, and chivalry.⁷⁴ His operative system of morality was not derived from the Catholic Church, which they dutifully attended with his father, but from his mother's visions of the obligations of gentlemanly chivalry.⁷⁵ In his first seven years he did not feel poor because of his surroundings. He was, however, perhaps made to feel poor by visits from or visits to his wealthy uncles and other relatives.⁷⁶ He was, moreover, made to feel himself to be the scion of the failed branch of the family on each side of his descent, whose duty was to restore that branch's fortunes.

Nothing about his mother's system of chivalry precluded physical combat with other males, as long as they were not weak opponents. If anything, it may have encouraged it. From an early age, Conan Doyle was a street fighter.⁷⁷ He could well afford to be one, since he was in fact bigger than most boys his age (he would grow up to be six feet and one or two inches, and 225 pounds in his prime,⁷⁸ in an era when the average adult male in England was around five foot seven⁷⁹). As he said, his world was rough boys and he became a rough boy.⁸⁰ Later in his teens, this male aggression was harnessed into the sort of amateur sport that was allegedly supposed by Wellington to have won the battle of

spasmodically. What Conan Doyle seemed to resent most was not misbehavior, but failure to provide more adequately for his mother and sisters. See CONAN DOYLE, *MEMORIES*, *supra* note 17, at 5. Conan Doyle's older sister Annette, three years his senior, would remain devoted to her father throughout her life, leaving him her savings from her career as a governess when she died in 1891. THE DOYLE DIARY xxi (Michael Baker ed., 1978).

⁷³ This is generally acknowledged. See, e.g., BOOTH, *supra* note 52, at 13.

⁷⁴ *Id.* at 11.

⁷⁵ *Id.* at 13–14. Mary was not particularly devout, and abandoned Catholicism for the Church of England later in life. *Id.* In Conan Doyle's heavily autobiographical story *The Stark Munro Letters*, Stark Munro's mother tells him, "Wear flannel next to your skin, my dear boy, and never believe in eternal punishment." Quoted by BOOTH, *supra* note 52, at 60. (Conan Doyle himself recommended *The Stark Munro Letters* as a proper autobiographical source. See CONAN DOYLE, *MEMORIES*, *supra* note 17, at 52.)

⁷⁶ "When my grandfather's grand London friends passed through Edinburgh, they used to call at the little flat 'to see how Charles is getting on.'" CONAN DOYLE, *MEMORIES*, *supra* note 17, at 6.

⁷⁷ *Id.* at 5–6.

⁷⁸ BOOTH, *supra* note 52, at 98. Booth puts his height at "over six feet" and his weight in his prime as "at least 15 stone (210 pounds). Conan Doyle gives his weight in 1892 as "sixteen stone" (224 pounds). CONAN DOYLE, *MEMORIES*, *supra* note 17, at 277.

⁷⁹ This figure is arrived at by taking Quetelet's measurements for Belgian male adults in 1870 (average height 5'6.3") set out in TIDY, *supra* note 19, at 145, and correcting upward for Tidy's assertion that the figures "are probably a little under the mark as regards the English." *Id.*

⁸⁰ CONAN DOYLE, *MEMORIES*, *supra* note 17, at 5.

Waterloo. Conan Doyle was never particularly fast or graceful, by his own account,⁸¹ but he made up for it with strength and absolute physical fearlessness. He excelled at boxing, rugby, soccer, and cricket, which he played into his fifties, and he was convinced such sport was necessary to insure against temptation to immorality and effeminacy.

And speaking of absolute physical fearlessness, no one ever questioned Conan Doyle's physical courage, but many may have questioned his judgment. Another characteristic of his personality throughout his life, at least until age slowed him down, was his recklessness. From his medical school research on dangerous drugs using himself as the subject,⁸² to the frankly stupid risks he took on his whaling voyage in 1881,⁸³ to his ridiculous record of spills and scrapes (some nearly fatal) with motorcycles and automobiles in the early 1900s,⁸⁴ it is some wonder that he survived to reach old age. He was a man who himself was lucky in his risks coming out all right, and so perhaps the record of success of his creation Holmes seemed realistic, or at least reassuring.

Conan Doyle was a risk taker, not only physically but in other ways as well. His abandonment of medicine for literature is one example.⁸⁵ His conduct of the relationship with his second wife, however honorable, was another.⁸⁶

And speaking of honor. And sex. For all of the vaunted free thinking of his "bohemian" period (as he called it), there is not an iota of evidence that he ever deviated from a strict conventional Victorian attitude toward sexual restraint and sexual honor, which he appears to have identified with the chivalric ideals he got from his mother. Many espoused it, but Conan Doyle apparently lived it. From his refusal to tolerate anything vulgar or sexually suggestive in the presence of a woman, to the avoidance of similar crassness with men,⁸⁷ and on to

⁸¹ "I was always too slow, however, to be a really good back...." *Id.* at 270.

⁸² He experimented with gelsemium, a root compound containing a dangerous alkaloid, derived from the Carolina Jasmine, *Gelsemium nitidum*. His letter to the *British Medical Journal* about his reactions to this drug was published in 1879. BOOTH, *supra* note 52, at 63.

⁸³ He volunteered to hunt seals on the ice and to chase whales in small boats though it was not part of his job, and the Captain was reluctant to let him. He fell in the Arctic Ocean, twice while hunting seals, and once while skinning with no one else to hand, in which instance he barely pulled himself out of the water before freezing to death. CONAN DOYLE, *MEMORIES*, *supra* note 17, at 35–38.

⁸⁴ Recorded with relish. *Id.* at 280–83.

⁸⁵ *Id.* at 88–92.

⁸⁶ See STASHOWER, *supra* note 55, at 225–27.

⁸⁷ Conan Doyle "revolted violently to the mildest risqué observation." Adrian Conan Doyle, in THE TRUE CONAN DOYLE, *quoted by* James Bliss Austin, *The Family's Counterattack*, ch. 6 in LELLENBERG, *supra* note 49, at 107. In this he followed his father, of whom Conan Doyle wrote: "He possessed, also, a remarkable delicacy of mind which would give him moral courage enough to rise and leave any company which was coarse." CONAN DOYLE, *MEMORIES*, *supra* note 17, at 25.

avoidance of what was regarded as illicit sexual activity⁸⁸ many in Victoria's reign talked the talk, but Conan Doyle seems to have walked the walk. So he was not averse to a few rounds of fisticuffs after dinner in good fun, even if a little blood was spilled,⁸⁹ but no low jokes, please. He was, as he himself might have put it, rough but not coarse.

But what about his period of agnosticism, and his commitment to science as a "medical man"?

It is doubtful that Conan Doyle would ever have qualified as an agnostic in any strict sense. In his memoir asserts that he was an agnostic, but then says that actually "in a broad sense I was a Unitarian, save that I regarded the Bible with more criticism than Unitarians usually show."⁹⁰ In a word, he was a deist.

His abandonment of Catholicism was as much a personal matter as it was a matter of principle, and this is another pattern that seemed to continue throughout his life. At age nine, he was shipped off to the Jesuits for the next seven years, for an education paid for at least in part by his rich relations.⁹¹ His first trip to the Jesuit school in Lancashire is one of the few times when he admitted to have cried inconsolably.⁹²

Jesuit education in the days of Pio Nono was not what it is today, when it is often viewed as suspiciously liberal by the Curia, not to mention Opus Dei. Then the Jesuits were the fighting arm of the conservative church, resisting all secularizing and rationalist doctrines.⁹³ They often met any signs of free thought from their students with aggressive physical discipline, and so they did with Conan Doyle, at least after he moved from Hodder, the lower school, to Stonyhurst itself.⁹⁴ At home, Conan Doyle was used to being reasoned with. At

⁸⁸ BOOTH, *supra* note 52, at 213–14. His pride at not having had any "dishonourable" relations with his second wife, Jean Leckie, in the ten years of their relationship before his invalid first wife's death, is well known. Of it he said, "I fight the devil, and I win." See Howard Lachtman, *The Ideal Storybook Hero*, ch. 7 in LELLENBERG, *supra* note 49, at 122. Consider also this observation on what Conan Doyle considered one of the virtues of his Catholic public school, Stonyhurst: "The Jesuit teachers have no trust in human nature, and perhaps they are justified. We were never allowed for an instant to be alone with one another, and I think that the immorality which is rife in public schools was at a minimum in consequence." CONAN DOYLE, *MEMORIES*, *supra* note 17, at 10.

⁸⁹ Conan Doyle recounts a number of such incidents. CONAN DOYLE, *MEMORIES*, *supra* note 17, at 265–66. One example will do: "It is one of several curious bye-battles of my career. I recollect another where another man and I, returning from a ball at five of a summer morning, went into his room and fought in our dress clothes several very vigorous rounds as a wind-up to the evening's exercise." *Id.*

⁹⁰ *Id.* at 27.

⁹¹ STASHOWER, *supra* note 55, at 22.

⁹² CONAN DOYLE, *MEMORIES*, *supra* note 17, at 8.

⁹³ *Id.* at 14–15.

⁹⁴ *Id.* at 10.

school he stubbornly set out to resist being bullied and beaten into submission, and quickly became the recipient of corporal punishments which he set himself to show no response to.⁹⁵ Luckily for him, he was also a leader among the other students because of his athletic prowess and his storytelling talent, which got him through,⁹⁶ but by the end of his Jesuit education he had abandoned Catholicism altogether for the deism he referred to as agnosticism, a position later reinforced in medical school, where English materialists such as Mill and Huxley (and, dare I say, the positivist Comte) were in vogue.⁹⁷ But nota bene. Had the Jesuits treated Conan Doyle differently, he might never have abandoned his formal adherence to the faith. There are many times in Conan Doyle's life when it is difficult to determine whether he is acting out of reasoned principle, or is being driven by resentment at having been disrespected. The famous incident with the German giant of medical science, Robert Koch, is perhaps a case in point.⁹⁸

Robert Koch was, along with Pasteur and Lister, one of the pioneers who demonstrated the validity of the germ theory of disease. He was the first to establish that the anthrax bacillus caused anthrax, and was responsible for the protocol for establishing when an organism could be said to be the cause of a disease. (He won the Nobel Prize for Medicine in 1905.)⁹⁹

Koch had long been interested in tuberculosis, and was the first to isolate the tubercle bacillus in 1882. In 1890 he announced that he had isolated a substance he called tuberculin, which would cure tuberculosis. He promised to unveil the details in a lecture in Berlin. Conan Doyle decided he wanted to hear this epoch-making lecture, and was dispatched to do a character sketch of Koch by the *Review of Reviews*. By some oversight, nobody had arranged for Conan Doyle's ticket to the lecture, and when he arrived, tickets were not to be had. Desperate, Conan Doyle waited outside the main entrance to the Hall until Koch arrived, then he threw himself across the great man's path. "I have come a thousand miles," he said "May I not come in?"

Apparently Koch was not touched by this appeal. As Conan Doyle recalled it,

He halted and glared at me through his spectacles. "Perhaps you would like to take my place," he roared, working himself up into that strange folly of excitement which seems so strange in the heavy German nature. "That is the only place left. Yes, yes, take

⁹⁵ *Id.* at 11.

⁹⁶ BOOTH, *supra* note 52, at 26–27.

⁹⁷ Conan Doyle lists as the prevailing influences during his medical school years "Huxley, Tindal, Darwin, Herbert Spencer and John Stuart Mill." CONAN DOYLE, MEMORIES, *supra* note 17, at 26.

⁹⁸ The following story is told in detail in CONAN DOYLE, MEMORIES, *supra* note 17, at 81–84.

⁹⁹ See Koch biography at nobelprize.org.

my place by all means. My classes are filled with Englishmen already.” He fairly spat out the word “Englishman.”...¹⁰⁰

So Conan Doyle did not get in, but an American in Koch’s entourage took pity on him, and showed him his notes of the lecture afterward. From those notes, Conan Doyle prepared a scathing analysis, which was published in the *Daily Telegraph*, warning readers not to be too quick to conclude that Koch’s tuberculin would lead to the defeat of tuberculosis. This turned out to be prescient, as tuberculin inoculation proved to be an ineffective treatment. However, the question here is whether Conan Doyle would have taken the critical approach that he did if he had not been insulted by Koch.

Conan Doyle’s hold on the finer points of science was anything but profound. He himself admitted to being a mediocre medical student, and to resentfully believing that many of the science subjects he was forced to learn had little to do with the practicalities of medical treatment.¹⁰¹ And he was not particularly evidence-driven, nor did he evaluate evidence coolly. It is true that when he rejected Catholicism and Christianity in general, he says he swore that he would never believe anything again that was not based on sound evidence.¹⁰² However, this was a man who by the early 1920s believed in fairies. Literally. Really he did.¹⁰³ The reality seems to have been that when he could not tolerate the prospect of indeterminacy (or the prospect of an emotionally threatening answer), as when he was facing the question of an afterlife, his decision threshold regarding what he took to be evidence plummeted. While he had much physical courage, his intellectual courage was perhaps in some areas suspect.

Conan Doyle himself never made any claims that he invariably bent his mind to the careful and objective appraisal of evidence in his daily life. Nevertheless, he did actually believe that, with a bit of effort, he could summon up the Holmesian ideal and apply Holmesian methods to obtain the same magical results if he set his mind to it.¹⁰⁴ His memoirs contain examples of success.¹⁰⁵

¹⁰⁰ CONAN DOYLE, MEMORIES, *supra* note 17, at 83.

¹⁰¹ *Id.* at 18, 21.

¹⁰² “ ‘Never will I accept anything that cannot be proved to me. The evils of religion have all come from accepting things which cannot be proved.’ So I said at the time and I have been true to my resolve.” *Id.* at 27.

¹⁰³ In fact, he believed in fairies when he wrote the words in note 101. It is still a staggering testament to the strength of his will to believe that he could have been deceived by such a transparent fraud as the “Cottingley fairy” photographs, especially since he himself was an experienced photographer. BOOTH, *supra* note 52, at 64–65. He wrote two essays and a book about the reality of fairies in the 1920s. See Jon L. Lellenberg, *The Quest for Sir Arthur Conan Doyle*, in LELLENBERG, *supra* note 49, at 10, 16.

¹⁰⁴ He said of himself:

I have often been asked whether I had myself the qualities which I depicted, or whether I was merely the Watson I look.... [A] man cannot spin a character out of his own inner

The examples of failure, of which there must have been many, remained unreported.

The fact is that Conan Doyle was more a born partisan than a cool evaluator of evidence. He would look at an issue, make up his mind, and marshal the evidence to support his view, often distorting it a bit in a good cause. Take his apologia for the Boer War in early 1902, for instance.¹⁰⁶ Enough said.

This is not to say that many of his causes were not just. Conan Doyle was, all in all, a decent man. His chivalry and support for fair play usually won out over more questionable instincts. As in the case of George Edalji.

III. ART IMITATING LIFE? BARNES'S VERSION OF THE EDALJI AFFAIR

We have looked a bit at Arthur (and his creation Sherlock), and we have looked a bit at George. How well are they captured by Barnes? All in all, Barnes's Arthur is fairly well realized. Barnes sticks very close to the documentary record,¹⁰⁷

consciousness and make it really life-like unless he has some possibilities of that character within him—which is a dangerous admission for one who has drawn as many villains as I... Among those figures [of his “multiplex personality”] there may perhaps be an astute detective also, but I find that in real life in order to find him I have to inhibit all the others and get into a mood when there is no one in the room but he. Then I get results, and have several times solved problems by Holmes' methods after the police have been baffled. Yet I must admit that in ordinary life I am by no means observant, and that I have to throw myself into an artificial frame of mind before I can weigh evidence and anticipate the sequence of events.

CONAN DOYLE, *MEMORIES*, *supra* note 17, at 94–95.

¹⁰⁵ *Id.* at 103–08.

¹⁰⁶ *Id.* at 148–204; *see also* ARTHUR CONAN DOYLE, *THE CAUSE AND CONDUCT OF THE WAR IN SOUTH AFRICA* (1902).

¹⁰⁷ Not that there are no questionable parts. Barnes gives Conan Doyle a bluster which the real Conan Doyle apparently worked hard not to have, or at least not to show. Also, Barnes somewhat anachronistically presents Conan Doyle as more committed to “Spiritism” than he seems to have been in 1907. He did not become the “St. Paul of Spiritualism,” as he was called late in his life, until after a real conversion experience sometime around 1916. *See* BOOTH, *supra* note 52, at 309–11; STASHOWER, *supra* note 55, at 10. Conan Doyle's general attitude that the spirit world was a proper subject for serious research was not uncommon. *See generally* DEBORAH BLUM, *WILLIAM JAMES AND THE SEARCH FOR SCIENTIFIC PROOF OF LIFE AFTER DEATH* (2006).

Barnes also has the Doyles moving “half a dozen times in Arthur's first ten years” when in fact they moved only twice, from Picardy Place to Portobello when Arthur was two, and from Portobello to Sciennes Hill Place in 1865 or 1866, when Arthur was about seven. (It is true that Arthur himself lived with friends of the family for a while around age seven while attending Newington Academy, but that is another story. For the various dates and details, *see* EDWARDS, *supra* note 17, at 46–49, 57–58.).

Most importantly, Barnes makes Conan Doyle worry that his sister Dodo, his mother's last child, was in fact fathered by the family's boarder cum protector, Bryan Waller. This was not physically impossible, and perhaps it helped Barnes sell books. Certainly Waller had a mysterious relationship to the Doyle household, and was exceedingly devoted to Mary Doyle, though he was

making especial use of Conan Doyle's accounts in *Memories and Adventures*¹⁰⁸

sixteen years her junior. And the possibility of an affair between Waller and Mary Doyle at some point has been raised (though doubted) before, *see* BOOTH, *supra* note 52, at 92, although the favored speculation is that it was attraction to Annette that originally cemented Waller to the family. *Id.*; *see also* EDWARDS, *supra* note 17, at 163–66. It is true that Waller became a boarder some time in 1875. But Charles Doyle was certainly still living at home when Dodo was conceived. She was born March 22, 1877, putting her probable date of conception sometime in June 1876, the very month government records show that Charles was involuntarily pensioned off from the Office of Public works as the result of “reorganization.” THE DOYLE DIARY, *supra* note 72, at xiv. While one can imagine crisis in the household as a result of this loss of work, an affair between Mary Doyle and Waller in the midst of the crisis seems most unlikely. Dodo is to me more likely the result of Mary Doyle comforting her husband in the aftermath of his discharge. And certainly such an unthinkable thought as his mother's infidelity would be unlikely to occur to Conan Doyle in any but the most fleeting way, if at all, when his father was physically available and capable at age forty-four of fathering yet another child (as he had done so often before). It is true that Dodo's birth-given name is Bryan Mary Julia Josephine, the first and third names being for Waller and Waller's mother, BOOTH, *supra* note 52, at 46, but this public declaration is rather more indicative of purity than of scandal, especially since Charles would have certainly joined in naming the child. Waller, who had come into substantial money in 1877, was certainly helping to support the Doyles, *id.*, and the name most likely signified gratitude to him more than anything else. For what it is worth, there is no evidence that Dodo, whom Conan Doyle took good care of when he became wealthy, resembled Bryan Waller in any way. And finally, it must be remembered that Conan Doyle lived under the same roof with Waller and his mother and father from late 1876 until sometime after his graduation from the University of Edinburgh medical school in 1881 (with time away for various jobs). Conan Doyle suggests 1879 as the date when his father was finally sent “to a rest home,” CONAN DOYLE, MEMORIES, *supra* note 17, at 25, although he is not necessarily reliable when it comes to details of his father's life. The real date appears to have been 1882 or 1883, EDWARDS, *supra* note 17, at 123, 162–63 (though he may have been in and out of more voluntary arrangements before then). The “rest home” was in fact an asylum to which Charles was sent as a result of his alcoholism and what we would today call clinical depression (there is also evidence of a diagnosis of “epilepsy,” but whether Charles suffered an actual seizure disorder or this was merely a diagnosis of convenience is unclear). There is little in the public domain to describe the quality of Charles's continued contacts with his family, though there were at least a few. Charles provided six illustrations for the first separate book edition of *A Study in Scarlet* in 1888. In 1890, Annette, the eldest daughter, left her entire estate (which, after years as a governess in Portugal sending money home to her mother to help support the family, was only £420, perhaps \$40,000 to \$45,000 in today's money, the pound having dropped considerably since the 1860s) in trust for her father. THE DOYLE DIARY, *supra* note 72, at xiv. The Baker volume is mostly devoted to reproducing Charles's sketchbook from his years of confinement. In Charles's sketchbook from the late period of his commitment (he died in 1892, still in an asylum), there is a sketch on page 27, done about 1888, showing Charles sitting on a hassock looking adoringly up at a plump attractive woman with a pleasant face who is concentrating on her sewing. The caption is “Mary, My Ideal Home Ruler,” and the sub-caption is “No repeal of the Union proposed in this case.” This, after five or more years of confinement. In addition, on page 71 there is a sketch of Charles seated at drawing board with a cat draped across his shoulders. The caption reads, “Where kitty used to sit at home.” In a sketchbook dominated by scenes of Charles being embraced by Death, it's enough to break your heart.

¹⁰⁸ CONAN DOYLE, MEMORIES, *supra* note 17.

and novelistic scenes from the early authorized biography by John Dickson Carr¹⁰⁹ for details of Conan Doyle's life,¹¹⁰ and making particular use of Conan Doyle's published materials arguing for Edalji's innocence for details of the case itself. He even lifts language from Conan Doyle.¹¹¹ Well, if you are going to borrow, borrow from a great prose stylist.¹¹² And, whatever else he was or wasn't, Conan Doyle was a great prose stylist, who packed a lot of atmosphere into his writing.¹¹³

George, and George's case, on the other hand, are not in my opinion so well realized. I see two linked reasons for this. One is that George's story is presented as a sort of morality play. We follow George from childhood, and the perspective given by the omniscient narrator's voice makes it clear that George is totally innocent of any involvement in any of the events that dog his family and later his community. So we know that the George of Barnes's story is an innocent victim. This makes any evaluation of the evidence in the case, and of the tenability of Conan Doyle's treatment of the evidence, somewhat beside the point. It also renders beside the point the otherwise potentially effective arguments for guilt made by Captain Anson (the Chief Constable and George's nemesis) in the scene where Conan Doyle and Anson meet to talk about the case—though Barnes

¹⁰⁹ CARR, *supra* note 50.

¹¹⁰ See, e.g., BARNES, *supra* note 1, at 6–7, where the “blazon me this shield” episode from CARR, *supra* note 50, at 6, is stitched together with the “when you are old, Mammie...” promise from CONAN DOYLE, MEMORIES, *supra* note 17, at 5, and an expansion on the Mayne Reid reference, *id.* at 7.

¹¹¹ There is, for instance, substantial borrowing of phrases from Arthur Conan Doyle, *The Case of Mr. George Edalji: Special Investigation by Sir Arthur Conan Doyle*, DAILY TELEGRAPH, Jan. 11, 1907, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE 31, 45–46 (Stephen Hines ed., 2001). Compare, e.g., *id.* at 45–46, and Barnes's description of Doyle's conversation with his assistant, Wood, concerning the testing of Edalji's eyes, BARNES, *supra* note 2, at 259–60. Examples could be multiplied. See also *supra* note 66.

¹¹² I am not for a moment suggesting anything improper in this borrowing. It is part of the historical novelist's craft to make use of such sources to maximize both accuracy and authenticity of diction. In this I fall on the side of Thomas Pynchon and others who defended Ian McEwan in the recent flap over the uses he made in his recent novel ATONEMENT of details from a memoir by Lucilla Andrews, a World War II nurse. See Nigel Reynolds, *Recluse speaks out to defend McEwan*, DAILY TELEGRAPH, Dec. 12, 2006, available at www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/12/06/nwriter06.xml.

¹¹³ “My contention is that Sherlock Holmes *is* literature on a humble but not ignoble level, whereas the mystery writers most in vogue now are not. The old stories are literature, not because of the conjuring tricks and the puzzles, not because of the lively melodrama, which they have in common with many other detective stories, but the virtue of imagination and style. They are fairy-tales, as Conan Doyle intimated in his preface to his last collection, and they are among the most amusing of fairy-tales and not among the least distinguished.” EDMUND WILSON, CLASSICS AND COMMERCIALS 267 (1950). It is ironic that Posner *supra* n. 19 quotes Wilson's generally dismissive views on the genre of detective fiction from the same book, *id.* at 263, when the Holmes stories were some of the few Wilson liked.

does use this scene effectively to show Conan Doyle's combative reactions when he perceives that he is not getting the respect to which he holds himself entitled.¹¹⁴ This infallible knowledge of George's innocence, vouchsafed to the reader from the start, deprives the book of evidentiary interest.

In addition, the George that Barnes creates is not very credible. George is shown to be strangely infantile in most of his reactions to his family and his situation, not just in his exterior manifestations, but in his interior reflections. It is true that, since there is not much evidence of George's characteristics during his youth or otherwise, we cannot say that this violates the author's obligations, but the George that emerges is strangely flat and lifeless.

George's father, Shapurji, suffers the same sort of fate. He spouts moral clichés; he involves George in dialogues concerning the happenings in their world, during which George plays the part of one of Socrates' less intelligent but more co-operative foils. (This is not generally presented to the reader as a child's strategy of appeasement¹¹⁵ but as George's actual response). Shapurji also gives lectures on the greatness of the Parsis. Otherwise he is not much seen. We are told he is sometimes away visiting the sick, as if his only interactions with his parishioners were when they are so laid up they cannot avoid him, but we get not much else of him. George's mother is hardly seen at all.

Even in the absence of more specific historical information, this is not a credible picture of a vicar running a Church of England parish in the 1880s and 1890's, or of the world of his child. There would be a vestry board to deal with. There would be issues of tithes and money, poor rates and poor relief. There would be issues of the Church's role in education.¹¹⁶ There would be services and sermons and Sunday school to be attended to, and the "preacher's kid" could avoid almost none of the social aspects of this life. Barnes presents George as a virtual loner, an isolated child among strangers on his first day of school. However, for good or ill, he would have known most of his own cohort (excepting, perhaps, some of the miners' children, who were predominantly Methodist). Nevertheless, he would have known plenty of the others. Also, you can be sure, given the vicar's role in the institutions of education,¹¹⁷ that the teacher would have known of George, and even likely known of his shortsightedness if it had already begun to manifest itself. Barnes presents it as if George only figured out that he was nearsighted from going to school, and his

¹¹⁴ See BARNES, *supra* note 1, at 282–302. The scene calls to mind a variety of referents, from the baiting of Polonius to the temptation of Christ, which makes it quite a nice piece of work.

¹¹⁵ It is arguably presented as appeasement once. See BARNES, *supra* note 1, at 14–15 (the "smelly farmboy" dialogue). At this time George is six. He becomes more malleable as he ages. See, e.g., *id.* at 18–19 (the "beating heart of the Empire" dialogue when George is ten); *id.* at 34–35 (the "they must be looney" dialogue when George is eighteen).

¹¹⁶ See WEAVER, *supra* note 3, at 27–29.

¹¹⁷ See *infra* note 126 and accompanying text.

parents are then surprised to find it out also. More incredibly, George cannot seem to figure out why “I can do the problems in the book, but I can’t do them on the board.” Not bloody likely (though it does lay the foundation for George being, at least through his youth, a certain kind of literary victim, a holy fool, victimized by the racism of Edwardian England in general and that of the vicious aristocrat, Captain Anson of the Staffordshire Constabulary, in particular).

But enough. I am not a literary critic. The real question is, how far from the historical truth did Barnes stray? And the answer is, pretty damn far.

Maybe it would be right to say that Barnes did a poor job on his historical homework. Or maybe he was just unlucky that Gordon Weaver’s book *Conan Doyle and the Parson’s Son*¹¹⁸ came out right after his novel was published.

Barnes claims to have researched *Arthur & George* for two years.¹¹⁹ In theory he had the same access to material that Weaver did; perhaps more, since Barnes is a famous and prosperous writer and Weaver is a retiree without many resources, operating as an independent scholar. Nevertheless, if you want to know what happened in the Edalji case, short of poring through the vestry minutes of Great Wyrley parish for the last half of the 19th century and reading all the Home Office documents yourself, Weaver’s book is the best available source by light years.

That is not to say it is perfect. Its strengths are its prodigious research, its use of primary sources, and its footnotes. Yes, footnotes, so the reader doesn’t have to fumble around looking for the documentation references (complete with Home Office file numbers). As a hater of endnotes, I salute this. The book’s weaknesses are its somewhat cumbersome prose and unwieldy organization, occasional lapses where facts clearly established and documented earlier are contradicted,¹²⁰ and the lack of an index. The work was self-published (or published through a “subsidy press,” Vanguard Press, which amounts to the same thing). This fact accounts for most of its weaknesses. What it really needed was a good edit and a good index.

It is also, perhaps, a little too absolute in its conviction that George was, to use a favorite phrase of the pro-death penalty polemicist Joshua Marquis, a “doe-eyed innocent.” While the Weaver work is not quite as black-and-white in its position as Barnes’s novelistic account (and I use the image advisedly), it seems to me that Mr. Weaver rejects the hypothesis of George’s partial guilt a little too quickly and too completely. Nevertheless, it does document most of the brute facts available from the historical record. It also shows that Barnes’s recounting of the facts of the Edalji case are much of the time wrong in both small and large

¹¹⁸ WEAVER, *supra* note 3.

¹¹⁹ See Vicky Uhland, *Crime-solving with Sir Arthur*, Jan. 13, 2006 (quoting Julian Barnes), at http://www.rockymountainnews.com/drmn/books/article/0,2792,DRMN_63_4383305,00.html.

¹²⁰ On the care sometimes needed in evaluating Weaver’s assertions, see *infra* note 428.

details. (This is partly because Barnes has apparently relied too much on Conan Doyle, whose partisanship sometimes undermined his accuracy.)

Barnes's most egregious inaccuracies involve the depiction of Shapurji Edalji and his wife. Charlotte Edalji was English, not Scottish, as Barnes unaccountably makes her.¹²¹ She was also a well-educated vicar's wife, with all the duties attendant on that position, as well as mother to three children. (George had two younger siblings, Horace, born 1879, and Maud, born 1882,¹²² who will both figure in the Edalji saga.) As I have said, in Barnes's world Charlotte is all but absent. However, one cannot read even snippets of her letters in defense of her son without realizing that she was a strong and articulate woman, a significant presence in the lives of her family.¹²³ Whatever burdens had to be borne in that strange household in the times when bizarre anonymous letters and physical pranks were pouring on it like a visitation by poltergeists, she would have played a large part in the family's response, and deserves to have been portrayed. It would have given a much more realistic texture to the account of George's growing up. In fact, the whole novel would have had a chance at greatness if George's story had been told through Charlotte's eyes.

IV. LIFE UNARTFUL: BARNES, THE EDALJIS, AND THE HISTORICAL RECORD, 1874–1891

Barnes's most clearly inaccurate portrayal is that of George's father, Shapurji Edalji. The Shapurji that emerges from Weaver's examination of vestry board minutes and other parish records, as well as various newspaper accounts, is radically different from the insubstantial person barely depicted by Barnes. The real Shapurji appears to have been quite aggressive in the pursuit of what he considered to be the proper authority of a vicar, and his personal vision of the interests of the parish.¹²⁴ This was in clear contrast with his predecessor, Charlotte's uncle, who seems to have been a go-along-to-get-along type who left parish policy to the dominant vestry board members. These represented the local gentry and their financial and political interests, most particularly the coal mining interests. Weaver documents instances of attempted sale of church property to the mining companies under conditions arguably unfavorable to the parish, which

¹²¹ See *supra* note 6 and WEAVER, *supra* note 3, at 24 (referring to Charlotte as a "middle Englander"). More dispositively, Charlotte refers to herself as English: "I am an Englishwoman." Charlotte Edalji, letter of thanks "to the many persons who have given this case of gross injustice their consideration, Jan. 4, 1904, *facsimile available at* <http://www.birmingham.gov.uk>.

¹²² Conan Doyle, *Case of Edalji*, *supra* note 111, at 32.

¹²³ See WEAVER, *supra* note 3, at 21, 69, 226–27, 333–34. See also Charlotte Edalji letter to the *Daily Telegraph*, Jan. 18, 1907, *reproduced in* THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 115–16; Charlotte Edalji letter, *supra* note 121.

¹²⁴ WEAVER, *supra* note 3, at 24–27.

Shapurji fought in ways his predecessor did not.¹²⁵ In addition, the 1880s were a time of transition in the educational history of England, when responsibility for primary education was being secularized, and Shapurji's involvement in and resistance to various parts of this process (parish vicars were still involved *ex officio*) led to more conflict and controversy.¹²⁶ Finally, there was politics, but not just as a result of Shapurji's letting the Liberals hold a meeting in the parish schoolroom in 1892, as Conan Doyle¹²⁷ and Barnes¹²⁸ would have it. Shapurji was a liberal and a supporter of Irish home rule,¹²⁹ and seems at various times to have supported the miners against the mine owners, even though most of the miners were not Church of England.¹³⁰ He was, however, apparently a bit timorous in this regard, and was looked upon by the miners as unreliable in a pinch. In one instance in 1889, Shapurji agreed to chair a meeting of the Miner's Federation to discuss local grievances, but when one of the speakers raised the possibility of a strike, Shapurji shut the meeting down, claiming that he would not have agreed to chair it if he had known such a tactic would be raised. The leader of the miners was nonplussed at Shapurji's position, since all of the posters advertising the meeting had indicated that the subject of a strike would be on the agenda, and another Federation leader claimed to have discussed it with Shapurji in advance.¹³¹

The picture of Shapurji that emerges from the historical record is thus altogether more complex and more interesting than the one put forth by Barnes. Though it is likely that his foreignness did not help him in Great Wyrley, it is reasonably clear that Shapurji would have been a controversial vicar if he had been as English as his wife.¹³² Sometimes courageous, sometimes abrasive, often stubborn, sometimes taking principled positions in the face of powerful opposition, sometimes flinching in the face of those same powers, he made enemies, but he clearly had supporters also. Pious he may have been, perhaps to

¹²⁵ Compare the Rev. Compson's actions in regard to the Joseph Brown estate, *id.* at 25–26 (going along with a passthrough from the estate to the parish to individuals on the vestry board at advantageous prices) to Shapurji's constant attempts to control the vestry in money matters, *id.* at 26–27.

¹²⁶ Shapurji's struggles with the newly created (by statute) United District School Board over control of school property, staffing and instruction through the 1880s are typical. *See id.* at 27–29.

¹²⁷ Conan Doyle, *Case of Edalji*, *supra* note 111, at 32.

¹²⁸ BARNES, *supra* note 1, at 244.

¹²⁹ WEAVER, *supra* note 3, at 38.

¹³⁰ *Id.* at 32–33. Most of the miners were Methodist.

¹³¹ *Id.* at 32.

¹³² *See* Shapurji's quotidian conflicts with the vestry board and its individual members, documented *id.* at 26–27, 36–37. The situation does not seem too much different than that of the vicar of Hednesford, the Rev. Quibell, a few miles north. Quibell, referred to as the “ranting parson” in one of the later anonymous letters, was a vicar of socialist leaning who appears to have excited nearly as much remark and controversy as Shapurji. *See id.* at 91–93.

the point of sententiousness, but he was not the passive, isolated stranger-in-a-strange-land who comes across in Barnes's book.

Another important mistake is Barnes's treatment of Elizabeth Foster, the Edaljis' maid of all work in 1888–89, the time of the first episode of anonymous letters and pranks.¹³³ These incidents went on for about five and a half months. George was twelve and a half when they started and just two weeks shy of thirteen when they stopped. The incidents began in August 1888 with an anonymous letter directed to Shapurji instructing him to order a particular Birmingham newspaper, the *Express and Star*, or suffer the consequence of having the vicarage windows smashed.¹³⁴ More letters in this vein arrived throughout the fall, which Shapurji dismissed as juvenile pranks.¹³⁵ Then in early December some windows actually were smashed, and a letter arrived threatening to shoot Shapurji if he continued to refuse to order the paper.¹³⁶ Seventeen-year-old Elizabeth, meanwhile, had begun to receive letters signed "Thomas Hitchins" (a name which will recur later), who claimed to be the author of the letters to her "black master," and who threatened to shoot her when her "black man" was out.¹³⁷ Also, graffiti calling the Edaljis "wicked" were chalked on both the outside and *inside* walls of the vicarage.¹³⁸ The threats of violence led Shapurji to contact the police,¹³⁹ and Sergeant Upton of the Cannock station (the main area

¹³³ *Id.* at 29–32.

¹³⁴ *Id.* at 30.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ A note on "the police." The existence of a professional police force was a relatively new circumstance in rural England, indeed, in all of England in 1888. Until 1829 policing, such as it was, was generally (with a few exceptions) the responsibility of individual parishes under the medieval system of watch and ward, and the parish watchmen were never deployed during the day. When the Metropolitan Police were established in London in 1829 through the efforts of Sir Robert Peel, policing underwent a quantum shift, with the creation of a single agency having jurisdiction over most of Greater London and having round-the-clock shifts. The model proved so successful that it was copied throughout England, first voluntarily in some areas and then after 1856 pursuant to Parliamentary mandate. (Staffordshire established a force early, in 1842. See <http://www.staffordshire.police.uk/histor.htm>) Each incorporated municipality and borough was to have its own police force, but each county was to establish a modern police force (subject to both partial funding and to inspection by the central government). The name adopted for these forces was the county constabulary (as, in Edalji's case, the Staffordshire Constabulary.) The force was run on the lines of the Metropolitan Police, with its head being called the Chief Constable for the county. Initially local control in the selection and staffing of the county constabulary was in the hands of the royally appointed Justices of the Peace (sometimes called also "magistrates" of the county) as a body in their quarterly meetings, or "quarter sessions." After 1889, when elected county councils were established, the two bodies shared local administrative supervision over the county constabulary. It was up to each County Constabulary to establish the terms of its local presence throughout the county, that is, how many stations, how

station to the North of Great Wyrley), who was to play such a significant role in later events, responded. He placed a watch on the vicarage for a few nights, but no new letters arrived.¹⁴⁰ When the surveillance was discontinued, the letters began once again, this time being placed in the yard or various other places on the property.¹⁴¹ Some of the letters were written on flyleaves removed from the children's books in the playroom of the vicarage.¹⁴² It became clear to all concerned that someone from inside the vicarage was involved, if not exclusively responsible. Presumably Shapurji and Charlotte can be eliminated as credible suspects, as can George's younger siblings, Horace and Maud, because of their ages and the content of the letters (Horace was nine and Maud was six). That left George and Elizabeth Foster. George was attending Rugeley School at the time.¹⁴³ He was no doubt exceptionally bright, as his later performance in law school showed, and likely somewhat intellectually precocious. Given the education dispensed in private grammar schools like Rugeley, the letters were well within George's compositional capacities, and the train commute to the school would have given him opportunity to compose unmolested. Whether any of the same things could be said for Elizabeth Foster is somewhat doubtful. Nevertheless, it is perhaps understandable that when parents are faced with a choice between the guilt of their son and that of a servant, it would take a pretty clear piece of evidence to lead them to believe their son was guilty, especially in that class-conscious era. Sergeant Upton was clearly comfortable with making the same choice. All three professed to see diagnostic similarities between the handwriting of Elizabeth Foster and that of the anonymous notes.¹⁴⁴ Elizabeth Foster was prosecuted by the Rev. Edalji¹⁴⁵ for criminal mischief, which

many constables, where constables would be assigned to individual duty, and so forth. See generally J. J. TOBIAS, *CRIME AND POLICE IN ENGLAND 1700–1900*, at 74–116 (1979).

¹⁴⁰ WEAVER, *supra* note 3, at 30.

¹⁴¹ *Id.*

¹⁴² *Id.* at 30–31.

¹⁴³ George had been “brought up at Rugeley.” Conan Doyle, *Case of Edalji*, *supra* note 111, at 37. George finished at Rugeley in 1892 at age 16, preparing for his matriculation examinations for Mason College law school. WEAVER, *supra* note 3, at 71. While I have found no explicit indication of the date of his leaving the local elementary school and starting at Rugeley, it seems reasonably certain to have been by 1888.

¹⁴⁴ WEAVER, *supra* note 3, at 31.

¹⁴⁵ A note on prosecution in 19th and early 20th century England. It is surprising, especially for American readers, to realize that in Britain there were no public prosecutors, in the sense Americans understand that term, until 1886. Before then, government agents had official responsibility for the prosecution of only two narrow categories of crime: treason and sedition-related charges (generally prosecuted by the Attorney General) and counterfeiting of the King's (or Queen's) money, which was prosecuted by the Treasury. All other ordinary crimes, including murder and other serious offenses, were prosecuted “in the King's name” by what we would today think of as private parties (private attorneys general?). The “prosecutors” were usually victims, but did not have to be. “Prosecutors” undertook the costs of prosecution, and were often

prosecution he used as a weapon, offering to drop the charges if she would confess. Instead, she ran away to her aunt's house near the vicarage.

When the trial came on in Cannock Police Court¹⁴⁶ on January 14, 1889, Elizabeth Foster had little choice. She could not afford a defense, and so she pled guilty in exchange for a sentence of probation (being bound over to keep the peace).¹⁴⁷ But, despite what Barnes says,¹⁴⁸ she did not simply disappear, never to be seen again. She settled in Hayes Heath, not many miles from the vicarage, and apparently from the day she left the courthouse to the day of her death twenty-eight years later, having married and borne children, she vociferously maintained her innocence, even on her death bed.¹⁴⁹ And if it wasn't her, it was George.

So perhaps one can understand how, as things developed in the next round of anonymous letters, which started in the summer of 1892,¹⁵⁰ when George was sixteen, Sergeant Upton might have come to suspect, perhaps somewhat guiltily, that he had been too quick to put the blame on poor Elizabeth Foster in 1889.

V. LIFE UNARTFUL: BARNES, THE EDALJIS AND THE HISTORICAL RECORD, 1892–1895

Barnes's whole version of the beginnings of the new round of letters and pranks in 1892 (which went on for three years) is wrong. These events did not begin

eligible for rewards under a complex system of rewards if the prosecution ended in conviction. An acquittal meant they lost the money they had laid out. The theory of the system remained the same until 1886, but the practical realities began to change with the coming of the new police forces after 1829. From that point on, it was generally police officers who acted as prosecutors, and their costs were defrayed by their departments. Private prosecutions were still possible, but the routine prosecution was a police prosecution. There was a central "Director of Public Prosecutions," created in 1879, lodged first in the Home Office and after 1884 in the office of the Treasury Solicitor, but that officer did not actually "direct" most prosecutions except in a general advisory capacity. Most prosecutions continued to be the province of the police departments and their own solicitors. The Director of Public Prosecutions did offer advice and aid in the form of expert witnesses, and sometimes took over the prosecution of important cases once they were filed. This was the system that obtained when George Edalji was prosecuted. See TOBIAS, *supra* note 138, at 117–38, and <http://cps.gov.uk/about/history.html> (the "cps" stands for "Crown Prosecution Service").

¹⁴⁶ A "police court" was a minor court presided over by a single justice of the peace "out of sessions." It could try minor cases and bind more serious cases over for consideration in higher courts.

¹⁴⁷ WEAVER, *supra* note 3, at 31.

¹⁴⁸ Barnes has Shapurji say that she left the district and was "long gone." BARNES, *supra* note 1, at 243.

¹⁴⁹ WEAVER, *supra* note 3, at 211, 218. Her consistent and oft-repeated denials were persuasive to at least one Home Office reviewer of the case, Mr. Bettany, in 1905. *Id.*

¹⁵⁰ *Id.* at 37–38.

with the episode of the Walsall Grammar School key, as Barnes would have it.¹⁵¹ They began with letters written primarily to W. H. Brookes, although Shapurji also received some.¹⁵² The main target of these initial letters seems to have been the Brookes family, particularly the son Fred and the daughter Lucy, a teacher in the local primary school who had been brought up on charges before the United District School Board for mistreatment of children (a matter of public knowledge, since it was recounted in the local newspaper).¹⁵³ In these initial letters, the Edaljis appeared to be throw-ins based mostly on assertions that they were friends or supporters of the Brookeses. For instance, George was threatened with death if he continued to talk to “the grocer kid,” and Shapurji was accused of being unchristian for letting “his bloody blasted dam bloody curst buger bleeding blasted kid talk to the grocer’s kid.”¹⁵⁴ Internal evidence in the letters suggested that the writer had a connection to and knowledge of Walsall Grammar School, while other evidence strongly suggested that the writer knew of the Elizabeth Foster episode (and took her part).¹⁵⁵ Also, the letters appeared to be in two distinct handwritings, sometimes both appearing in the same letter.¹⁵⁶

Besides misdescribing the initial stages of the 1880’s events, Barnes mischaracterizes Shapurji’s relations with Brookes, and by implication, George’s relations with Brookes’s son Fred. Brookes was the local grocer (not an ironmonger, as Barnes has it, though he may also have sold hardware), and he was also a member of the vestry board of St. Mark’s parish.¹⁵⁷ The families were thus clearly acquainted, if only on a formal basis through church business. In 1891 Brookes, as a member of the vestry board, had been heavily critical of Shapurji’s approach to church governance, which he contrasted unfavorably with that of Shapurji’s predecessor in letters to the local Charity Commissioners.¹⁵⁸ Their relations, however, though strained, were not completely poisonous. For example, Fred Brookes was a member of the parish choir, and after an incident resulting in the organist’s demanding his expulsion, Shapurji had intervened to restore him to the choir.¹⁵⁹ So, even though Fred appears to have been somewhat younger than George (Fred was still at Walsall Grammar School and George had

¹⁵¹ BARNES, *supra* note 1, at 32–33.

¹⁵² WEAVER, *supra* note 3, at 38.

¹⁵³ *Id.* at 39.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 40–43. Walsall Grammar School was in the town of Walsall, about two thirds of the way to Birmingham from Great Wyrley by rail. Rugeley, site of the Rugeley School, was in the opposite direction by rail.

¹⁵⁶ Letter of Arthur Conan Doyle to the *Daily Telegraph*, May 24, 1907, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 201–203.

¹⁵⁷ WEAVER, *supra* note 3, at 36.

¹⁵⁸ *Id.* at 37.

¹⁵⁹ *Id.* at 52–53. The organist quit over the incident.

finished at Rugeley and was off to Birmingham every day to law school), acquaintance between them was likely, and some sort of friendship was not impossible.¹⁶⁰

So the elder Brookes was far from the character sketched by Barnes—a dour lower-class hardware dealer, almost a stranger to Shapurji, who had attached no importance to the letters and decided to ignore them, and who was contacted about them by Shapurji months after the letters began, and then only because young Brookes (apparently until then also a near stranger) had come to Shapurji's attention by being mentioned along with George in a prank newspaper advertisement.¹⁶¹ In reality, the letters had caused the Brookes family quite a bit of grief and pain, and Brookes had by no means been silent about the letters he had received. He later became an implacable enemy of the Edaljis, and even physically assaulted George on a railway platform just for looking at him,¹⁶² having become convinced through his dealings with the police, mainly Sergeant Upton, that George was behind the new wave of letters.¹⁶³

When the letters started accelerating and became more outrageous in content, Shapurji again, as in 1889, brought in the police.¹⁶⁴ So in early October

¹⁶⁰ *Id.* at 38. This would make Fred Brookes closer to Horace Edalji's age than to George's, which may be of some significance. Horace's name is curiously absent from all the anonymous letters in all periods, and he is the only member of the Edalji household to escape being mentioned in them, including little Maud. Fred Brookes also appears to be a contemporary of Royden Sharp, later to become Conan Doyle's main suspect in the horse maimings, who was twelve or thirteen when second round of anonymous letters began. *Id.* The problem with attributing the 1892 letters exclusively to Sharp, however, is that he had been thrown out of the Walsall Grammar school and was a boarder at a school in Lincolnshire when the letters were being delivered by hand in large numbers in November and December of 1892. For this and other reasons, Conan Doyle threw in Sharp's elder brother "Wallie," then a "senior scholar" at Walsall Grammar School, as a co-conspirator. See Arthur Conan Doyle, *Statement of the Case Against Royden Sharp* (directed to the Home Office) [hereinafter *Case Against Royden Sharp*], reproduced in RICHARD WHITTINGTON-EGAN AND MOLLY WHITTINGTON-EGAN, CONAN DOYLE PLAYS SHERLOCK HOLMES IN THE STRANGE CASE OF THE STORY OF GEORGE EDALJI 109, 113, 115 (1985). Barnes went further and made "Wallie" Sharp a tormentor of George in the village elementary school. BARNES, *supra* note 1, at 10–11, 13. But the Sharps lived in Hednesford, on the other side of Cannock, in a different parish, and it is not only unlikely that George and Walter would have attended the same elementary school, they were not very likely even to have known each other. Conan Doyle admitted as much. CONAN DOYLE, MEMORIES, *supra* note 17, at 117.

¹⁶¹ BARNES, *supra* note 1, at 251–252.

¹⁶² WEAVER, *supra* note 3, at 43–44.

¹⁶³ *Id.* Years later, after George's conviction, in response to a letter supportive of George in the *Birmingham Daily Mail*, Brookes submitted a virulent response which the paper refused to publish on the grounds that it was libelous. *Id.* at 177.

¹⁶⁴ The letters had begun mostly with name calling, but by October they had shifted to accusing Fred Brookes of writing the earlier "Elizabeth Foster" letters, and George of posting them. Through the fall they also began to describe in detail imagined sexual relations between George and Fred's adult sister, the teacher Lucy, and between Fred and George's ten-year-old sister,

1892 Sergeant Upton found himself once again in the vicarage as the result of anonymous letters connected to the Edaljis.¹⁶⁵ He interviewed the members of both the Edalji and Brookes families and took handwriting samples from everyone.¹⁶⁶ He also visited Walsall Grammar School in early November, where suspicion fell on a former student named Royden Sharp and a friend of Fred Brookes named Wynne.¹⁶⁷ At this point the postal authorities were also engaged by the police to keep watch for the letters in the mails.¹⁶⁸ While the postal watch went on, the posted letters stopped, and various hand-delivered notes, some seventy-four in all, started to turn up at the vicarage, along with a shower of odd foreign objects on the steps and sills and in the yard: “pieces of coal, a pocket knife, a blue crayon, a bundle of leather bootlaces, a leather purse, an empty phial, spoons, a collar stud, a small thermometer.”¹⁶⁹ Some of the notes were written on envelopes which had previously been posted to Shapurji.¹⁷⁰ Feces were placed in a brown paper bag and left on the front steps.¹⁷¹

At some point Upton’s superior, Superintendent Barrett, ordered a watch on the vicarage.¹⁷² On December 12, Constable Poole found a large key on the back doorstep of the vicarage, and claimed that nobody had passed in or out from the time George entered to the time the key was discovered.¹⁷³ (The key was later traced to the Walsall Grammar School, and even Captain Anson, at a later date, had to admit that George could not have actually stolen it himself).¹⁷⁴ The police watch, if it continued, proved generally ineffective, perhaps because of the weather. After the key was found, objects continued to appear around the vicarage, and on December 14 feces were wiped onto the outside of upstairs windows.¹⁷⁵ Upton came to the conclusion that George was responsible, and so

Maud. The phrase “the black man” (also used in the 1888 letters) reappeared repeatedly. Charlotte was warned, “Unless you run away from the Black, I’ll murder you and Mrs. Brookes,” and it said further that she stirred up trouble, and that she should be sent away, otherwise she would be shot, as she “is a cant, liar, devil, confounded hypocrite, silly blasted bloody fool.” (Weaver remarks on the oddity of a scribe who could not spell “cunt” but could spell “confounded hypocrite.”) *Id.* at 41.

¹⁶⁵ *Id.* at 40.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 40–41.

¹⁶⁸ *Id.* at 40.

¹⁶⁹ *Id.* at 40–41.

¹⁷⁰ *Id.* at 68.

¹⁷¹ *Id.* at 41.

¹⁷² *Id.* at 46.

¹⁷³ *Id.* at 47.

¹⁷⁴ *Id.* at 47, 51.

¹⁷⁵ *Id.* at 46–47.

informed his superior, Captain the Honorable G. A. Anson¹⁷⁶ (he also informed Brookes and perhaps the rest of the entire community¹⁷⁷). The police attempted various ruses to catch George, and at one time pretty clearly planted an envelope in order to be able to charge him, but in the end this did not work.¹⁷⁸ Shapurji wrote to Captain Anson on December 22, 1892, complaining of this last tactic, and also demanding that Elizabeth Foster be brought in and questioned.¹⁷⁹ (Over the course of the next years Shapurji suggested many alternative suspects, but none were investigated.¹⁸⁰) He also threatened to inform Lord Hatherton,¹⁸¹ the

¹⁷⁶ *Id.* at 47 n.69. George Augustus Anson was born on Dec. 22, 1857, <http://www.thepeerage.com/p1035.htm>, making him only a year and a half older than Conan Doyle. The circumstances of their respective births were worlds apart, however. Anson was the second son of the second Earl of Lichfield. If his father had been a duke, he would have been entitled to the honorific “Lord,” like Lord Peter Wimsey (Dorothy L. Sayers’s famous detective hero), but as the second son of an earl all he got was the honorific “the Honorable.” He was educated at Harrow, leaving in 1874, took no University degree, and entered the army in 1876 as a lieutenant. All of his service was in England except for a brief posting in Egypt. He was promoted to captain in 1885, and left the army in 1888, the year he was appointed Chief Constable of the Staffordshire Constabulary. He was selected (by the Justices at Quarter Sessions) over sixty-seven other applicants, despite his lack of police experience. WEAVER, *supra* note 3, at 33. See also THE HARROW REGISTER 1801–1894, at 402 (R. Courtenay Welch ed., 1893), available at books.google.com/books?id=HGHI9c5N2KAC).

¹⁷⁷ *Id.* at 43–44.

¹⁷⁸ *Id.* at 47–50.

¹⁷⁹ *Id.* at 52–53.

¹⁸⁰ *Id.* One alternate suspect who perhaps should have been investigated was the well-educated near-madman James Morgan, who kept up a bizarre correspondence with Shapurji both privately and in the pages of the *Cannock Advertiser* in 1893, and whose letters bore some resemblance to the more religiously raving anonymous letters. *Id.* at 60–61. There surely is a great variety of strange creatures that appear when the rock of an apparently quiet little community is turned over.

¹⁸¹ Edward G. P. Littleton (b. 1842), who became the third Baron Hatherton in early 1888, was one of the few peers who was also a Justice of the Peace (probably becoming Chair of Quarter Sessions on his elevation to the peerage in 1888). He had served in the Grenadier Guards, and would likely have found the selection of Anson as chief constable congenial. See www.thepeerage.com/p872.htm, and the biography that accompanies his 1895 caricature in VANITY FAIR, currently available in summary at www.antiquemapsandprints.com/spy/SPY-1895.htm. Hatherton had an unusual family and, it must be said, was not unacquainted with exiles from India. Hatherton’s father, the second Baron, was something of an eccentric in matters of religion. He had the family pews removed from the local parish church and replaced with what can only be described as a living area against the wall, complete with armchairs and a fireplace, and surrounded by a curtain apparently open only in the direction of the pulpit and altar, where he and the family would sit during services drinking coffee and reading the papers. It is said that he would rustle his paper loudly if he grew impatient with the sermon. See BRIAN THOMPSON, IMPERIAL VANITIES 66 (2001).

In 1855 the exiled last Maharaja of Bengal, Duleep Singh, who was only four years older than Edward G. P. Littleton, paid an extended visit to Hatherton’s family in Staffordshire. Singh, a Sikh and a somewhat involuntary convert to Christianity, became friends with the family and

Chair of Quarter Sessions,¹⁸² of the constabulary's performance in the case. Beginning on December 20, 1892, the letters took on a new tone entirely, one of apparent religious mania.¹⁸³ Then what appears to be yet another new voice appears in March of 1893.¹⁸⁴ Thereafter, in the summer of 1893, a torrent of hoax orders of goods and services began.¹⁸⁵ This continued off and on for two years, punctuated by various letters, some mentioning Brookes, some mentioning Elizabeth Foster, some extolling Sergeant Upton. Generally, the authorities refused to investigate. In 1895, Shapurji was again in correspondence with Anson.¹⁸⁶ Anson dispatched his chief assistant to tell Shapurji that it was clear to Anson that the chief culprit was either Shapurji himself or George.¹⁸⁷ Charlotte wrote to Anson saying that it was cruel of him to refuse to investigate further.¹⁸⁸ Anson wrote a quite insolent letter in response, indicating that he would in the future ignore all communications from her unless she assured him she was doing all she could to discover the culprit inside the vicarage.¹⁸⁹ Shapurji wrote protesting Anson's treatment of Charlotte,¹⁹⁰ and in response to this, on June 24, Anson wrote indicating that he was close to making an arrest and that the culprit would get a dose of penal servitude.¹⁹¹ It was clear that he meant George. The letters and pranks continued for another six months.

The tone of the anonymous letters at this time can best be judged by a specific example. Here is one from August 17, 1895, signed "Thomas Hitchins" and addressed to the servant girl Nora, as summarized with relevant quotations by Gordon Weaver:

presumably with the young scion. But of course there was a big difference between a "Hindoo prince" and a "Hindoo vicar."

¹⁸² On the role of Quarter Sessions in supervising the police, *see supra* note 139.

¹⁸³ WEAVER, *supra* note 3, at 56.

¹⁸⁴ *Id.* at 58.

¹⁸⁵ Though not always factually accurate, Barnes's depiction of these practical jokes gone mad is pretty effective in conveying the extremity of the situation. *See* WEAVER, *supra* note 3, at 62–64, where he describes the prank orders that resulted in the delivery of "wines, spirits, medicines, books, furniture, clothes, musical instruments, and an undertaker to collect a body of a family member." Letters were also written to fellow clergy allegedly from Shapurji, making paranoid charges with sexual components. In addition, one "ingenious hoax summoned a female detective to the vicarage, summoned, so she thought, to assist Mrs. Edalji in gathering proof of her husband's infidelity." *Id.* This detail was to re-emerge when years later "Martin Molton" wrote letters claiming to be a similarly summoned detective from the 1890s events. *See infra* note 479.

¹⁸⁶ *Id.* at 66.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 67.

¹⁸⁹ *Id.* at 67–68.

¹⁹⁰ *Id.* at 66–67.

¹⁹¹ *Id.* at 67.

[The letter claimed to be from] a Thomas Hitchins, chief constable of West Bromwich, specially commissioned by the Home Secretary to prevent any more girls from being enticed into hell. Reverend Edalji, referred to as the “infernally Blackman,” was described as the most immoral man in creation responsible for starving, beating and torturing every girl employed at the vicarage and soon to be arrested for “vile...gross immorality with persons using Vaseline in the same way as did Oscar Wilde and Taylor.”

The writer invited Nora to put the bits of paper enclosed in the letter under carpets, throw the cat down one of the WC’s in her master’s yard for which she would be rewarded with £50. Also suggested was for Nora to report finding Mr. Brookes sleeping with Mrs. Edalji under Nora’s bed at the vicarage and that they held Nora down and outraged her before she managed to escape through the bedroom window where she met George Edalji, Fred and Edgar Brookes, who wanted to take Nora upstairs and similarly ravage her and drink her urine. Nora, eulogized as “You most lovely, most sweet...creature whom I loved directly I saw you: was told she owed a “Duty to yourself. God our crucified savior, (to) stop the vile career of the blackguard and murderer, this Pharisee. The letter ended with a culinary instruction: “Put shit with anything you may cook for the family and save all your piss and put it to boil potatoes.”¹⁹²

In December 1895 three things happened. Sergeant Upton was transferred to another part of the county,¹⁹³ Royden Sharp went to sea,¹⁹⁴ and the letters and pranks ceased.¹⁹⁵ For seven years.

VI. LIFE UNARTFUL: BARNES, THE EDALJIS, AND THE HISTORICAL RECORD, 1895–1903

The seven years of relative peace between George’s twentieth birthday (January 22, 1896) and his twenty-seventh birthday (January 22, 1903) were years in which

¹⁹² *Id.* at 65.

¹⁹³ *Id.* at 71. Such transfers were routine. See TOBIAS, *supra* note 139, at 108. Upton retired in 1903, perhaps as a result of some alcohol-related incident. *Id.* Barnes, of course, keeps him around. BARNES, *supra* note 1, at 86.

¹⁹⁴ WEAVER, *supra* note 3, at 71. Sharp had returned to the area to become apprenticed to a butcher named Mellor around 1894, and shipped out as an apprentice seaman on the *General Roberts* from Liverpool, at about the same time the last phony advertisement letter was sent to a Liverpool area newspaper. *Id.*

¹⁹⁵ *Id.* at 70–71.

George made great progress in his legal career, but less progress on other fronts. Indeed, as we will see, one episode just before the beginning of the maiming incidents almost ruined him.

While the torrent of letters and pranks was still pouring upon his family, George had finished his preparatory law course at Josiah Mason College in Birmingham, done well in the Law Society exams, and obtained his articles. During the five years of his articles he was essentially an apprentice in a law firm, who also had to take courses and pass examinations sponsored by the Birmingham Law Society. If he performed satisfactorily, he would qualify as a licensed solicitor. He did more than satisfactorily, winning a number of prizes and taking the bronze medal for the third highest overall score in the Birmingham qualifying exams in 1898.¹⁹⁶ With capital from his family, he obtained space in Birmingham and set himself up in business with a solo practice as a solicitor.¹⁹⁷ (Whether this means that he was not wanted by the firm with which he served as an articulated clerk is anybody's guess.) He also practiced locally in Great Wyrley and vicinity out of the vicarage.¹⁹⁸ And he appears to have developed a clientele. We know, for instance, that on the night before the pony slashing for which he was convicted, he met at the vicarage with a client, David Hobson, a merchant from Bridgtown (just north of Great Wyrley) between 7:15 and 7:55 p.m.¹⁹⁹ We also know that George was engaged in late 1901 to do the conveyancing of some land priced at £5500 from J. T. Hatton to the Cheslyn Hay village for a water works.²⁰⁰ Squire Hatton (for so he was called)²⁰¹ was a substantial farmer, a

¹⁹⁶ *Id.* at 73.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 97.

¹⁹⁹ *Id.*

²⁰⁰ The Cheslyn Hay Historical Society Newsletter contains the following, excerpted from a local newspaper (probably the *Cannock Advertiser*), by local historian Mike Belcher:

In late 1901, a tender of £4,575 for a water scheme at Cheslyn Hay, was accepted from Mr. W. H. Reading of Wolverhampton. This involved the laying of mains, the erection of a pumping station, a reservoir and other appurtenant works in connection with a water supply. An agreement to purchase land for the site of the Water Works in Hollybush Lane from Mr. J. T. Hatton for £5,500 was drawn up by solicitor Mr. George Edalji. It was also decided to ask a sanitary expert to draw up a sewage scheme.

Copy on file with author; apparently no longer available on line. (Note: Cheslyn Hay was the community bordering Great Wyrley to the west.) (Second Note: This is a good place to alert the reader to a narrative version of Conan Doyle's involvement in the Edalji case, which exists (or existed) in a couple of places on the Web, including the now apparently defunct Cheslyn Hay Historical Society site, and which involves a female reporter for the muckraking magazine *Truth*, acting as Conan Doyle's "Watson." It is almost certainly pure fiction, perhaps drawn from a fictionalized BBC program from the 1970s. Its fictional nature should be apparent from the name given to the female reporter (for which there is no record in any of the sources concerning *Truth*): Kathleen Moriarty. Weaver notes the story's existence. WEAVER, *supra* note 3, at 361.

²⁰¹ WEAVER, *supra* note 3, at 297.

Justice of the Peace, and a vestry board member who had also clashed with Shapurji from time to time over church policy.²⁰² His son Christopher either was or was not a good friend of George's brother, Horace.²⁰³ (Christopher Hatton will surface later as an information source for Captain Anson in the struggle with Conan Doyle.) We also know that George was entrusted with client trust money in the amount of £214 at the time he was arrested.²⁰⁴

George had at least one scrape with local roughs, although not from his own immediate community. In late 1900, in Snareshill, about three miles from the vicarage, two men, Joseph Gladwin and William Walker, menaced George while he was on one of his walks.²⁰⁵ They shoved him, and when he asked for their names, they "punched him up," as they might have said. He prosecuted them, and they were convicted on December 7, 1900. The magistrates threatened a jail sentence, but in the end, imposed only a fine.²⁰⁶

We also know that George, like many lawyers, made enemies when he threatened suit on behalf of clients. This certainly was the case in 1901 with a local butcher, John England Hart, with whom George corresponded concerning a possible defamation action.²⁰⁷ Nor was Hart the only person who took a dislike to George in those years. Perhaps influenced by Captain Anson, C. A. Loxton, a fellow solicitor and the clerk of the Quarter Sessions, accused George (according to a 1907 memorandum of Anson's to the Home Office) of writing "immoral and offensive" graffiti about Loxton and his fiancé on various walls in the local vicinity in 1901.²⁰⁸ (Loxton will play a significant role in George's later problems).

In early 1901 George published a slim (123 pages) "everyman his own lawyer" book in the "Wilson's Legal and Useful Handy Books" series, entitled *Railway Law for the 'Man in the Train.'* At least some of his neighbors seem to

²⁰² *Id.* at 26.

²⁰³ WEAVER, *supra* note 3, at 181–83.

²⁰⁴ *Id.* at 181. This would be around \$21,000–\$22,000 today, calculating from the \$100 pound. See *supra* note 70. This trust money became another point of contention between George and the police. See, WEAVER, *supra* note 3 at 181–85. It was kept in a lockbox in his office (this was not uncommon practice at the time). The key to the lockbox was apparently in his desk. After George was arrested, his office was thoroughly searched by the police. Later when George dispatched Charlotte to retrieve the money, the lock box was found open and empty. The police denied knowledge and suggested that George had cleaned out the money himself to help solve his money problems. There was some suspicion that some employee of the landlord might have taken the money. George's client wrote a letter of support to the press expressing implicit trust in George, but one might speculate that this may have been at least a tacit condition of repayment by George's family. Boxes in boxes.

²⁰⁵ WEAVER, *supra* note 3 at 74, citing the *Cannock Advertiser*, Dec. 8, 1900.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

have been proud of this accomplishment of a Wyrley native, for the *Cannock Chase Courier* of January 26, 1901, described the book as interesting and useful and went on that it was “somewhat gratifying to the public of this district that ‘one of us’ has been the author.”²⁰⁹

So George’s life appears to have been one of more ups than downs, at least until 1902. He continued to live at the vicarage. And he continued to share a room with his father.

Here let us put on the table the sleeping arrangements that were to figure so prominently in people’s evaluation of the case over the next five years and beyond. It seems undoubtedly true that, in a not insubstantial house of at least eight rooms,²¹⁰ George’s mother, Charlotte, and his younger sister, Maud, slept in one room; George’s younger brother, Horace, slept by himself in another room, and George and his father, Shapurji, slept in a third room. These general sleeping arrangements are not subject to much doubt. They lay at the heart of George’s later claim to an alibi, and if they had not been substantially true, and true for roughly the period of time described in the family’s explanations, there were various maids over the years who could have put the lie to the story.²¹¹ Conan Doyle professed to see nothing strange in these sleeping arrangements,²¹² but he may be the only person ever to assert as much. Whatever else might be made out

²⁰⁹ *Id.*, citing the *Cannock Chase Courier* (the text makes references to the *Cannock Advertiser*, but one of the references is wrong, so I have gone with the footnoted reference). (The length of the book was determined by reference to the online catalogue of the Library of Congress, <http://catalog.loc.gov/>)

²¹⁰ The exact layout of the vicarage is something of a problem. It was a substantial two-story brick Victorian residence, and pictures of it have been published in various places. Nota bene, however, that the picture following page 112 in PETER COSTELLO, *THE REAL WORLD OF SHERLOCK HOLMES* (1991) is most certainly not the vicarage. That house, which has a slightly similar double gabled appearance, is much more substantial, appearing by the number of windows to have at least twelve to fourteen rooms. The best photograph of the actual vicarage is the one taken by Paul Lester in 1991 and appearing (in a rather dark print) on page 46 of PAUL LESTER, *SHERLOCK HOLMES IN THE MIDLANDS* (1992). The way to come to an estimate of size and number of rooms, however, is to combine that photo with the line drawing which apparently accompanied the original Conan Doyle series in the *Daily Telegraph* in 1907, and which appeared in WHITTINGTON-EGAN & WHITTINGTON-EGAN, *supra* note 158, at 13. The two different views, at right angles to each other, allow one to be fairly confident that the house had at least four substantial rooms on each floor. The DoYLES would have been happy to have such a house in the early 1870s. Perhaps more to the point, Lester says the vicarage had five bedrooms, LESTER, *supra*, at 47, and he has been there. Barnes must have decided that the bedroom arrangements had to be accounted for in some way to maintain his vision of George as holy fool, because Barnes has it that there are only three bedrooms, with Maud getting Horace’s bedroom when he moved out even in the face of George’s desire for it. BARNES, *supra* note 1, at 72. Shall we say pure fiction?

²¹¹ This includes even Elizabeth Foster, who was in court for the trial, seated among the prosecution’s potential witnesses. WEAVER, *supra* note 3, at 139.

²¹² *Id.* at 234–35.

of them, it appears that every other contemporary observer found them extremely unusual.

The family story was that, around the time when George was seven and Maud was four (around 1883), Maud became sick with a lingering illness and she was taken into her mother's bed for nursing and comfort.²¹³ Shapurji therefore gallantly removed himself. At the time, it may be speculated (though it is not clear) that George and Horace were sleeping in separate rooms. George's was likely larger, perhaps, so Shapurji moved in there. And so things continued *for the next seventeen years*, even though Horace moved out in 1899 when he was around twenty to take up a government clerkship in Shropshire.²¹⁴ Neither George nor Maud moved into Horace's room. George accounted for this by saying that Horace often returned to visit.²¹⁵ But not many twenty-seven-year-olds, now or then, would voluntarily share a room with their father when other space is available. (And other space could have been made available much earlier, in a house of that size, had anyone had a mind to do so.)

The obvious explanation for Shapurji's exit from the marital bedroom is the explicit or tacit agreement between Charlotte and Shapurji that whatever passion was ever present was now past. A not uncommon story, perhaps more common then than now. But why did the boys not share a room, leaving Shapurji in solitude? Two dominant explanations were suggested during the controversy over George's conviction: that Shapurji was molesting George (Conan Doyle accused Anson of suggesting this in their only face-to-face meeting, an accusation that Anson passionately denied; more on this later),²¹⁶ or that the parents felt

²¹³ I have set out the most coherent version of the story that I could, and that most favorable to George, based on statements made in Conan Doyle, *Case of Edalji*, *supra* note 111, at 47; by Shapurji in a letter to the *Daily Telegraph*, Jan. 21, 1907, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 149–50; and George's testimony, but there are some problems of reconciliation. For instance, George apparently testified that he moved in with his father so his mother could nurse the sick *Horace*. See Edalji testimony, taken from various press sources by the *Daily Telegraph*, reproduced *id.* at 160. Accord, BIRMINGHAM DAILY POST, Oct. 23, p. 11. These two reports agree that George testified that it was "his brother" who was taken sick, but differ in their general wording sufficiently to be sure that they are independent reports of his testimony (unlike the story in the Oct. 23 *Birmingham Daily Mail*, an evening paper whose story is copied virtually straight from the *Daily Post*.) There also appears to be some doubt about the beginning date of the arrangement. George testified that it had begun "fifteen or twenty years ago" according to the *Daily Telegraph*, and "nearly twenty years" according to the *Daily Post*. The twenty year figure would have made Maud an infant, which seems to be an unlikely circumstance to precipitate all the shifting of domestic arrangements, so I have selected an intermediate date of 17 years for the text. However, on the whole, I don't buy the family story as to either the length of time involved, or as to the precipitating event. It smacks of polite cover, though it is not necessarily covering anything nefarious.

²¹⁴ See COSTELLO, *supra* note 210, at 93.

²¹⁵ Edalji testimony, *supra* note 213.

²¹⁶ WEAVER, *supra* note 3, at 250–55.

George had to be watched.²¹⁷ Perhaps George was a sleepwalker. Perhaps they suspected him of doing other things at night. Perhaps none of this. I make no claims about any evidentiary bearing *vel non* of these strange circumstances on other issues, but they must be set out, since they colored every view of the subsequent events, for better or worse.

Finally, we must describe George's dramatic misfortunes in 1902. George knew another solicitor named John William Phillips.²¹⁸ Phillips had been entrusted with £900 (about \$90,000 in today's money²¹⁹) by three clients.²²⁰ In 1900 Phillips had apparently failed to repay the clients, and finally they filed a suit against him for an accounting.²²¹ In order to be allowed to defend the suit, apparently, Phillips needed to obtain sureties.²²² He asked George to sign as one surety, and George did.²²³ It is not known whether they were friends, or whether George was just being naively cooperative with another solicitor, but in August 1900, after a chancery order to repay the money, Phillips absconded.²²⁴ The creditors pursued Phillips for a year, and finally located him in January of 1902.²²⁵ He turned out to have no assets (and in fact he was prosecuted and received a sentence of twelve months' imprisonment for fraud).²²⁶ That left the clients with nowhere to turn except to the sureties. Desperate, George took what funds he had and invested in stock market flyers, but he had no better luck there than he had had with Phillips.²²⁷ George apparently did not want to tell his family, and in March 1902 he was reduced to writing obsequious begging letters to wealthy strangers telling his sad story and asking for five pounds.²²⁸ This worked no better than the stock market flyers. The surety creditors prepared an involuntary bankruptcy petition against George, which apparently would have resulted in his ruin as a solicitor. This they threatened to file in January 1903 if he

²¹⁷ This seems to have been the implication made in the closing for the prosecution: "Referring to the sleeping arrangements at the Vicarage, counsel said what an extraordinary arrangement was that which admitted of a man of twenty-nine [*sic*] years of age sleeping in the same room as his father when there was no lack of bedroom accommodation." Counsel then turned to motive, asking: "Was it a lust for blood—an uncontrollable passion to kill something?" See summary of closing argument of prosecution counsel Mr. Disturnal, BIRMINGHAM DAILY MAIL, Oct. 20, 1903, at 3, col. 4. The argument was also made by Anson. See WEAVER, *supra* note 3, at 251.

²¹⁸ WEAVER, *supra* note 3, at 75.

²¹⁹ The pound was then worth about \$100. See *supra* note 70.

²²⁰ WEAVER, *supra* note 3, at 75.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

did not come up with at least £105.²²⁹ At this point, he apparently broke down and went to his family, and they must have bailed him out, since there is no indication that the bankruptcy was ever proceeded with.²³⁰

VII. THE HISTORICAL RECORD AND THE ANIMAL SLASHINGS—FEBRUARY TO MID-AUGUST, 1903

On the night of February 1, 1903, the first maiming took place.²³¹ A horse belonging to Joseph Holmes, a local merchant, was slashed across the belly.²³² While it is reasonably clear that the horse did not die as a result of this wound directly, and that a sufficient investment in veterinary attention might have saved it (the slash caused bleeding and extrusion of fat but did not penetrate the peritoneum),²³³ a horse in that condition was for all practical purposes ruined, and was duly put down. Most of the subsequent maimings appear to have followed a similar pattern.

This episode did not cause much stir. Animal maimings and rick burnings were fairly common methods of settling grudges in rural England, and while they were perhaps on the wane, they were still not particularly rare.²³⁴

Two months later, on the night of April 10 (which was Easter Saturday) a horse belonging to Mr. Thomas, a baker and parish counsellor, was similarly slashed.²³⁵ Then a cow owned by Mrs. E. Bungay on May 2, a horse belonging to the publican Henry Badger and a sheep belonging to the farmer T. J. Green on May 14, and two cows belonging to Captain Harrison, manager of Brownhill Colliery, on June 6, were all slashed in the night.²³⁶ Now people were definitely paying attention, and complaining about the ineffectiveness of the police.²³⁷

²²⁹ *Id.*

²³⁰ According to Shapurji, George's liabilities at the time of his arrest were less than £100. *Id.* at 182.

²³¹ *Id.* at 77.

²³² *Id.*

²³³ Conan Doyle, *Case of Edalji*, *supra* note 111, at 111. Weaver uses the word "disemboweled," which is clearly wrong.

²³⁴ WEAVER, *supra* note 3, at 77.

²³⁵ *Id.* at 77 n.132.

²³⁶ *Id.* There appear to have been survivors. In his testimony Inspector Campbell said only that Mrs. Bungay's cow was "cut," and it is clear that one of the Blewitt horses (victims of the later June 29 slashings) survived. Campbell testimony, BIRMINGHAM DAILY MAIL, Oct. 20, 1903, at 3 col. 5. This horse was apparently slashed on the flank, either instead of or in addition to being cut on the belly, judging from the picture reproduced in COSTELLO, *supra* note 210, following page 110. In addition, Campbell testified that all of the animals "with the exception of the cows, were killed and injured in the same way." All of this raises the question of the extent to which these slashings really were the work of a single person.

²³⁷ *Id.* at 78.

Almost all of these slashings occurred within a radius of half a mile centered on the middle of Great Wyrley.²³⁸ And the vicarage.

George's name began to circulate in the rumor mill, in part allegedly because a local Justice of the Peace had asserted to Anson that George was known to be often seen at night on foot far from the vicarage.²³⁹ A force of new men were specially assigned for use in patrol and surveillance in the area of Great Wyrley, but nevertheless, on June 29 two horses belonging to Mr. Blewitt were slashed.²⁴⁰

Then on June 30 the first letter arrived. Over the next six weeks they would come to total eleven missives in all (seven letters and four postcards). These writings are in large part what brought about the conviction of George Edalji for the August 11 maiming with which he was charged, so a little time must be spent on them. They may be divided into a number of groups, but first, it is necessary to note that none of them contain any internal information that would establish for sure that any of them were from whoever was (or were) in fact behind any of the slashings.

The first was a letter was addressed and sent to Sergeant Rowley at the Hednesford²⁴¹ Police Station on June 30. It was printed in capital letters, written in a flamboyant style, and professed inside information describing the slasher as having "eagle eyes and ears as sharp as a razor and fleet of foot as a fox."²⁴²

The next missive was a postcard addressed to Blewitt & Co., another colliery, of which Mr. Blewitt was apparently the principal, on July 4.²⁴³ It was signed "John L. Sullivan," and it asserted that there was a connection between the slashings, the crimes of Jack the Ripper, and various acts of violence by the Fenian Brotherhood.²⁴⁴ This postcard was certainly by someone other than the author of any of the other letters. The writer may even have been serious in his theory. It appears safe to disregard this card as having any real bearing on the case. For whatever it is worth, the handwriting expert brought into the case by the

²³⁸ *Id.* at 77.

²³⁹ George took strong exception to the suggestion that his walks often occurred at night. "I should imagine no person in the district was less in the habit of being out at night than I was...." George Edalji, letter to the *Daily Telegraph*, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 210. Ironically, the historical record seems to indicate that it was Anson who initially dismissed George as a possible slasher, and Inspector Campbell, who had been put in charge of catching the slasher, who immediately "liked" George for it. WEAVER, *supra* note 3, at 80. Barnes, of course, has it backwards. BARNES, *supra* note 1, at 94–98. Weaver infers that the local J.P. referred to was Hatton. WEAVER, *supra* note 3, at 80.

²⁴⁰ WEAVER, *supra* note 3, at 78.

²⁴¹ Hednesford was on the north of Cannock, about three miles from Great Wyrley.

²⁴² WEAVER, *supra* note 3, at 84.

²⁴³ *Id.*

²⁴⁴ *Id.*

prosecution, Thomas Gurrin (about whom more below), did not attribute this post card to George Edalji.²⁴⁵

On July 2, an extensive story on the slashings and the investigation appeared in the *Birmingham Daily Mail*, insuring that any future letter writer would know whatever details were desired.²⁴⁶

The third missive was a letter, also addressed to Sergeant Robinson (this time referred to as “Inspector Robinson”), which arrived on July 7.²⁴⁷ It was in cursive and in a somewhat different style from that of the June 30 letter to Sergeant Rowley. This letter was signed in the name of “Wilfred Greateorex.”²⁴⁸ There was in fact a Wilfred Greateorex. He was a young man of about fifteen, a student at Walsall Grammar School.²⁴⁹ The Greateorex, like the Sharps, lived in Hednesford. During the school year Wilfred Greateorex rode the same morning train as George Edalji,²⁵⁰ along with some large number of other regulars, including other Walsall Grammar School students named in this and subsequent letters: Fereday, Stanley, and the son of another vicar, the vicar of Hednesford, Rev. Quibell.²⁵¹ Wilfred got off in Walsall while George continued on to Birmingham. Wilfred’s father, W. A. Greateorex, was a prosperous landowner in Hednesford. One of his longtime tenants was the now-deceased father of Royden Sharp.²⁵² Greateorex senior was a trustee under Sharp’s will, of which Royden was one beneficiary,²⁵³ and the widow Sharp (and Royden too, as he had returned from his time at sea)²⁵⁴ lived near the Greateorex house. It was later established beyond doubt that Wilfred Greateorex had nothing to do with the “Greateorex letters,” since he was abroad during much of the time they were generated.²⁵⁵

This letter describes a large gang devoted to the slashings, in a kind of penny dreadful adventure story style. The letter tells the story of the initiation of the writer (allegedly Greateorex) into the gang.²⁵⁶ It gives a litany of local names as members of the gang under a shadowy leader, the Captain: Mr Browell, manager of the Great Wyrley Colliery (misspelled Broel), Edgar, the porter at the

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 84–85.

²⁴⁹ Greateorex testimony, summarized in the *Daily Mail*, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 145–46.

²⁵⁰ *Id.*

²⁵¹ WEAVER, *supra* note 3, at 85–86.

²⁵² Conan Doyle, *Statement of the Case Against Royden Sharp*, *supra* note 158, at 111, 115–16.

²⁵³ *Id.* Weaver refers to Royden Sharp as Greateorex senior’s nephew, but the details given in Conan Doyle establish that W. A. Greateorex was a court-appointed trustee under the Sharp will.

²⁵⁴ *Id.*

²⁵⁵ Conan Doyle, *Case of Edalji*, *supra* note 111, at 40. See also WEAVER, *supra* note 3, at 94.

²⁵⁶ Conan Doyle, *Case of Edalji*, *supra* note 111, at 40. Conan Doyle reproduces a fair amount of the letter’s text, *id.* at 41–42.

Wyrley train station, Fred Wootton of Cheslyn Hay post office, Fereday, Stanley, Quibell and “Edalji, the lawyer.”²⁵⁷ The letter was written on four pieces of paper of various kinds put in one envelope.²⁵⁸ In addition to the message to Robinson, some of the pieces bore inscriptions appearing to be parts of letters to George Edalji from Fred Wootton.²⁵⁹ Except from the Wootton-to-George inscriptions, this appears, according to Weaver, to be the first specimen of handwriting attributed to George by Thomas Gurrin, the prosecutor’s handwriting expert, at trial.²⁶⁰

The police interviewed all persons mentioned in the letter, alleged gang members or not, including George.²⁶¹ At trial they made much out of the fact that George asked various questions “to find out about the investigation,”²⁶² but of course, if he had asked no questions they would have found that equally suspicious.

On July 10, missive number 4 (an unsigned letter) arrived. This letter was pretty clearly by the same person as the author of the original “Greatorex” letter.²⁶³ The writer knew (or guessed) about the police interviews of those mentioned in the first “Greatorex” letter, and taunted the police for not catching the gang.²⁶⁴ In an ominous turn, the letter said that the gang would “do twenty wenches like the horses before next March.”²⁶⁵ However, fear of such a turn had already been circulating and was reported in the July 2 *Daily Mail* story, so the

²⁵⁷ *Id.* See also WEAVER, *supra* note 3, at 85.

²⁵⁸ WEAVER, *supra* note 3, at 85.

²⁵⁹ *Id.*

²⁶⁰ *Id.* Gurrin asserted that the piece of a letter from Fred Wootton was not in George’s hand. *Id.* at 146. (No surprise there, since the writer apparently had gotten hold of an authentic Fred Wootton letter.) There is some reason to believe that Gurrin may also have also attributed the first letter, the June 30 letter sent to Sgt. Rowley, to George. Weaver insists this was not the case, relying on the recorded preliminary hearing testimony. *Id.* at 121. At trial, however, Gurrin testified that only one of the letters he was shown in court was not in George’s hand. See BIRMINGHAM DAILY POST, Oct. 22, 1903, at 11 (the most complete version of Gurrin’s testimony in any of the various newspaper sources I obtained from the British Museum). It is possible that Gurrin was not asked about the June 30 letter during his testimony, but one would think the existence of one extensive anonymous letter not attributed to George by the prosecution’s expert would have been brought out on cross, which it wasn’t, at least so far as the fairly extensive newspaper summary reflects. I have gone with Weaver’s assertion in the text, but with this reservation.

²⁶¹ WEAVER, *supra* note 3, at 86.

²⁶² See Campbell testimony summarized in the *Daily Telegraph*, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 138–39, and closing argument of prosecution counsel Mr. Disturnal, *id.* at 164–65.

²⁶³ *Id.* at 86.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

threat in the letter was not so clearly original to the writer.²⁶⁶ The letter also grandiosely threatened to murder Sergeant Robinson.²⁶⁷ While on its face it was hard to take any of it very seriously, someone *was* out at night slashing livestock, after all, and while the writer might not be connected to that in any way, he just might be. Gurrin later attributed this letter to George,²⁶⁸ and it was the basis of the murder threat charge for which he was indicted.

On July 15 missive number 5, another signed “Greatorrex” letter, was sent to Inspector Campbell.²⁶⁹ It included part of an envelope originally sent through the mail to Greatorrex in care of the General Post Office, Walsall. Whoever sent it had some access to either the Greatorrex house or the Greatorrex trash, or had picked up mail addressed to Greatorrex by impersonating him at the post office, an unlikely thing for George, given his appearance.²⁷⁰ The letter offered to reveal the name of the Captain of the gang for a fee, and was generally full of fantasy adventures of the gang.²⁷¹ Gurrin later attributed this letter to George.²⁷²

On July 23 missive number 6, a letter by a different writer, was posted at Rugeley and later delivered to George at the vicarage.²⁷³ It was signed “Lover of Justice.”²⁷⁴ The writer admitted to disliking “natives” but said he thought George was being treated unfairly as a suspect in the slashings, and advised George to take a holiday, and by being away remove himself from suspicion.²⁷⁵ This letter, which was actually brought up at George’s trial (though not attributed to George by Gurrin; it was never shown to Gurrin²⁷⁶), was later admitted by Captain Anson to have been a concoction of Anson and the previously mentioned solicitor and clerk of Quarter Sessions, C. A. Loxton.²⁷⁷ It was an investigative ploy designed

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 87.

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 88.

²⁷⁰ *Id.* It should be noted that George wore a mustache at this time, making him look in some ways even odder than usual. See the mustachioed George in Stashower, *supra* note 55, at photos following page 222. It is also of some interest to note that the sketches of George that appeared in the newspapers during his trial are perhaps the worst such sketches ever done. They look absolutely nothing like him. See, e.g., the sketch in the *Evening Dispatch* (Birmingham) Sept. 4, 1903, at 3.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 93. This fact is pretty strong evidence that the prosecution solicitor, and probably prosecution counsel, knew of the falsity of this letter. In that case, any reference to it at all as if it were a real anonymous letter would seem to be a serious prosecutorial abuse. It was testified to extensively by Inspector Campbell. See Campbell testimony, summarized by the *Daily Telegraph*, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 137–38.

²⁷⁷ WEAVER, *supra* note 3, at 88.

to get Edalji to incriminate himself as the writer of the Greatorex letters (though it is not completely clear how this was supposed to work).²⁷⁸ George would later claim he actually recognized Loxton's handwriting.²⁷⁹ Though he attempted no such assertion at trial, he did say when he was arrested that the arrest was Loxton's doing.²⁸⁰ At any rate, George turned the letter over to the Inspector Campbell and Constable Cooper on June 27.²⁸¹ He asked them a few more questions about how things were going, natural enough questions that were nevertheless once again turned against him at trial.²⁸²

The day before George's meeting with the police, missives 7 and 8 were posted.²⁸³ One was a postcard to the inspector at Cannock indicating that the maimings would move from Great Wyrley to Littleworth (they didn't).²⁸⁴ The other was a letter to Wilfred Greatorex claiming that warrants had been issued to arrest him, George Edalji, and Fred Wootton. The letter then went on with accusations about Greatorex's role in the slashings.²⁸⁵ The writer seemed to be aware of the advice to leave that had been given to George in the "Lover of Justice" letter.²⁸⁶ Hence, this letter may have been another Loxton creation. Gurrin later attributed it to George.²⁸⁷

Missive number 9 was addressed to George and signed "Wilfred Greatorex," but it was not like the earlier "Greatorex" letters.²⁸⁸ In this letter, too, the writer seemed to be very much aware of the contents of the "Lover of Justice" letter, and there are striking compositional parallels that stretch the bounds of likely coincidence.²⁸⁹ This could mean that George wrote the letter to himself (assuming he really had not figured out that the original letter was written by Loxton). Or it could be Loxton writing again. Gurrin attributed it to George.²⁹⁰

²⁷⁸ *Id.* Anson said in a report to the Home Office in 1905 that the intent was "to puzzle Edalji into taking some step to assist the police in clearing up some doubtful points." *Id.* at 89 and 90 n.65. Interestingly, the Home Office later suspected Conan Doyle of using a similar phony letter ploy on his favorite suspect, Royden Sharp, in 1907. *Id.* at 270–71. Boxes in boxes.

²⁷⁹ *Id.* at 89.

²⁸⁰ *Id.* at 89, 102.

²⁸¹ *Id.* at 90.

²⁸² *Id.* See also Campbell testimony and closing argument of prosecution counsel Mr. Disturnal, *supra* note 262. The Lord Chancellor, Lord Halsbury, dismissed all such arguments in his confidential review of the case for the Home Office, observing that the questions asked by Edalji were "the type that any ordinary person interested in the outrages might ask." WEAVER, *supra* note 3, at 83, 194.

²⁸³ WEAVER, *supra* note 3, at 90.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 121 (summary of Gurrin's conclusions from the preliminary hearing).

²⁸⁸ *Id.* at 91.

²⁸⁹ *Id.* at 92.

²⁹⁰ *Id.* at 91.

Missives 10 and 11 were both August 4 postcards, one mailed from Wolverhampton to George at his office in Birmingham, and one mailed in Walsall to Inspector Campbell from someone claiming to be a student.²⁹¹ George's card accused George of reverting to his old habits of writing anonymous letters and "scribbling on walls" and killing cows. It also very explicitly charged George with sexual conduct with the sister of the Rev. Quibell. Though these postcards were posted at a time when George was away with his sister Maud on a day trip to Aberystwyth in Wales, rather tortured assumptions were made to allow for George to have posted them in rural mailboxes on the day before their postmarks.²⁹² What was not revealed at the trial was that these postcards were in fact part of a series of several such cards sent to a variety of people uninvolved in the case.²⁹³ One of the recipients, a bank manager named Greatorex (no known relation to Wilfred or his father) was told by the police on August 4 that Royden Sharp was suspected and was to be arrested that evening.²⁹⁴ Royden Sharp was interviewed but nothing further was done.²⁹⁵ Letters 11 and 12 were both attributed to George by Gurrin.²⁹⁶

Interlude—Handwriting Identification Expertise

This is a good place to reflect on the reliability of the handwriting attributions by the "expert" Gurrin. Thomas Gurrin had succeeded the earlier generation of Charles Chabot and Frederick Netherclift²⁹⁷ to become one of the leading handwriting experts in England.²⁹⁸ Leading in reputation and in business, that is. Just how actually accurate anyone's attributions of authorship by comparison of hands is, under various circumstances, was unknown then (despite the endorsement of Sherlock Holmes and various claims to near perfection by its practitioners), and remains unknown to this day.²⁹⁹ No one claims there is no "signal in the trace," that is, that there are no significant differences among many individual handwritings, or that differences are wholly random from one piece of writing to another.³⁰⁰ The real question concerns how to extract individual habits from individual internal variation, and then, assuming such habits are identified,

²⁹¹ *Id.* at 93.

²⁹² *Id.* at 94–95.

²⁹³ *Id.* at 95.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 147.

²⁹⁷ On Chabot and Netherclift, see Risinger, *Handwriting Identification*, *supra* note 36, at 282 n.8.

²⁹⁸ WEAVER, *supra* note 3, at 121.

²⁹⁹ See generally Risinger, *Handwriting Identification*, *supra* note 36, at 341–86 (discussion of the testing of document examiner expertise).

³⁰⁰ *Id.* at 341.

what random match probability is represented by those habits. Unfortunately, no decent empirical and statistical work on these issues has ever been done, despite the aforesaid claims of near perfection by various practitioners and schools of practice. This is not to say that handwriting identification might not work, or at least work for some kinds of tasks under some circumstances. If it does, the claim would be that individual practitioners, either through training or an inherent knack, supplemented by experience in observing a large number of examples of handwriting, develop a subjective and not wholly describable skill at identifying the signal in the noise of ever-present internal variation in the individuals' own forming of letters. The claim would further be that such practitioners also have a reliable skill at judging which aspects of the signal are so unusual that they provide a secure basis for concluding that a single person wrote two examples of handwriting. It would seem that one should not accept such a claim simply because it is made by apparently respectable persons (though this was the habit of many, including courts, in the age of Holmes).³⁰¹ Instead, such claims should be subjected to testing.

One must keep in mind that, like most such claims to experience-based skill, the phenomenon examined actually presents many different kinds of tasks, some harder and some easier. The few decently designed studies that have directly tested the accuracy of both lay persons and claimed experts, in a specific task that might arise in actual forensic practice, did find a significant difference between expert and lay accuracy. But they still resulted in an error rate of 8%–12% among experts in regard to one subtask.³⁰² And that general skill under test, which was not attributing authorship of an unknown writing to a particular person, but merely determining the authenticity of a purported signature (i.e., did the person whose name is reflected in the signature actually sign the signature?) is conceded to be the easiest subtask of handwriting identification, because of the special characteristics of signatures which make them more stable and more distinctive than other kinds of writing. Other sources of data indicate that in actual writer attribution tasks, such as trying to attribute disguised writing (which

³⁰¹ See Risinger et al., *Exorcism*, *supra* note 36, at 766–67.

³⁰² See Risinger, *Handwriting Identification*, *supra* note 36, at 371, reporting on Kam et al., *Signature Identification by Professional Document Examiners*, 46 J. FORENSIC SCI. 884 (2001). When document examiners declared a signature to be a simulated forgery, they were wrong 8% of the time. Laypersons, however, were wrong 25% of the time. When document examiners declared a signature to be genuine, they were right 99.5% of the time, as opposed to the laypersons' 92%. It should be noted, however, that document examiners asserted that signatures were too ambiguous to give a decision at a much higher rate than did the lay participants, something document examiners may not do so often in actual practice. A similar study, Jodi Sita, Byran Found and Doug Rogers, *Forensic Handwriting Examiners Expertise for Signature Comparison*, 47 J. FORENSIC SCI. 1117 (2002), found a similar pattern of results, but the errors attributed to the document examiners rose to 12.2% and 2.1% respectively.

all of the letters attributed to George clearly were to some extent), error rates may be, and probably are, much higher.³⁰³ In addition, the subjective skill involved, like every such skill so far tested, would almost certainly be highly subject to “observer effects,” errors arising from expectancy, suggestion, and role. And in an adversary system, there are always pressures of expectancy, suggestion, and role placed upon experts.³⁰⁴

Gurrin was hardly infallible. After George’s conviction he was found to have erred in what is one of the clearest non-DNA cases of factual wrongful conviction in British history,³⁰⁵ the Adolph Beck case.³⁰⁶ On the basis of Gurrin’s testimony, and erroneous eyewitness identifications by a dozen women, Beck was convicted of committing a string of frauds which later evidence (much later; Beck spent years in prison) proved conclusively had been committed by one John Smith.³⁰⁷ Smith had also written all of the letters involved in the fraud.³⁰⁸ No one knows how many other miscarriages resulted from Gurrin’s testimony (or that of any similar forensic expert), for the simple reason that when convictions follow, objective evidence of innocence is usually not then forthcoming. This is not to say that Gurrin was always wrong, or that he was not right a lot of the time in regard to some kinds of tasks, or that it can be shown directly that he was wrong in the Edalji case. It merely establishes that his opinion, like that of any similar expert, is at best by itself an extremely shaky basis for any conclusion, especially in a high-profile case, where the pressures leading to errors of subjective interpretation are at their most intense.

³⁰³ See *id.* at 341–48, 374–76.

³⁰⁴ See generally D. Michael Risinger, Michael J. Saks, William C. Thompson & Robert Rosenthal, *The Daubert/Kumho Implications of Observer Effects in Forensic Science: Hidden Problems of Expectation and Suggestion*, 90 CAL. L. REV. 1 (2002).

³⁰⁵ The clearest cases must remain cases like the 17th century case for *R. v. Perry*, referred to as the Campden Wonder, where the decedent reappeared after his servants had been convicted of his murder and hanged. It was this case that led Matthew Hale to declare that he did not think it ever right to convict a defendant of murder when no body had been found. See WILLIAM WILLS, AN ESSAY ON THE PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE 333–34 (6th edition, Sir Alfred Wills ed., 1912). See generally SIR GEORGE CLARK, THE CAMPDEN WONDER (1959).

³⁰⁶ *Id.* at 121. See THE TRIAL OF ADOLF BECK (Eric R. Watson ed., 1924).

³⁰⁷ THE TRIAL OF ADOLF BECK, *supra* note 306, at 1–70. The case is much more complicated than this summary can do justice to, particularly because Beck finally was released and then once again charged and convicted in a new series of scams of which he was finally also proven not to be the perpetrator. *Id.* at 28–31.

³⁰⁸ *Id.* at 67.

VIII. THE HISTORICAL RECORD: THE SLASHING OF THE PIT PONY, AND GEORGE'S ARREST.

As we have seen, over the course of July, as the various letters were arriving, George was in fairly constant contact with the police. He was also under surveillance.

It is obvious from the record that Inspector Campbell had concluded that Edalji was the slasher after the June 29 slashings.³⁰⁹ At some time, or at various times, or continuously from June 29 forward, the vicarage was kept under police surveillance at night. The reason for the preceding odd sentence is the odd state of the record. The various statements about when the surveillance started, how many men were detailed to it, how continuous it was, when it was discontinued, and whether there was any specific surveillance in place on the night of August 17/morning of August 18, when the slashing George was convicted of took place, create an unresolvable puzzle.³¹⁰ Obviously, if there was specific surveillance of the vicarage on the night of the slashing, that would count heavily in George's favor, since he was not seen leaving. There appears to have been some pretty definite testimony at George's preliminary hearing that there was such surveillance,³¹¹ but one constable testified to the contrary. Anson later claimed categorically that, since the surveillance had proved fruitless, it had been withdrawn some days before.³¹² Conan Doyle's equally categorical assertion that there certainly was such surveillance is another statement made out of partisan excess, though perhaps not an "unfair" one, in light of the preliminary hearing testimony and the confusion for which the police themselves were responsible.³¹³ Besides the watch on the vicarage, if any, there is no doubt that some officers

³⁰⁹ *Id.* at 80. In March 1907 Captain Anson asserted to the Home Office that George had been seen near the site of the June 29 slashings on the night they happened, and that tracks had led from the slashings to the vicinity of the vicarage. Anson was not on site, and could only have gotten such information from an officer at the scene, most likely Campbell. Whether these assertions were communicated in 1903 is uncertain, since they were not mentioned until 1907, and were not further documented. Be that as it may, Campbell seems to have become committed to George's guilt in regard to the slashings from June 29 on. *Id.* at 80-81.

³¹⁰ Contrast, e.g., Anson's 1906 statement that "the watch was abandoned sometime before the 18th of August," *id.* at 294, with Sgt. Robinson's preliminary hearing testimony apparently to the effect that the vicarage was under observation on the night of August 17/18, *id.* at 117. (But note, Conan Doyle, who also quotes this passage, believed it to have referred to an earlier night.) Conan Doyle, *Case of Edalji*, *supra* note 111, at 47. The relevant preliminary hearing testimony is further treated *infra* notes 401-404 and accompanying text.

³¹¹ WEAVER, *supra* note 3, at 80. See further elaboration *infra* notes 390-93 and accompanying text.

³¹² *Id.*

³¹³ Conan Doyle, *Case of Edalji*, *supra* note 111, at 47. Conan Doyle asserts that there were at least twenty men detailed to watch in the district that night.

were supposed to be on watch in the fields and highways of Great Wyrley generally on August 17/18,³¹⁴ but whether any of them actually stayed out all night (in the rain) is anybody's guess.

At any rate, it appears that Campbell was merely waiting for another slashing to move in and arrest George for it, and in the event, that is what happened.

On the morning of August 18, 1903, at about 5:40 a.m., Henry Garnett, a youth of about fourteen who worked in the Great Wyrley Colliery mine, was on his way to work when he noticed a roan pit pony standing in the colliery field next to the path.³¹⁵ The pony was bleeding in large drops from its abdomen, and a roll of fat was protruding from a wound.³¹⁶ Garnett raised the alarm. Various people went into the field to look at the pony, and the police were notified.³¹⁷ Constable Cooper was the first responder, arriving about 6:20 to find a couple of dozen mine employees already on the scene.³¹⁸ Examination of the blood at the scene seemed to indicate that the pony had been slashed in the pony shed, and had later moved outside.³¹⁹ There appeared to be wipe marks on some grass, which might have been where the slasher wiped his hands and weapon.³²⁰

Inspector Campbell, accompanied by Sergeant Parsons and Constable Marklow, arrived at the field around 7:00 a.m.³²¹ They spent about forty minutes examining the scene and discussing the case with Cooper and Garnett. At some time around 7:40 Campbell, who apparently knew that George caught the eight o'clock train to Birmingham, sent Constable Marklow to the station to tell George that Campbell wished to see him at the vicarage immediately.³²² George declined the invitation and went on to Birmingham.³²³ (He would probably have been better off, guilty or innocent, if he had returned to the vicarage to oversee Campbell's visit. But maybe George had to get to his office to eliminate any evidence of his writing the anonymous letters. Boxes in boxes.)

Campbell, Parsons and Cooper then proceeded directly to the vicarage at around 8:00 a.m.³²⁴

³¹⁴ *Id.*

³¹⁵ WEAVER, *supra* note 3, at 98.

³¹⁶ *Id.* See also Conan Doyle, *Case of Edalji*, *supra* note 111, at 48 (quoting Garnett as to the "blood dropping pretty freely").

³¹⁷ WEAVER, *supra* note 3, at 98.

³¹⁸ *Id.*

³¹⁹ *Id.* Garnett first saw the pony in the field. The largest concentration of blood was in the shed.

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.* at 99.

³²³ *Id.*

³²⁴ *Id.*

When they arrived, Campbell peremptorily told Charlotte that he wanted to see all of George's knives.³²⁵ All that could be supplied was a botany spud (trowel).³²⁶ He also demanded to see George's clothes, and according to Charlotte, she did her best to comply.³²⁷ From this clothing the officers settled on a pair of trousers George had worn on his evening walk the night before, which had mud on the cuffs, and a pair of boots George had worn the night before, which were clearly wet and at least somewhat muddy.³²⁸ One of the boots had a worn heel that the police apparently thought they might match to footprints at the scene. (Though the scene had already been trampled over, perhaps they thought they could pick up footprints leading away at some distance, uncontaminated by the confusion.) They also seized an old lounging coat, which would have been a strange garment to wear on a slashing trip on a stormy and rainy night.³²⁹ But they thought it was damp (by trial it had become "wet").³³⁰ And they thought they recognized spots of blood and horse saliva on it, and on a handkerchief they found in a pocket of the coat, and on a waistcoat (vest) also, so they took them.³³¹ They also professed to see a horse hair on the coat (although Shapurji, Charlotte, and Maud all demanded to see, and denied seeing, any such horse hair).³³² By the time the coat reached the police surgeon, Dr. J. K. Butter, for examination, it had twenty-nine one-half inch horsehairs on it, indistinguishable from those on a piece of skin collected from the slashed pony.³³³

³²⁵ WEAVER, *supra* note 3, at 101.

³²⁶ *Id.* At some time Shapurji joined them.

³²⁷ *Id.* at 100. At the trial Shapurji apparently testified that the police had asked to see the clothes George had been wearing the night before, which makes the production of the lounging coat appear somewhat more meaningful than it probably was (since George in fact wore the coat the night before during his client meeting.) Shapurji Edalji testimony, summarized in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 161–162. This point was not lost on prosecution counsel Disturnal in his closing. There were a number of such generally minor discrepancies between Shapurji's, Charlotte's and Maud's testimony that were remarked upon Mr. Disturnal in closing as evidence of total unreliability. See summary of closing argument of prosecution counsel Mr. Disturnal, BIRMINGHAM DAILY POST, Oct. 24, 1907, at 13. (Barnes does not appear to have been wrong in characterizing Shapurji as an ineffective witness.)

³²⁸ WEAVER, *supra* note 3, at 100–01.

³²⁹ *Id.*

³³⁰ *Id.* at 118 ("damp" at preliminary hearing); Conan Doyle, *Case of Edalji*, *supra* note 111, at 58 ("damp" changes to "wet"); summary of closing argument of prosecution counsel Mr. Disturnal, BIRMINGHAM DAILY POST, *supra* note 328 ("wet").

³³¹ WEAVER, *supra* note 3, at 100–01.

³³² *Id.* See also letter of Charlotte Edalji to the *Daily Telegraph*, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 115–16 ("I am sure that there were no hairs on the coat when the police took it away from this house").

³³³ *Id.* at 105–06. Cross contamination appears unlikely, since the police wrapped the jacket into a brown paper parcel with paper supplied by Mrs. Edalji. *Id.* at 100. If the hairs migrated onto the jacket (a not unlikely occurrence, given that Shapurji and Charlotte stated adamantly that they

Campbell and company left about 9:00 a.m. with the coat, the handkerchief, the vest, and the boot with the worn heel (unaccountably leaving the trousers and the other boot).³³⁴ Constable Cooper returned to the field.³³⁵ In his absence a veterinary surgeon, Robert M. Lewis of Cannock, had arrived. Lewis examined the horse, which was still alive, at about 8:30 a.m.³³⁶ Taking into account the wound, the horse's then current condition, and the amount of blood in various places, Lewis concluded that the wound could not have been inflicted more than six hours before his examination, so it must have been no earlier than 2:30 a.m.³³⁷ After he concluded his exam, the horse slaughterer, William Cooper, put the horse down and the carcass was removed to his premises.³³⁸ When Constable Cooper got back to the field around 9:30, the vet's opinion on the time of the wound was apparently not communicated to him very clearly, or else it was never communicated to Inspector Campbell, a fact which was to cause all parties a great deal of trouble.³³⁹

closely examined the jacket when the police asserted there were hairs on it, and that there were no such hairs on it when it left the vicarage), those hairs were assisted in their migration intentionally. Dr. Butter, incidentally, does come across as a straight shooter because of the integrity of his findings regarding the supposed blood and saliva stains on the clothes and the razors. His treatment by Barnes is actually a little gem, with Butter cast as a Holmes-like character, ironically confronting the rather bumbling wannabe Conan Doyle. See BARNES, *supra* note 1, at 270–76.

There is a discrepancy between the date given by Campbell in his preliminary hearing testimony for the delivery of the items to Dr. Butter for examination, and Butter's testimony concerning the date upon which he did his examination, and Weaver tries to make much of this. Butter said they were delivered on the night of August 18th; Campbell apparently said the 21st. *Id.* at 105–07. To me, it is likely a normal confusion of numbers, and, given the general integrity of Dr. Butter's conclusions, I would assume his claim that they were examined on the 18th was accurate.

³³⁴ WEAVER, *supra* note 3, at 101. Actually, they initially even forgot the boot, and Cooper had to go back into the vicarage to fetch it.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.* at 153.

³³⁸ *Id.* at 102.

³³⁹ *Id.* at 153, 160. It is important to understand the reason this turned out to cause so much trouble. The original theory of the prosecution was clearly that George had slashed the pony sometime between the departure of his client, Mr. Hobson, just before 8:00 p.m., and his return to the vicarage by the virtually incontestable time of 9:40 p.m. at the latest. (This was testified to by George, Shapurji, Maud, Dora the maid, and an independent witness who saw him going toward the entrance of the vicarage at 9:30). George undoubtedly walked to Bridgtown (which borders Great Wyrley to the north), starting shortly after Hobson left and arriving at the shop of Mr. Hands the bootmaker around 8:30. No time for a slashing there. Between 8:30 and 9:30 George was seen by so many people in places so far removed from the pony that for him to have worked in a slashing before his return was just on the edge of impossible anyway. Lewis's testimony destroyed what was left of that theory completely, and while prosecution counsel Disturnal did not completely give up the tenability of a pre-9:40 slashing in his closing (though he said he would not seek a conviction upon it), and though Lewis was deprecated by the judge in his instructions as not

Inspector Campbell and Sergeant Parsons did not return to the field. Having dispatched Constable Cooper to conduct further investigation and develop the evidence at the field, they left to catch a train to Birmingham to arrest George.³⁴⁰ They arrived at George's office and arrested him around 10:30.³⁴¹ George was told about the stains on the coat, which he attributed to milk and oatmeal.³⁴² He was told about the alleged hairs on the coat, which he denied could be there, and then said that if there were hairs he must have gotten them on the coat while leaning up against fences at some point in the past.³⁴³ When George was taken into custody, he appeared dazed. He said, "Me into custody?" and then added, "I have got Loxton to thank for this."³⁴⁴

He was held in a cell in Birmingham while the office was carefully searched.³⁴⁵ On the way to the lock-up, George said "I am not surprised at this. I have been expecting it for some time," which was given an incriminatory construction at trial.³⁴⁶ The search of George's office turned up nothing of evidentiary value. Campbell and Parsons then transported George to the Cannock police station, where he was charged with maiming the horse at some time the previous night.³⁴⁷ His parents had engaged a local solicitor, Litchfield Meek, whom George consulted in jail on the afternoon of the 18th.³⁴⁸

Meanwhile, Constable Cooper had been busy developing evidence. At around 11:00 a.m. he had gone to the horse slaughterer's premises to collect a piece of the belly skin of the pony from near the wound for comparison purposes, though comparison with what was not clear.³⁴⁹ Constable Cooper had also spent quite a bit of time pushing the boot with the worn heel into various impressions, or pushing it into the mud next to various impressions, also for comparison

sufficiently experienced to be relied upon, in practical reality, after his testimony the case turned on whether George could have sneaked out of the vicarage after the others in the house were asleep. Lewis was called by the defense. In his closing, Mr. Disturnal admitted that he himself ought to have called Lewis, but that he had not known of his existence. See summary of closing argument of prosecution counsel Mr. Disturnal, in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 164–165, and also in *BIRMINGHAM DAILY POST*, Oct. 24, 1903, at 13. For a nice analysis of the witnesses and the time sequence, see *WEAVER*, *supra* note 3, at 108–11.

³⁴⁰ *WEAVER*, *supra* note 3, at 102.

³⁴¹ *Id.*

³⁴² Campbell testimony, summarized in the *Daily Telegraph*, in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 140–41.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*, and *WEAVER*, *supra* note 3, at 103. For the connection of the search to the controversy concerning George's missing trust money, see note 203.

³⁴⁶ Campbell testimony, *supra* note 342.

³⁴⁷ *Id.*

³⁴⁸ *WEAVER*, *supra* note 3, at 103.

³⁴⁹ *Id.* at 102.

purposes.³⁵⁰ He made no casts or photographs of any of his results, and made comparative measurements with a twig, but later Cooper, accompanied by Campbell and Parsons after their return late in the day, claimed to be able to trace the distinctive mark of those boot heels all the way to the vicarage some half to three-quarters of a mile away.³⁵¹

When Campbell first got back from arresting George, he concluded that they needed to do a better search of the vicarage than they had done in the morning.³⁵² He returned to the vicarage with a dozen constables, and they searched the vicarage, the church, the school building, the barn, and all the grounds and outbuildings.³⁵³ The fruits of this labor were a set of four razors and nothing else except the trousers and the other boot they had left behind in the morning.³⁵⁴ (Shapurji was clean shaven and George had a mustache. It would have been more suspicious if there had been no razors³⁵⁵). The police claimed that the razors had been recently washed, and that the trousers had been muddier in the morning and had been cleaned.³⁵⁶

The coat, the razors, the handkerchief and the vest were turned over to the police surgeon, Dr. Butter, for testing.³⁵⁷ The handkerchief and the vest apparently tested negative for mammalian blood, for they were never mentioned again. The razors also tested negative for the presence of blood, and did not reveal any evidence of horse hair under magnification.³⁵⁸ The “horse saliva” spots on the coat turned out to be starch stains, probably from some food.³⁵⁹ The

³⁵⁰ *Id.* at 101.

³⁵¹ Campbell testimony, *supra* note 342 at 141–42; Parsons testimony, summarized in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 143; Cooper testimony, *id.* at 145; WEAVER, *supra* note 3, at 104–05.

³⁵² WEAVER, *supra* note 3, at 103.

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ The razors, though virtually irrelevant themselves, took on a life of their own at trial. The police claimed they were wet when found, and then Shapurji was accused by the police of trying to dry them with his thumb, both of which assertions Shapurji denied. Again, prosecution counsel Disturnal made much of this in the closing. *See* Disturnal closing, summarized in *BIRMINGHAM DAILY POST*, *supra* note 328. Also, Shapurji unaccountably testified at trial that neither he nor George had used the razors in years. Shapurji Edalji testimony, summarized in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 162. Since Shapurji was clean shaven (*see* photo reproduced in *COSTELLO*, *supra* note 210, following p. 112) and George only had a mustache, this testimony is something of a puzzle. Perhaps they made daily trips to the barber, but it seems odd, considering that no other razors were found. Conan Doyle mistakenly believed the razor episode took place in the morning, *see* Conan Doyle, *Case of Edalji*, *supra* note 111, at 48, and that mistake is repeated by Barnes, *see* BARNES, *supra* note 1, at 103–04.

³⁵⁶ WEAVER, *supra* note 3, at 103–04, 119.

³⁵⁷ *Id.* at 105–06. For more on Dr. Butter, *see supra* note 334.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

blood spots, originally noted by the police as “four inches long,” turned out to be two drops on the right cuff, 1 cm. in diameter each (about two-thirds the size of a dime),³⁶⁰ which Dr. Butter admitted could be very old, and which could be from any mammal including a human.³⁶¹ Any nosebleed or finger cut in the past several years could have accounted for them.

And now you have all the evidence against George Edalji that the prosecution had, both as to his having written all or any of the 1903 letters, and as to his having slashed the pit pony. A pretty weak case on both counts. Most of what the prosecution claimed to be incriminatory behavior or statements of George’s were (at least) just as consistent with innocence, as various contributors to the initial Home Office review of the case, including the Lord Chancellor, Lord Halsbury, later concluded.³⁶² The specific evidence as to the pit pony was pretty much limited to the suspicious evidence of the horse hairs and the equally questionable evidence of the boot tracks. As to the horse hairs, it would not have been either the first or last time members of a law enforcement team felt justified in a little proactive creativity to secure the conviction of someone they thought, rightly or wrongly, was guilty. And as to the boot tracks, we all know that under such circumstances, humans often see what they want to see.

And in light of various circumstantial difficulties, the attribution of any of the letters of 1903 to George was entirely dependent on one’s view of the likely level of reliability of Mr. Gurrin under the circumstances. Was his attribution beyond reasonable doubt accurate? The question ought, by now, to answer itself. Nevertheless, George was tried and George was convicted. In the face of all these weaknesses, how did that happen?

Interlude: George’s Eyesight

In the next section, the main task will be to show how the prosecution managed to play the adversary game in such a way as to maximize its chance of winning with a weak hand. But before that, I must address another unresolvable conundrum concerning evidence the jury did *not* have—the problem of George’s visual handicap.

When Conan Doyle first decided he would do an initial investigation to determine whether to throw his weight behind George Edalji, he agreed to meet George in the lobby of the Grand Hotel in London.³⁶³ In his first salvo regarding

³⁶⁰ Conan Doyle gives the position of the bloodstains, Conan Doyle, *Case of Edalji*, *supra* note 111, at 49 (quoting Dr. Butter, apparently from the preliminary hearing testimony).

³⁶¹ WEAVER, *supra* note 3, at 106.

³⁶² *Id.* at 194–97. The conclusion concerning the weakness of the case was not universal. A review by a Mr. Bettany supported the propriety of the conviction. *Id.* at 216–20.

³⁶³ Conan Doyle, *Case of Edalji*, *supra* note 111, at 31.

the Edalji case in the *Daily Telegraph*, on January 11, 1907, Conan Doyle tells the story of his eureka moment, when he enters the lobby and spies George sitting in a chair reading the newspaper with the paper an inch from his nose.³⁶⁴ Eureka! Conan Doyle, from his background as a physician, which included some specialist training in what today would be called ophthalmology, decides that George is so myopic (near sighted; short sighted) that he could not possibly have gone out at night over rough terrain to hunt for livestock to maim.³⁶⁵ Conan Doyle proceeds to have Edalji examined by “Mr Kenneth Scott, of Manchester Square,” whom he asks “to paralyse the accommodation by atropine, and then to take the result by means which were independent of the patient.”³⁶⁶ The report—right eye -8.75 diopters with astigmatism, left eye -8.25 diopters.³⁶⁷

Even assuming that normal accommodation would tend to make the left eye dominant and therefore reduce the perceived effects of the astigmatism, -8.25 diopters is classified as severe myopia, and uncorrected it is a serious handicap for some purposes, driving, for example. But there continues to be a debate, as there was then, about how really serious a functional handicap it actually was for George.³⁶⁸ How did George function all his life without glasses? And why? (in a family where his father wore glasses) While no doubt he might have learned routine paths to familiar places more or less by heart, and even, given decades, memorized enough of the surrounding highways and byways perhaps to account for his regular rambles, how did he cope with the necessity of going to new places in Birmingham as a solicitor without making himself appear like Mr. Magoo to all who knew him? And there is no doubt that George took lengthy walks, sometimes after sundown, as the episodes of the Snareshill assault³⁶⁹ and his meanderings on the night before his arrest³⁷⁰ illustrate.

People with such myopia may not fit the image Conan Doyle portrayed. Especially if they have not generally worn glasses, they apparently can be

³⁶⁴ *Id.* Barnes has Anson suggest to Doyle that Edalji set Doyle up by arriving early and exaggerating how closely he had to hold the paper. BARNES, *supra* note 1, at 293. Boxes in boxes.

³⁶⁵ Conan Doyle, *Case of Edalji*, *supra* note 111, at 31: “There, in a single physical defect, lay the moral certainty of his innocence....”

³⁶⁶ *Id.* at 45–46.

³⁶⁷ *Id.* at 46.

³⁶⁸ Various ophthalmic experts weighed in on the Edalji case in different directions in 1907. Besides Conan Doyle, *id.* at 45–47, see THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE. *supra* note 111, at 73 (letter of James Aitcheson, ophthalmic surgeon); *id.* at 104 (letter of Sydney Stephenson, Editor, *Ophthalmoscope*); *id.* at 108 (second letter of James Aitcheson); *id.* at 117 (Conan Doyle response); *id.* at 152 (Kenneth Scott letter); *id.* at 168 (letter signed “Fideliter”).

³⁶⁹ See text accompanying *supra* notes 205–06.

³⁷⁰ See *supra* note 339.

surprisingly functional, and low light may perhaps impede this function less than it would for one with more normal vision.³⁷¹

George himself attempted to respond to such questions in the *Daily Telegraph* on January 15, 1907. He admitted that on “a main road, providing I know it thoroughly, I can find my way as well as most people after dusk without glasses at all.”³⁷² He also admitted that

I have several times been to optical experts and ophthalmic surgeons, with a view to getting glasses to suit me, but until Dr. Kenneth Scott made a long and careful scrutiny of my eyesight I have never got glasses of any use to me. Last November [two months earlier] I got two well-known ophthalmic surgeons to examine my eyes. Both prescribed glasses of practically the same description. For several weeks, I thoroughly tried those recommended by one of these gentlemen (a man, let me add, of the highest standing in his profession), but found them to be absolutely useless. After a prolonged investigation, Dr. Scott discovered defects which I presume the others had failed to detect, told me I must not use the glasses I had, and prescribed very different ones, and with them I can see better than ever I did in my life. But even these do not give me normal sight, as I find that other people can see things without glasses at a far great distance than I can with them.³⁷³

This is a very curious passage. George admits to having had numerous pairs of glasses, but none “of any use to me.” The serial malpractice is remarkable. In addition, one can only hypothesize that the previous glasses failed to correct for the astigmatism in the right eye (a process invented in the early 19th century), but why the resulting glasses would not have been extremely useful if the right eye were closed is not apparent. This was the age of the monocle, after all.

³⁷¹ I was surprised to find, after ransacking the web, how much debate continues to exist in regard to the causes and variety of causes and manifestations of myopia. (Google “myopia” and start with the Wikipedia entry.) As for any real indication of how functional a person with George’s myopia could be, at night over familiar ground after a lifetime of adjustment without glasses—well, there are almost no such people around, and there have not been for a long time. There seems to be no source of either formal or anecdotal data on the issue one way or the other, at least that I could find, so it remains an issue for which the resolution is as blurry now as it was then.

³⁷² Edalji letter, Jan. 15, 1907, *reproduced in* THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 81.

³⁷³ *Id.* at 80–81.

In addition, George apparently never mentioned to the police the impossibility of his performing the acts with which he was charged. It is true that his solicitor's brief to counsel does contain the following passage, which he included in his January 15 letter to the *Telegraph*: "He is by no means an athlete, and, in addition, is very short-sighted. This would make it difficult for him to get out at night, find his way across country, and scale hedges and ditches, and also find the animals...."³⁷⁴ George claimed that his counsel had told him that the case against him was so weak that there was no sense in spending the money to bring in an expert on his eyesight (or a handwriting expert to oppose Gurrin, for that matter).³⁷⁵ Any barrister who was aware of the boot tracking and horse hair evidence to be given by officers of the law, and was sure they could get a jury not to buy it, would seem to have been extremely overconfident. Even so, if money were the issue, George could presumably have testified to his poor eyesight himself, and corroborated it with any number of witnesses, assuming it to be as bad as Conan Doyle believed, and assuming its effects on his functionality to be as severe as he later claimed. Whatever the reason, the issue was not raised at all by the defense. If counsel was responsible for the omission, it must certainly count as a grave error.

At any rate, at this remove, the true extent of George's visual handicap in practice, the extent of his learned accommodation for it, by habit or by supplementary lenses, and whether in reality it would have rendered him absolutely incapable of the post-midnight episode of slashing for which he was convicted, are questions that must forever remain subject to some impairment of resolution themselves.

IX. THE HISTORICAL RECORD: FROM GEORGE'S ARREST TO HIS TRIAL

So how did the prosecution go about arranging things to maximize its chances of success with a weak case? The first moves were made at the charging stage.

The day following his arrest George appeared before a three-man panel of magistrates, including J. T. Hatton, at the Cannock Police Court, to be arraigned on the charge of malicious destruction of property by the maiming of an animal.³⁷⁶ Inspector Campbell testified, giving minimum details and failing to

³⁷⁴ *Id.* at 82.

³⁷⁵ *Id.* at 81–82.

³⁷⁶ WEAVER, *supra* note 3, at 112. The notoriety of the case was already piquing the curiosity of the Justices of the Peace. Ordinarily such business would be handled by a single magistrate. Apparently the rule was the same in a police court as at Quarter Sessions, where there was a minimum number required to do business (one for police court business, generally two at Quarter Sessions), but as many JP's from the county as wanted to could show up and sit (it was, after all, the best seat in the house).

mention either the tracking of George's boot or the horse hairs on the coat.³⁷⁷ Bail was opposed by the prosecution, represented by Captain Anson and a solicitor, Mr. Burke, and denied by the court.³⁷⁸ George was remanded to the Staffordshire jail in Stafford, the county seat.³⁷⁹ On the next Monday, August 18, the bail application was renewed before a slightly different panel. Mr. E. A. Foden had replaced Squire Hatton.³⁸⁰ The defense argued that George's practice was being destroyed by the denial of bail.³⁸¹ Anson again opposed bail, on what ground it is not clear.³⁸² Bail denied.³⁸³

On August 31 there was a formal remand application on a new charge: threatening to murder Sergeant Robinson.³⁸⁴ As curiosity had grown, so had the bench. There were now five magistrates in attendance, including two of the 61-year-old Lord Hatherton's sons, E. C. R. Littleton and Lt. Littleton.³⁸⁵ The prosecution could now report that an expert, Mr. Gurrin, had attributed to George authorship of the June 10 threatening letter. As a matter of routine, George was bound over, but in a somewhat surprising move, the panel announced that it would now grant bail.³⁸⁶ In a more surprising move, George declined it.³⁸⁷ He later said that his practice had already been compromised, and that he had decided to stay where, if a new outrage was committed, he could not be charged with it.³⁸⁸ (When a new outrage was committed, the refusal to take bail was construed as evidence that George was a member of a gang that did the new slashing in an attempt to free him.³⁸⁹ Boxes in boxes).

³⁷⁷ *Id.* at 112–13.

³⁷⁸ *Id.* at 113.

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 114.

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.* Shapurji was quoted in the press as commenting on the denial of bail, "You might as well live in Turkey." *Id.* at 115.

³⁸⁴ *Id.*

³⁸⁵ Edward George Percy Littleton, third Baron Hatherton, had nine children. E. C. R. (Edward Charles Rowley) Littleton was his heir, later becoming fourth Baron Hatherton in 1930. He was 35 in 1903. Lt. Littleton was Charles Christopher Josceline Littleton, Lord Hatherton's third son. He was 31. See http://freepages.genealogy.rootsweb.com/~conqueror/genealogy_html/i606.html#i2466. By obtaining Justice of the Peace commissions for his sons, Lord Hatherton increased his dominance of Quarter Sessions in both its judicial and administrative capacities.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ Edalji testimony, *supra* note 213, at 158.

³⁸⁹ See, e.g., opening of prosecution counsel Mr. Disturnal, in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 136.

On August 31 the formal preliminary hearing, which at that time was required before presentment to a grand jury, was held.³⁹⁰ The bench had reduced itself to three, two newcomers, Messrs. Wolverson and Evans, and the faithful Mr. Williamson.³⁹¹ The prosecution continued in the hands of a solicitor, Mr. A. M. Barnes replacing Mr. Burke, and Captain Anson.³⁹² George now had a barrister, Mr. Gandy, instructed by Mr. Meek.³⁹³ The proceeding was quite elaborate. There were ten witnesses in all, five policemen (Constable Cooper, Sergeants Rowley, Parsons, and Robinson, and Inspector Campbell), four citizens to testify to seeing George out walking on the evening of August 17, followed by Mr. Gurrin, and Dr. Butter.³⁹⁴ The veterinarian, Dr. Lewis, was not called. These proceedings were actually taken down in shorthand, perhaps at the instance of the defense, and transcripts exist in the Home Office records.³⁹⁵

These are the main points of interest emerging from the hearing. The prosecution seemed locked in on the theory George had slashed the pit pony before 9:40 p.m. Its commitment to this time frame at the preliminary hearing was clear in the presentation of Mr. Barnes,³⁹⁶ in the testimony of Inspector Campbell,³⁹⁷ and in the selection of witnesses called to establish when George had been out and about on the evening of the 17th.³⁹⁸ Because of the failure to call Dr. Lewis, and perhaps the failure even to consult with him, neither the prosecution nor the defense appear to have been aware that the prosecution's then-embraced scenario just wouldn't fly.³⁹⁹ Police testimony now revealed that what were alleged to be the prints of George's boots had been tracked from the scene of the crime to near his house, and that there were horse hairs on the coat taken from his house.⁴⁰⁰ It appears that Sgt. Robinson may have testified that there was a police watch on the vicarage on the night of the 17th, that he didn't know how many men were detailed to it, but that no one could have gone out from the side he was watching without his seeing them.⁴⁰¹ Inspector Campbell

³⁹⁰ WEAVER, *supra* note 3, at 115–16.

³⁹¹ *Id.* at 116.

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ 116–20

³⁹⁵ *See id.* at 120 n.6, citing “Depositions of Committal Proceedings,” HO file 990.

³⁹⁶ *Id.* at 116.

³⁹⁷ *Id.* at 118.

³⁹⁸ *Id.* at 120.

³⁹⁹ *See supra* note 340.

⁴⁰⁰ WEAVER, *supra* note 3, at 119.

⁴⁰¹ One must be circumspect about this. Weaver so characterizes Robinson's testimony. *Id.* at 117. But Conan Doyle, who had also read the deposition, uses the same language but indicates that Robinson was referring to a different night. Conan Doyle, *Case of Edalji*, *supra* note 111, at 47. Without seeing the actual text it is difficult to choose. However, the Home Office Committee apparently also regarded the statements as inconsistent (at least as Weaver interprets their report).

seemed to confirm that the vicarage was specifically watched, but only by one man.⁴⁰² Sgt. Parsons asserted that there was no watch on the vicarage on the night of August 17.⁴⁰³ No written records of deployment assignments were kept.⁴⁰⁴

At the close of the evidence, the prosecution moved to have the case tried at the Staffordshire Quarter Sessions rather than sending it for trial at the next Assizes, and that motion was granted.⁴⁰⁵ To see the possible importance of this, a little must be said about the difference between the two venues.

Both Quarter Sessions and Assize courts were of ancient lineage. From at least the 14th century, monarchs had given commissions to local magnates to protect the peace by dealing with local matters of petty offence.⁴⁰⁶ In rural counties, these Justices of the Peace, or magistrates, as they were alternatively called, also met together four times each year in meetings called Quarter Sessions, where as a body they had jurisdiction to try more serious offenses,⁴⁰⁷ as well as various administrative duties.

The Assizes were of even older antecedents. Four times each year, a judge from one of the three common law courts (King's Bench, Common Pleas, or Exchequer) would ride through each of the eight designated circuits (Staffordshire was on the Midland circuit)⁴⁰⁸ and stop at the "assize town" in each county to try civil jury trials, and also to "deliver the jails" by trying any untried felons.⁴⁰⁹ By the early 20th century the separate common law courts had been abolished and combined into a single Supreme Court of Judicature, but the new "high court" judges continued to ride circuit as before.⁴¹⁰ Although there was much overlap between the criminal jurisdictions of the Quarter Sessions and the Assizes, in the early 20th century serious cases were generally sent to the Assizes.⁴¹¹ The balance of opinion among contemporary commentators (though there were dissenters) was that normally a case such as George's should have been tried before a high court judge, since there were some tricky evidentiary issues⁴¹² dealing with what we would now call the propensity rule, specifically,

WEAVER, *supra* note 3, at 287. I have adopted Weaver's version the statement in the text, with this caveat.

⁴⁰² WEAVER, *supra* note 3, at 117.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.* at 118–19. Campbell said the watch was for two or three weeks before August 17. Parsons said it was for two or three weeks starting on June 29.

⁴⁰⁵ *Id.* at 122.

⁴⁰⁶ See J. H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 25–26 (4th ed. 2002).

⁴⁰⁷ *Id.*

⁴⁰⁸ SIR BASIL NIELD, FAREWELL TO THE ASSIZES 57 (1972).

⁴⁰⁹ *Id.* at 3, 20; BAKER, *supra* note 406, at 20–22.

⁴¹⁰ NIELD, *supra* note 408, at 3; BAKER, *supra* note 406, at 113–15.

⁴¹¹ BAKER, *supra* note 406, at 25; WEAVER, *supra* note 3, at 122–23.

⁴¹² WEAVER, *supra* note 3, at 122–23. See, e.g., letter to the *Daily Telegraph* signed by "An Irish Barrister," in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 84–86; Letter

first, the extent to which both charges could be tried together; second, as to the specific charge of maiming the pit pony on August 17/18, the admissibility of the letters and the other maimings; and third, as to the charge of threatening to murder Sergeant Robinson in the June 10 letter, the admissibility of the other letters.⁴¹³ Having the case tried at Quarter Sessions would predictably give the prosecution much more latitude in regard to these issues. The Quarter Sessions were chaired by Lord Hatherton, and the magistrates were generally of the same social class and background as Captain Anson, who was himself then the brother of the Earl of Lichfield.⁴¹⁴ More importantly, magistrates were generally not lawyers, and might be depended to gloss over fine points of admissibility in favor of efficiency (and in favor of the prosecution). And even if serious errors were made in this regard, there was anciently and even at this time no mechanism to review the legal rulings of a judge leading to a conviction (except under very narrow circumstances not applying here). In short, there was no court with appellate jurisdiction over criminal cases. A conviction by a jury was as absolute as an acquittal, and could only be corrected by executive clemency through the Home Office.

Captain Anson apparently was proud of having gotten the committal to Quarter Sessions, and later took credit for it in correspondence to the Home Office.⁴¹⁵ A letter of Mr. Disturnal, the treasury counsel who tried the case for the prosecution, describes a pre-trial conference with Captain Anson in which Disturnal inquired why the case had not been sent to the Assizes, and Anson indicated that it was to help George, since George was in jail and the next assize was not for two months.⁴¹⁶ But the Quarter Sessions trial did not begin until October 20, and the difference in the amount of delay would seem inconsequential. In fact, it seems probable that Anson was seeking the very procedural advantage that the prosecution in fact ended up with.

On September 21 another horse was ripped up.⁴¹⁷ It belonged to Harry Green, son of the T. J. Green, whose sheep, it will be recalled, had been slashed on May 14.⁴¹⁸ It also set off a new round of anonymous letters, directed to T. J. Green, his son Harry, and others.⁴¹⁹ With George in jail, this set the community

of R. D. Yelverton, ex-Chief Justice of the Bahamas, to the *Daily Telegraph*, January 1, 1907, *id.* at 69–73.

⁴¹³ WEAVER, *supra* note 3, at 122–23. The elaboration of the issues is my own.

⁴¹⁴ Anson's brother had succeeded his father as earl on the latter's death in 1892. *See* sources cited *supra* note 176.

⁴¹⁵ WEAVER, *supra* note 3, at 123–24 (citing correspondence between Captain Anson and a Mr. Simpson of the Home Office, March 25, 29, 30 & 32, 1904, HO no 87 File 985).

⁴¹⁶ *Id.*

⁴¹⁷ *Id.* at 129.

⁴¹⁸ *Id.* *See supra* note 236 and accompanying text.

⁴¹⁹ *Id.* at 131.

buzzing and the police into desperate action.⁴²⁰ Two circumstances at least seem to have focused suspicion on Harry Green himself: First, the horse was “very spirited” and hard to catch, and a stranger would have had trouble getting near it.⁴²¹ Second, Harry was a member of the local Staffordshire Yeomanry, a kind of national guard cavalry unit, and he had recently put in a claim for compensation alleging that the horse had been injured in training.⁴²² Some suspicion of the falsity of that claim had apparently been raised, and the thought was that Harry had taken advantage of the slashing craze to destroy his horse, in order to cover up his fraud, as he apparently was preparing to leave England for South Africa anyway. The police brought Harry in for interrogation. To make a long story short, he finally confessed.⁴²³ Instead of being prosecuted (since it was his own horse, or perhaps technically his father’s, there were some difficulties with prosecuting Harry for destruction of property, although cruelty laws might have applied⁴²⁴), Harry was allowed to ship out to South Africa, as long as he remained available until after George’s trial, in case he was needed.⁴²⁵ At that trial the

⁴²⁰ *Id.* at 129–30.

⁴²¹ *Id.* at 131.

⁴²² *Id.* at 134. Weaver does not credit this.

⁴²³ *Id.* at 134–35. Many of Green’s supporters believed Green was pressured into a false confession by the police in order to put the new slashing to rest so that it could not be connected with the previous slashings. Green signed the confession on the understanding that he would not be prosecuted, which he was not.

⁴²⁴ Conan Doyle, *Case of Edalji*, *supra* note 111, at 57; letter to the *Daily Telegraph* signed by “An Irish Barrister,” *supra* note 415.

⁴²⁵ WEAVER, *supra* note 3, at 136. Weaver also recounts a very strange story concerning Green’s relations with the defense, and a conversation between Green and one of his friends acting as a police informant which was listened to by Inspector Campbell hiding in a cupboard, but since the story is so bizarre and no footnote sources are given I have discounted it. One must approach Weaver’s assertions with some caution. Although he appears to be reliable when recounting the brute facts of primary sources, his commitment to various alternate theories, and to the notion that Anson’s racism was the almost exclusive factor in George’s prosecution and conviction, sometimes leads him to remarkable excesses. To take one example, he seems committed to the fact that the various animals were in fact disemboweled and that their intestines were hanging out, *see, e.g., id.* at 256 n.445, where even the sources he quotes at various places show this not to have been the case, and a main part of Conan Doyle’s case against Royden Sharp was based upon the oddly shallow injuries matching a specialized knife in Sharp’s possession. *See* Conan Doyle, *Statement of the Case Against Royden Sharp*, *supra* note 158, at 111–12. Proceeding from the assumption of actual disembowelment, Weaver finds Green a credible candidate for the slasher in part because he is a member of the Staffordshire Yeomanry, and therefore would have possessed a cavalry saber, which Weaver takes as a perfect instrument for the slashings. However, inflicting the actual shallow injuries with a cavalry saber seems extremely unlikely, and the prospect of the slasher lugging a three-foot, three-pound hunk of incriminating steel, presumably concealed in some (awkward) way, over ditches and hedges at night as part of his planned method of operation, seems even more far-fetched. Though one must have great respect for Weaver’s industry and

prosecuting barrister, Mr. Disturnal, managed to raise the Green slashing in anticipation that the defense might try to use it, but he noted that George had refused bail, and claimed that one could infer George was a member of a gang, which George knew would carry on without him in order to make him appear innocent.⁴²⁶ Disturnal was an absolute master at taking hold of statements and details that would have been equally likely to be true if George were totally innocent, and making them appear powerfully damning. In this, Barnes's portrayal of Disturnal's ability to make bricks without straw is completely accurate.⁴²⁷

X. THE HISTORICAL RECORD: THE TRIAL

The actual trial began on October 20, 1903.⁴²⁸ The charges were put to the grand jury in the morning, which returned true bills by noon.⁴²⁹ The trial began immediately thereafter. It was tried by the second panel of the Staffordshire Quarter Sessions because Lord Hatherton, who was chair of the Quarter Sessions and presided over the first panel, recused himself, saying he lived nearby and was too intimately acquainted with the persons involved, and the events.⁴³⁰ Sir Reginald Hardy presided over the second panel,⁴³¹ which included a shifting population of other local Justices of the Peace, ultimately totaling eleven,⁴³² who sat with Sir Reginald at various times, again apparently mostly out of curiosity.⁴³³ Hardy and four others showed up the first day of trial, including Captain (later Rear Admiral) A. C. Littleton, another of Lord Hatherton's family (his younger brother).⁴³⁴ A Mr. Brough was to act as legal advisor to the bench, but he apparently did little advising, as, according to one press report, he was frequently absent dealing with client business in other courtrooms.⁴³⁵ The jury was from

patient digestion of primary sources, throughout the text narrative I have tried to be judicious in culling details from his work.

⁴²⁶ See opening of prosecution counsel Mr. Disturnal, in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 135–36.

⁴²⁷ BARNES, *supra* note 1, at 127.

⁴²⁸ BIRMINGHAM DAILY POST, Oct. 21, 1903, at 4.

⁴²⁹ WEAVER, *supra* note 3, at 139–140.

⁴³⁰ *Id.* at 123.

⁴³¹ *Id.* at 139–140.

⁴³² Summary of trial in the *Daily Telegraph*, Jan. 21, 1907, reproduced in *THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE*, *supra* note 111, at 133.

⁴³³ The J.P.'s weren't the only members of the elite attracted by curiosity. The *Birmingham Daily Mail* noted the presence of "Theresa, Countess of Shrewsbury" among the spectators on the first day of trial. BIRMINGHAM DAILY MAIL, Oct. 20, 1903, at 3.

⁴³⁴ WEAVER, *supra* note 3, at 140 (relationship to Hatherton established by reference to http://freepages.genealogy.rootsweb.com/~conqueror/genealogy_html/i605.html#i2730).

⁴³⁵ *Id.*

various parts of Staffordshire, but all persons from the area surrounding Great Wyrley and Cannock were excluded.⁴³⁶

The prosecution was represented by Mr. Disturnal and Mr. Harrison, treasury counsel, instructed by Mr. Barnes. Mr. Vachell and Mr. Gandy, barristers, defended, instructed by Mr. Meek.⁴³⁷

Two indictments had been returned on the two charges, and the trial appears formally to have been only on the first indictment,⁴³⁸ but beginning with the opening by Mr. Disturnal it appears that all the events were referred to and that little attempt was made to separate and formally restrict evidence that was perhaps admissible on the charge of having written the June 10 letter, but not admissible on the August 17/18 slashing charge. It is a bit difficult to be sure exactly, since no transcript was made. The chair, Sir Reginald Hardy, was supposed to keep notes of the proceedings, but these proved to be scanty and in large part illegible (to the later consternation of the Home Office).⁴³⁹ There were plenty of reporters present, and accounts appeared in various newspapers, some in considerable detail, but these accounts are summaries, they conflict to a certain extent, and they would not be expected to reflect very clearly if at all any technical legal arguments made and ruled on.⁴⁴⁰

One criticism of the trial sometimes put forth is that, having apparently finally discovered Dr. Lewis's conclusion regarding the time of the slashing, the prosecution changed its theory regarding the time the slashing was committed, from the night of the 17th between 9:00 and 10:00 p.m. to the morning of the 18th after 2:30 a.m.⁴⁴¹ It is true that the prosecution did change its theory, and the lead defense counsel, Mr. Vachell, appeared to be surprised by it (understandably, given what was said at the preliminary hearing) when it became clear toward the end of the prosecution's case that it was now relying on the later time.⁴⁴²

⁴³⁶ One could argue that this added to the racial prejudice that George might suffer from at trial, since the locals were at least used to seeing the Edaljis around, as respected members of the community, while the jurors from far away would be seeing the "Hindoo vicar" and his family for the first time.

⁴³⁷ *Id.*

⁴³⁸ *Id.* at 140, 165.

⁴³⁹ *Id.* at 164.

⁴⁴⁰ As the reader knows, various of these accounts of the trial testimony have already been used at various places *supra* in regard to particular details of testimony, but not in regard to legal arguments, which, as the text says, are generally not reported, presumably because the reporters thought them of little interest to the readers of their papers.

⁴⁴¹ Weaver, for instance, embraces this argument enthusiastically. WEAVER, *supra* note 3, at 159–61.

⁴⁴² See the interchange between Disturnal and Vachell as reproduced in the *Daily Telegraph*. (Mr. Vachell: "It is material to know at what time the prisoner returned to the vicarage on Aug. 17. The prosecution allege he went down to the shed and committed this deed before he returned home." Mr. Disturnal: "I am not alleging that. I did not open my case in that way.") Summary of

However, all of George's alibi witnesses for the new time, including his father and mother and the servant Dora Earp, were available and did testify to it, as did George himself.⁴⁴³ Mr. Vachell's surprise seems from his closing to have been more attributable to the shock he felt that the prosecution would actually alight on a theory that attacked the veracity of the Reverend Edalji, a man of the cloth of the established church.⁴⁴⁴ Mr. Vachell in that case might have overlooked the possibility that the jury, independent of considerations of the main alibi witness's status or his piety, and also independent of any feelings of racial prejudice, could easily come to the conclusion that Shapurji, being the defendant's father, might have exaggerated the impossibility of George's having left the room during the night without waking Shapurji. In the event, they must have disbelieved him on some point or other. After Sir Reginald's instructions (which were generally pro prosecution), and after deliberating fifty minutes, they convicted George.⁴⁴⁵ They also recommended mercy, based on George's "position."⁴⁴⁶ After a recess of a few minutes, George was immediately sentenced by Sir Reginald, in theory speaking for the panel, to an unmerciful seven years at hard labor.⁴⁴⁷ And so George went off to prison.

Perhaps the main point raised later by critics of the way the case was handled is that evidence of the anonymous letters, and their attribution to George by Mr. Gurrin, was admitted.⁴⁴⁸ Those letters, they argue, even if written by George, should have been inadmissible on the issue of George's guilt for the charged slashing, which appears to have been the only charge formally under trial. The validity of such a position turns on technicalities of both criminal joinder and practice before juries in 1903 in England, and on the rules of evidence then in force. I can speak to the latter more comfortably than the former, but before I do, I must point out that this criticism will probably not impress too many modern American readers, for the following reason: Whatever formal restrictions there were in England at the time, it is almost certain that both charges would be tried together today in an American court, and that all the proffered evidence would be found admissible. I believe most courts today would rule that the letters attributed to George (assuming a finding that they were authored by him), were all acts done in the carrying out of a plan to excite the community by writing such letters, and further, that the letters' claims of participation in the slashings would be admissible as admissions of the author (George, again, according to the assumed

testimony in the *Daily Telegraph*, Jan. 21, 1907, reproduced in THE TRUE CRIME FILES OF ARTHUR CONAN DOYLE, *supra* note 111, at 145.

⁴⁴³ *Id.* at 161–62.

⁴⁴⁴ *Id.* at 163.

⁴⁴⁵ *Id.* at 166.

⁴⁴⁶ *Id.* See also WEAVER, *supra* note 3, at 163–66.

⁴⁴⁷ WEAVER, *supra* note 3, at 166.

⁴⁴⁸ *Id.* at 157–59.

finding), which would be relevant to some degree in attributing to him guilt for the earlier slashings. The perpetration of the earlier slashings would be relevant to show a plan to slash animals in a certain manner to excite the community, or for personal reasons known only to him, a plan pursuant to which the charged slashing was also carried out. In addition, certain passages in various letters indicate an intent to do acts of slashing in the future, and would therefore be admissible to show the writer's (George's) perpetration of the charged act, occurring after the declaration of intent and consistent with it. Hence the letters would be both relevant to the charged August 18 slashing of the pit pony, and also admissible under Federal Rule of Evidence 404(b) and its various modern state analogues as generally construed. So even if the trial violated all sorts of rules then in place, and was in some sense unfair because of this, it would be hard for most of us to get too exercised concerning the factual indefensibility of the result on that ground, given that we would try the case the same way today, under our rules, as it was in fact tried then.

That having been said, a high court judge in 1903 might well have ruled that, even if the letters might be construed as evidence of prior acts of slashing by the writer (assertedly George), the prior slashings and the letters were inadmissible upon the issue of George's commission of the single charged criminal act (the August 18th slashing), and many barristers so argued after the conviction.⁴⁴⁹ English evidence law, as reflected by such sources as Stephen's Digest of the Law of Evidence, was at the time extremely restrictive when it came to using prior acts of a defendant to prove the commission of the *actus reus* of a charged crime (as opposed to their use to show state of mind when the charged crime might have been an innocent mistake).⁴⁵⁰ Since it is hard to fit the letters or prior slashings into this restrictive formula, they well might have been ruled inadmissible in any separate trial at the Assizes restricted to the August 18 slashing. But that is not, and was not, really the problem with the result in George's case. The real problem was simply that the evidence produced (the horse hairs alleged to have been found on George's coat and the tracking of what were alleged to be George's boot prints, in regard to the slashing of the pit pony,

⁴⁴⁹ See *supra* note 415.

⁴⁵⁰ See SIR JAMES FITZJAMES STEPHEN, A DIGEST OF THE LAW OF EVIDENCE, 6TH EDITION (1893), Articles 7, 10, 11, and 12, and Appendix, note VI to Articles 10, 11 and 12, *reprinted in* SIR JAMES FITZJAMES STEPHEN, A DIGEST OF THE LAW OF EVIDENCE 19–23, 34–53, 357–58 (Samuel Chase ed., 2nd American ed. 1898). The underdeveloped nature of “plan” or “design” as a non-propensity inferential path for “other crimes” evidence in criminal prosecutions in the early 20th century is well treated by Wigmore in his first edition, where he generally laments the underdevelopment. None of his few illustrations of the principle of “prior act as evidence of plan, proved to show commission of charged act” (my characterization), which Wigmore favored, are drawn from British authorities. See 1 JOHN HENRY WIGMORE, A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW 174–78, 396–98 (1904).

and the testimony of Gurrin, in regard to the authorship of the June 10 letter, if that was properly in issue), although perhaps formally sufficient, was epistemically very weak, with or without evidence of George's myopia, and even without taking into account George's alibi. It seems extremely unlikely on what is known that George slashed the pit pony (which is the only crime for which he was convicted), and also unlikely, on the record before the court, that he wrote any of the 1903 letters, which formally is somewhat beside the point anyway. Certainly as to the slashing of the pit pony for which he was convicted, George's case is the classic case of an unsafe verdict.⁴⁵¹

XI. THE HISTORICAL RECORD: THE TRIAL'S AFTERMATH FROM SENTENCE TO CONAN DOYLE

The local reaction to George's conviction was immediate, and George's supporters were not slow to react. On October 27 a local Cannock newspaper observed:

During the past few days much comment has been made regarding the petition which has been placed before the Home Secretary respecting the sentence passed on Mr. G. E. Edalji. There is no doubt the citizens are in great sympathy, and it is estimated that 85% of the people in the surrounding districts would place their name on the petition.⁴⁵²

The petition may initially have been the work of Shapurji and George's defense team, but they were soon joined by more widely known figures, most importantly, Sir George Lewis, K.C., M.P., and Mr. R. D. Yelverton, former Chief Justice of the Bahamas and a well-known activist in legal reform circles.⁴⁵³ Many regarded Yelverton as perhaps somewhat quixotic, but the proof of the pudding in George's case lay in the subsequent events.⁴⁵⁴ It was Yelverton, and the organization he generated, in alliance with the muckraking weekly *Truth*, that created the public pressure which ultimately resulted in George's early parole by the Home Office.⁴⁵⁵

⁴⁵¹ See D. Michael Risinger, *Unsafe Verdicts: The Need for Reformed Standards for the Trial and Review of Factual Innocence Claims*, 41 HOUSTON L. REV. 1281, 1313–16 (2004).

⁴⁵² Cheslyn Hay Historical Society Newsletter (Fall 2003), copy of relevant sections on file with author. Other non-area newspapers were split in their responses. See WEAVER, *supra* note 3, at 167–69.

⁴⁵³ *Id.* at 170–171.

⁴⁵⁴ *Id.*

⁴⁵⁵ See generally *id.* at 171–99, 206–25 (detailing the complex story of the pre-release campaign on George's behalf).

The effort to gain relief for George was boosted immensely on November 3, 1903, when two more horses, both belonging to a Mr. Stanley, were slashed in the same way as the previous February–August series.⁴⁵⁶ This triggered a reaction from Anson & Co. which one can only characterize as a media blitz.⁴⁵⁷ Stories began to appear in a variety of newspapers, both in Birmingham and more locally.⁴⁵⁸ The new slashings were cited as more evidence that George was a dangerous member of a dangerous gang.⁴⁵⁹ Various details of George's financial difficulties were leaked, and embellished.⁴⁶⁰ In these versions, George became a desperate person with large gambling debts, and an embezzler of client funds. Mr. Brookes the grocer wrote a long letter to the press accusing George of authoring the 1892–95 letters, and attacking Shapurji for abusing his position by turning St. Mark's Church into a pulpit to harangue the congregation about the alleged injustice to his son, and to campaign for his release.⁴⁶¹

On December 10, 1903, the first petition was formally delivered to the Home Office, requesting that George be granted relief from his conviction.⁴⁶² It contained ten thousand signatures, including those of a thousand solicitors, numerous barristers, and five members of Parliament.⁴⁶³ Subsequent petitions were presented. Responses from Anson were filed. Polite letters acknowledging receipt were sent by the Home Office. But the Home Office response was its accustomed response. Hundreds, perhaps thousands, of petitions for relief from criminal convictions or sentences were presented to the Home Office every year.⁴⁶⁴ They went in. Then, viewed from the outside, there was nothing but silence. After a time, a long time or a longer, some decision would issue. Usually it was a peremptory denial without explanation from which there was no recourse. The view from the inside would of course, be different. Petitions were considered. Unimportant or simple petitions, once reached, were disposed of without much expenditure of time or resources. But important petitions with a lot of significant support would be reviewed at length. And so it was with George's petition, though it was only after the Home Office records from the period became available for examination in the 1980s that there was a chance of determining

⁴⁵⁶ *Id.* at 173.

⁴⁵⁷ *Id.* at 174–82.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.* at 174.

⁴⁶⁰ *Id.* at 180–83.

⁴⁶¹ *Id.* at 177–78.

⁴⁶² *Id.* at 180.

⁴⁶³ *Id.*

⁴⁶⁴ It must be remembered that, since there were no appeals in criminal cases, the bureaucratic procedure remained largely what it had been in Sir Robert Peel's time and before. For a summary of the circumstances in Peel's day (the 1820s) see V. A. C. GATRELL, *THE HANGING TREE: EXECUTION AND THE ENGLISH PEOPLE, 1770–1868*, at 417–44 (1994).

what information had been available to the Home Office at the time, and how evaluations of George's case had been made. Decisions by the Home Office were generally not rationalized in writing, at least to the world, and so it was in George's case. In the fullness of time, at the appropriate juncture and taking into consideration all relevant information,⁴⁶⁵ the Home Office simply decided to parole George after he had served only three years of his seven-year sentence. The motives can be guessed. The responsible boffins, most notably the Home Secretary Mr. Akers-Douglas, whether they doubted the accuracy of the conviction or not,⁴⁶⁶ probably thought that the sentence was harsh to begin with, and that George's release would make his supporters fade away. On the latter count, they were quite wrong. For it was after his release that George gained his most powerful supporter: Sir Arthur Conan Doyle.

XII. THE HISTORICAL RECORD: ENTER CONAN DOYLE

Barnes tells the story of Conan Doyle's efforts on George's behalf reasonably accurately. His fictionalizations regarding the activities of his "Watson" (Conan Doyle's real-life secretary, Alfred Wood) are reasonable artistic license, perhaps, and do not interfere with the known facts of the case much.⁴⁶⁷ And, as I have already indicated,⁴⁶⁸ Conan Doyle's visit to Captain Anson's house is one of the most dramatically effective scenes in the book. But unfortunately, it does not appear that it reflects what actually happened.

Conan Doyle met with Anson late on January 3, 1907.⁴⁶⁹ They appear to have parted on what Anson thought were good terms.⁴⁷⁰ Two things about the meeting left Anson toweringly angry when he later found them out, and also left him with a grudge which would appear to have motivated his actions and colored his judgment in all things regarding the Edalji case for years.

⁴⁶⁵ The phrase is the standard line of that ultimate bureaucratic insider, Sir Humphrey Appleby, in *Yes, Minister* (BBC series, 1980–84). And yes, there of course is a Wikipedia entry for the program.

⁴⁶⁶ Internal documents are split, with some reviewers, notably the Lord Chancellor, Lord Halsbury, doubting the propriety of the conviction (though not recommending a pardon, but a retrial to be obtained by trying the untried murder threat indictment—how strange), and others, notably a Mr. Bettany, supporting the conviction unreservedly. See WEAVER, *supra* note 3, at 194–96 (Chancellor's evaluation), and 216–18 (Bettany's evaluation).

⁴⁶⁷ Barnes does appear to put the date of Wood's employment by Conan Doyle much too early. According to Adrian Conan Doyle, Wood became Conan Doyle's secretary in 1897. NORDEN, *supra* note 51, at 273 (quoting Adrian Conan Doyle). Barnes has him on board while Conan Doyle still practiced medicine, BARNES, *supra* note 1, at 46–47, which, according to Conan Doyle, he stopped in August 1891. CONAN DOYLE, MEMORIES, *supra* note 17, at 91.

⁴⁶⁸ *Supra* note 114 and accompanying text.

⁴⁶⁹ WEAVER, *supra* note 3, at 233.

⁴⁷⁰ *Id.* at 235.

The first is that he believed that Conan Doyle had lied to him in order to gain a meeting that Anson otherwise would not have agreed to.⁴⁷¹ Anson thought that when Conan Doyle had requested the meeting he had represented himself as a neutral investigator who had not yet come to any conclusions about the Edalji case, and the meeting was conducted in that spirit.⁴⁷² The deception was established to Anson's satisfaction when Conan Doyle wrote to him to tell him that he intended to support George's innocence a mere two days after their January 3 meeting, and when Conan Doyle published the first half of his scathing, eighteen-thousand-word manifesto on the case a mere eight days later, an article in which Conan Doyle admitted having become convinced of George's innocence at his first meeting with George. To Anson, son of an earl, this was no way for one gentleman to treat another, and it revealed Conan Doyle's claims to gentlemanly honor as mere pretensions. (He accused Conan Doyle of behaving like a "contemptible brute."⁴⁷³ Anson's own participation in the phony "lover of justice" letter to George was, of course, a different thing entirely, done in the course of professional duty. Anson failed to see that Conan Doyle might have similarly regarded his own behavior.)

The second outrage, in Anson's eyes, was that Conan Doyle, in his communication to the Home Office, accused Anson of implying during their meeting that homosexual incest between Shapurji and George was the explanation for the odd sleeping arrangements in the vicarage.⁴⁷⁴ Anson hotly denied implying any such thing.⁴⁷⁵

From that point on, Anson displayed few limits in the kind of argument, or the kind of information, that he would pass on to the Home Office.⁴⁷⁶ He

⁴⁷¹ *Id.* at 253.

⁴⁷² *Id.*

⁴⁷³ *Id.* He also later characterized Conan Doyle as "an absolutely dishonest unscrupulous man," an utter fool, a knave, and insane. *Id.* at 326.

⁴⁷⁴ *Id.* at 252.

⁴⁷⁵ It is possible though not inevitable to read such implications into Anson's words in an exchange of pre-meeting letters between Conan Doyle and Anson. *Id.* at 250–51.

⁴⁷⁶ Here is a good place to address racism, particularly Anson's racism, and its effect on George's conviction. Both Barnes and Weaver, and to a great extent, Conan Doyle, account for George's arrest and conviction purely in terms of the racist attitudes of Anson in particular, the police in general, and the residents and powers in South Staffordshire even more generally. No doubt there was a prevailing racism, supported by Holmesian scientism and notions of atavism and criminal types derived from the Lombrosian criminology of the day. And there is no doubt that Captain Anson was quite subject to it. Indeed, after the attack on the police following the conviction, and more so following Conan Doyle's entry into the fray, Anson seems to have been willing to commit many racist excesses to paper (not for publication, of course), most of which appear to have been culled and collected by Weaver. A couple of examples: George goes through life "carrying in his face manifest traces of his Eastern parentage, very noticeable thick protruding lips and a peculiar panther like walk." WEAVER, *id.* at 126 (quoting Anson letter to Home Office, Mar. 30, 1907). And, in arguing that despite his visual handicap George could see well in the dark, Anson asserted

bombarded them with memoranda, and when Conan Doyle's public campaign actually resulted in the appointment of an official committee of inquiry into the case, Anson stepped up his paper assault.⁴⁷⁷

that when it got dark in the courtroom, George's eyes "came out with a strange sort of glow, like a cat's eyes," *id.* at 208 (quoting Anson letter to Home Office, Dec. 12, 1904). Etc. So Barnes's depiction of Anson's way of thinking in the Anson-Conan Doyle confrontation is not unjustified. But that being said, it must be noted that there was a lot more going on in George's case than Anson's racism, or that of South Staffordshire. So far as is known, for instance, Horace, rightly or wrongly, never suffered any persecution.

One charge made against Anson concerns his assertion that George was motivated to do all that Anson believed he had done because "he was possessed with a blind fury against his father for being his father and being black." See WEAVER, *supra* note 3, at 72 (quoting Anson). Such a theory seems farfetched, but consider the following from a recent New Jersey newspaper story about the solution to what had appeared to be bias crimes:

It wasn't a stranger after all. The person responsible for terrorizing a Hindu family in Wayne with menacing letters and spray-painted walls was living under the same roof, authorities said Friday. Behind the threats over the past six months was the couple's 17-year-old son, whose latest tactic was to leave handwritten notes last week on the edge of the property....

Douglas Crouse, *Son Tied to Hate Crimes that Targeted Hindu Family*, RECORD (Hackensack, New Jersey), July 22, 2006, at A-7. In this case they tied the son to the crime by recovering deleted e-mails from his computer. Maybe he read Barnes's book, but got the wrong message.

⁴⁷⁷ Another plague of anonymous letters descended on Anson, Edalji, Conan Doyle, and others, commencing the day Conan Doyle's declaration of intent arrived in Anson's mail. This was also just a little time after an article by Edalji in a magazine had announced his intention to keep fighting for exoneration. The first letter, a lengthy one, purported to be from one Martin Molton, claiming to be a private investigator who had first become interested in the Edalji case in the mid-90s when he was sent to the vicarage as a victim of one of the many hoaxes that caused unordered goods and services to arrive. "Martin Molton" was clearly a virtuoso in the details of the Edalji case, from Elizabeth Foster onward. Whether he could have assembled such knowledge by collecting every press clipping about the Edaljis for the last fifteen years is uncertain, but perhaps possible. His motive for writing is conjectural, but perhaps tied to George's publicized resolve to seek vindication. The first letter, which was sent to Anson, alleged that Molton could prove that George had slashed the pit pony, even though it further asserted that George had not in fact written the "Greatorex letters." The letter demanded that money to be sent to a general delivery pickup at a London post office. As it turned out, this letter and the subsequent half dozen that followed to Anson, Conan Doyle, and George, appeared on their face to be an elaborate plot to entrap George into picking up the letter with money in it while the delivery was being watched by the police. Anson claimed the letters were in George's "Greatorex" hand. Gurrin agreed, with some reservations. Conan Doyle alleged that they were done by Royden Sharp, perhaps acting as an agent of the authorities. (As it turned out, confidential Home Office reports showed that Royden Sharp was then employed by the Staffordshire Constabulary as an informant on regulation violations by pubs. This may or may not be another story.) At any rate, the Molton letters petered out by early February. In April and May there were more sets of letters, pretty clearly by other people, which ended up establishing nothing. The Martin Molton letters were a central part of Conan Doyle's own attempt at playing amateur handwriting expert. In the end, although Royden Sharp remains a decent candidate to have written at least some of the letters over the years, Conan Doyle's case against Royden Sharp and his brothers, as the masterminds behind all of the letters, turns out to be as weak and conjectural as the prosecution's case against George. (Conan Doyle

In the face of Conan Doyle's public crusade, the Home Office had to do something. Conan Doyle was, at that time, the second most influential and publicly revered writer in England (after Kipling). On January 15, Conan Doyle met with the Home Secretary, Herbert Gladstone; the Permanent Under-Secretary (the top career officer), Sir Mackenzie Chalmers; and the Legal Assistant Under-Secretary, Mr. Blackwell.⁴⁷⁸ Conan Doyle hoped to obtain the appointment of a Commission of Inquiry with subpoena powers, as had been done in the Beck case, and announced in the press in early February that this was in fact what he expected would be done.⁴⁷⁹

The Home Office was not inclined to go in that direction, however, perhaps fearing the mud that might splash on such official participants as Mr. Gladstone's cousin, Sir Reginald Hardy.⁴⁸⁰ Instead, they inclined toward a three-man Committee of Inquiry, which would perform an internal review of the available information and issue a report.⁴⁸¹ By mid-February, they thought they had such a committee in place, to be chaired by Sir Robert Romer, a retired Lord Justice of Appeal.⁴⁸² However, some disagreement arose about the limitations to be placed on the committee's warrant, and Romer withdrew.⁴⁸³ Sir Arthur Wilson became chairman, and J. Lloyd Wharton agreed to remain on the committee.⁴⁸⁴ Romer was replaced by Sir Albert de Rutzen, chief magistrate of London. Sir Albert was also Captain Anson's cousin.⁴⁸⁵

The committee and the Home Office staff worked for two months, reviewing the records of previously submitted information, and whatever else Conan Doyle and Anson supplied.⁴⁸⁶ On April 23, 1907, they announced their

published his analysis without naming names in the *Daily Telegraph*, beginning May 23, 1907, and sent it to the Home Office with names, entitling it *Statement of the Case Against Royden Sharp*. See Conan Doyle, *Case Against Royden Sharp*, *supra* note 158. The Home Office declined to pursue any prosecution of the Sharps.) See generally WEAVER, *supra* note 3, at 259–69.

⁴⁷⁸ WEAVER, *supra* note 3, at 244–45.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.* at 246–48.

⁴⁸¹ *Id.*

⁴⁸² *Id.* at 248–49.

⁴⁸³ *Id.* at 249–50.

⁴⁸⁴ *Id.* at 249.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.* at 285–88. Even Gurrin got into the act, soliciting (on behalf of the committee) opinions from a French expert and colleague, M. Gobert, concerning the authorship of the various 1903 anonymous letters and the Martin Moltin letters, all of which Gurrin had ascribed to George. Gobert indicated that he generally refused to work from photographs, then gave conclusions supporting Gurrin. In the meantime a letter arrived from two American experts who had seen newspaper accounts referring to Gurrin as a “so-called expert in handwriting.” The letter went on “we both feel that your skill and experience are such that you could not be mistaken in the matter, and we desire to refute, in case we agree with you, the aspersions cast upon you and your work.”

conclusions and recommendations.⁴⁸⁷ They made no one happy. They concluded that the evidence concerning George's guilt on the charge of slashing the pit pony, the only charge for which he was tried, was insufficient to sustain his conviction, and recommended a free pardon.⁴⁸⁸ Nevertheless, they believed it reasonable to conclude that George had written at least some of the letters, and that his conduct in doing so had contributed to his prosecution and conviction in a way that made him in part responsible for his own situation.⁴⁸⁹ Hence they recommended no compensation for his time in prison.⁴⁹⁰

These recommendations had to be accepted by the Home Office before they had any official effect. Both behind the scenes and in the press there were two weeks of intense lobbying, with Anson and his allies arguing for a rejection of the committee finding regarding a free pardon,⁴⁹¹ since innocence had not been affirmatively established, and Conan Doyle and his allies pushing for a rejection of the committee findings in regard to the authorship of some of the letters, a finding which, if approved, would result in a denial of compensation and make it difficult to have George restored to the roll of qualified solicitors.⁴⁹² It appears that Gladstone was personally inclined to go with Anson, but in the end, on May 7, 1907, rather grudgingly, he adopted the committee recommendations, and on May 15 the pardon was granted.⁴⁹³

As it turned out, the Master of the Rolls seemed less concerned with the Home Office's position on George's authorship of letters than one might have expected. George was reinstated as a qualified solicitor on November 27, 1907.⁴⁹⁴

Between the date of the pardon and George's reinstatement, there was much controversy over the Committee report. The Tories used the opportunity to attack the Liberal government for adopting what appeared to be an inconsistent

The letter was from W. J. Kinsley, on behalf of himself and his colleague, Albert S. Osborn(!). Gurrin supplied them with the photographs to work with. Kinsley supplied a report somewhat lacking in detail supporting Gurrin's conclusions. Osborn supplied a report that consisted of one sentence: "The photos establish conclusively the connection of George Edalji with the anonymous letters." These "corroborations" of Gurrin contributed to the Wilson Committee's final split decision in George's case. *Id.* at 278–81. I have been unable to discover any discussion of either the Beck case or the Edalji case in any of Osborn's later writings.

⁴⁸⁷ *Id.* at 286–88.

⁴⁸⁸ *Id.* at 288.

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.* at 288–91.

⁴⁹² *Id.* at 291–95.

⁴⁹³ *Id.* at 295–96.

⁴⁹⁴ *Id.* at 327. The day before, Captain Anson had been installed as a Member of the Royal Victorian Order.

position—a pardon without compensation.⁴⁹⁵ Conan Doyle and Anson continued pursuing various lines of investigation behind the scenes.⁴⁹⁶ There was another horse slashing, for which a vociferous Edalji supporter named Morgan was tried and acquitted.⁴⁹⁷ There were a few anonymous letters supporting Morgan, which Anson duly attributed to George.⁴⁹⁸ None of this led much of anywhere, and it finally all petered out over a protracted period of hostility and recrimination between Anson and Conan Doyle.⁴⁹⁹ Even as late as 1924, Conan Doyle reported that he could not think of the Edalji case without anger rising at the stupidity of the Home Office position.⁵⁰⁰

But then, almost certainly Sir Arthur did not know about the letters in the Home Office files from George's brother Horace.

XIII. THE HISTORICAL RECORD: HORACE

It may be something of an exaggeration to call the documents in the Home Office files letters from Horace, but they were definitely claimed by Captain Anson to be transcriptions of such letters, as provided to him by Christopher Hatton. Christopher Hatton was one of Squire Hatton's ten children.⁵⁰¹ He claimed to be a close friend of Horace. He also claimed, in statements to Constable Cooper in 1903, and then in correspondence with Captain Anson later, that in late 1903, right after George's conviction, he had had conversations with Horace and exchanged a number of letters with him.⁵⁰² In those conversations and letters, according to Hatton, Horace had said that he opposed the high-profile way that George's supporters were carrying on, since it might lead to the exposure of information that would be more hurtful than helpful.⁵⁰³ He thought that they shouldn't be saying that George couldn't have written the anonymous letters. "No, that won't do," Horace was reported to have said, "that line of defense will do more harm than good. I don't think George killed the horses, but he did write the anonymous letters, and it is no good basing a defense on unsound premises by maintaining that he did not write them."⁵⁰⁴ Furthermore, he said he himself had

⁴⁹⁵ *Id.* at 298.

⁴⁹⁶ *Id.* at 301–02.

⁴⁹⁷ *Id.* at 303–17.

⁴⁹⁸ *Id.* at 310.

⁴⁹⁹ *Id.* at 336–41.

⁵⁰⁰ "Mentally I began to class the Home Office officials as insane. Even now, after the lapse of so many years, I can hardly think with patience on the handling of this case." CONAN DOYLE, *MEMORIES*, *supra* note 17, at 213.

⁵⁰¹ WEAVER, *supra* note 3, at 185, 326. *See also supra* notes 200–203 and accompanying text.

⁵⁰² *Id.* at 185–86.

⁵⁰³ *Id.* at 186.

⁵⁰⁴ *Id.* at 324.

caught George perpetrating some of the forgeries of 1892–95, and it was only when he threatened to tell their parents that George quit.⁵⁰⁵ In addition, he was reported to have said that he had finally told his mother this in December of 1903, but that she had called him a liar, and that they were not thereafter on very good terms.⁵⁰⁶

It is not clear if Christopher Hatton gave the originals of these letters to Captain Anson, and if he did, when. Anson made reference to this information in a submission to the Home Office in late 1903, and perhaps again in 1905. This was referred to in Mr. Bettany's 1903 internal review recommending dismissal of George's petition for pardon.⁵⁰⁷ The letters themselves do not appear to have been supplied. Then, in early 1905, Anson supplied the text of the letters to the Home Office.⁵⁰⁸ Although it was not like Anson to be so reticent, when Anson finally supplied the alleged letters to the Home Office, he supplied them in the form of typed copies, not originals.⁵⁰⁹ So they could be Anson fabrications, or Hatton fabrications, but if they reflect what Horace actually said, they are clearly explosive. That Horace *might* have said such things is corroborated by the story told (almost certainly in violation of any notion of attorney-client privilege) by a Mr. Hazell, MP for West Bromwich, to Home Secretary Gladstone. The story was contained in a memo to file by Gladstone marked "secret," and dated June 6, 1907 (it was discovered by Peter Costello and first published in 1991).⁵¹⁰ It is best to quote it in its entirety:

Secret

Tonight at dinner I met Mr Hazell—MP West Bromwich. Confidentially he told me that he was with Mr. Vachell in the Edalji case. Both he and V. were convinced that E. wrote two letters. When the trial was on, a member of the E. family—he thinks it was G.E.'s brother—brought them a letter which had been found in one of G.E.'s drawers. It was brought as a specimen of G.E.'s handwriting and the idea was that an expert should be called to show it was different to the anon. letters—it was actually brought as G.E.'s own writing.

The letter was a long one of several pages. It contained several scraps of paper atrocious in character.

⁵⁰⁵ *Id.* at 189–90, 322.

⁵⁰⁶ *Id.* at 187–88 n.290 (reproducing extensive text of alleged Horace letter).

⁵⁰⁷ *Id.* at 218.

⁵⁰⁸ *Id.* at 189.

⁵⁰⁹ *Id.*

⁵¹⁰ COSTELLO, *supra* note 210, at 92.

The letter was addressed to the servant maid at the Vicarage. It was full of things unmentionable. It told her to put the scraps under the doormats and about the house. On the scraps were abusive remarks—“Curse Edalji” and so forth. The letter was not posted. Vachell and he decided to suppress the letter as most damaging to the case. It would seem that by accident the letter was left in the drawer. Mr. H. told me that when he met Vachell in Jan. (or Feb?) when Martin Moulton [*sic*] letters were known to have begun, V. said to him “he is at it again”—meaning G.E.

Hazell said that nothing could be worse than the content, [yet he thought the prosecution] ought not to have had a conviction on the evidence.

The similarity of this letter to the 1895 “Thomas Hitchins” letter to the servant Nora, previously set out above, is obvious.⁵¹¹ The same scraps of paper under carpets, etc. Whatever the ethics of the conversation between Hazell and Gladstone, there is little reason to doubt its veracity. Gladstone made his record of it merely a note to file, where it lay unread for eighty years or more.⁵¹² Gladstone recorded it when it was fresh in his mind. The declarant, Mr. Hazell, certainly seems to have had no reason to fabricate, though his memory on details might have been faulty. While he had obviously not seen who supplied the letter, Horace is really the only candidate. (Shapurji? Charlotte? Maud? Nah.) So either Horace wrote it, or he found it, but not necessarily when and where he said he found it. After all, the house had been searched by legions of police on the evening of August 18, for just such a piece of paper. It seems that they would have found anything “in one of G.E.’s drawers” at the time, and George was never out of custody after that. Horace was twenty-four at the time of the trial, so he was too old not to know its implications. Was he merely trying to frame his brother? Was he warning the defense in the way he later claimed to be warning his parents, according to Chris Hatton? Is this a letter he had caught George writing, as Christopher Hatton reported Horace had said he had done back in the 1890s, a letter which he had then kept hidden somewhere? At this point, all we can say for sure is that it is apparent that Horace was a key to all the mysteries, at least as far as the letters were concerned. And, so far as the available record

⁵¹¹ See *supra* text accompanying note 192. The implications were not entirely lost on Weaver, who argues that the letter somehow was in fact the actual 1895 letter set out in the text, at note 192 *supra*, perhaps supplied in some way through Anson. WEAVER, *supra* note 3, at 149–50. Still, while conceding that it raises a number of issues, he seems to shy away from its implications rather than face what is in my opinion its centrality to the case.

⁵¹² COSTELLO, *supra* note 210, at 92.

reflects, neither Anson nor Conan Doyle ever got a statement from him directly.⁵¹³ Perhaps both were afraid of what he might say. Boxes in boxes.

CONCLUSION

So what is to be said in conclusion? Sherlock Holmes is a dangerous conceit for forensic experts and law enforcement? Conan Doyle could not live up to Sherlock Holmes in reality? Barnes's version of the Edalji case is so far removed from reality as to be, not historical fiction, but merely fiction? Barnes's version is so much a morality play as to be mediocre fiction? Fiction is a dangerous source of examples for teaching evidence students? Good comes out in the end?

The Edalji case is one of the three cases always invoked as providing the impetus for the creation of a Court of Criminal Appeals in Great Britain. The other two are the Beck case, already described above in connection with Gurrin's role in it, and the Florence Maybrick case.⁵¹⁴ Each case contributed a different ingredient into the mixture that finally emerged as the "unsafe and unsatisfactory" standard of review. From Beck came the necessity of providing a judicial forum to consider new evidence of actual innocence, since executive clemency through the Home Office was too political and unpredictable. Such clearly wrong verdicts are not merely unsafe, or unsatisfactory, they are factually erroneous. From the Maybrick case came the necessity to provide a forum to review judicial errors and excesses, as represented in that case by the scandalous address to the jury by the aging giant losing his grip, Sir James Fitzjames Stephen.⁵¹⁵ Verdicts so obtained

⁵¹³ In one of the alleged "Chris Hatton" communications, Horace assertedly indicates that he was surprised to learn of Conan Doyle's intervention in the paper, and that "if necessary I will let him know how matters stand. He has evidently been kept in the dark by Yelverton and my people." *Id.* at 323. However, there is no evidence that Horace and Conan Doyle ever communicated, though presumably Conan Doyle could have done so at will. In 1903, after the subject of the Hatton communications first came up, the Home Office suggested to Anson that he interview Horace directly, but instructed that he be careful to give assurance to Horace that he was under no obligation to make a statement. Anson replied that any statement obtained by him "would be looked upon with suspicion by the Edalji party" and suggested that a Home Office official interview Horace. The Home Office did not want to do any interviews for fear that others would demand to be interviewed, creating a de facto open inquiry. The subject of interviewing Horace directly ended in that stalemate. *Id.* at 198. Anson's willingness to have a neutral interview of Horace by the Home Office goes some way toward establishing Anson's good faith in the matter, if not that of Chris Hatton. Unless Anson could predict the suggestion would be rejected. Boxes in boxes.

⁵¹⁴ See RICHARD NOBLES AND DAVID SCHIFF, UNDERSTANDING MISCARRIAGES OF JUSTICE (2000) at 48–50 (mentioning also the Penge Murder case [the trial of the Stauntons] and the Israel Lipski case). As to the Beck case, see *supra* notes 306–07.

⁵¹⁵ See THE NECESSITY FOR CRIMINAL APPEAL AS ILLUSTRATED BY THE MAYBRICK CASE 311–403 (J. H. Levy ed., 1899) (reproducing Stephen's address to the jury along with running critical

are unsatisfactory even if they might not be unsafe. Harmless error should only go so far. And from the Edalji case came the necessity to provide a forum to review the sufficiency of the evidence, not according to the artificial standards prevailing presently in the United States,⁵¹⁶ but according to standards of rationality unmodified by doctrines of waiver and deference to juries.⁵¹⁷ Thus, from the Edalji case came the very model of the unsafe verdict, and the American judicial system would be better if we were to emulate it, these hundred years on.



Shapurji and Charlotte continued to live in the vicarage of St. Marks, and they continued their duties to the parish until Shapurji passed on to his Christian God in 1918.⁵¹⁸

Horace married and moved to Ireland.⁵¹⁹ He changed his last name to his wife's name, and was thereafter essentially lost to history, as he apparently desired.⁵²⁰ He died in 1953 in a Dublin nursing home.⁵²¹

George never returned to Great Wyrley after his release from prison except for short visits to his parents.⁵²² Upon his readmission to the list of qualified solicitors, he began practice in London.⁵²³ His sister Maud moved in with him, and they lived together in apparent peace until his death in 1953.⁵²⁴ Upon his death he left his papers on the case to the Incorporated Law Society.⁵²⁵ For unknown reasons, they were destroyed soon thereafter.⁵²⁶

commentary in footnotes); *see also* TREVOR L. CHRISTIE, ETCHED IN ARSENIC 134–146 (revised English ed., 1969).

⁵¹⁶ *See* Risinger, *Unsafe Verdicts*, *supra* note 451, at 1313–28.

⁵¹⁷ *Id.*

⁵¹⁸ WEAVER, *supra* note 3, at 227. (I have not discovered any reference to the year of Charlotte's death.)

⁵¹⁹ COSTELLO, *supra* note 210, at 93.

⁵²⁰ Horace "married Ann Gertrude Magee, an Ulster woman, in Hereford in 1910. Adopting her name, he moved as Horace Edward Magee to Belfast, and later to Dublin, where he lived in the prosperous suburb of Blackrock. After changing his name he broke completely with his family. He died in a Dublin nursing home in 1953." *Id.*

⁵²¹ *Id.*

⁵²² WEAVER, *supra* note 3, at 227.

⁵²³ BARNES, *supra* note 1, at 387 (author's [non-fiction] note).

⁵²⁴ *Id.* *See also* WEAVER, *supra* note 3, at 343.

⁵²⁵ WEAVER, *supra* note 3 at 343.

⁵²⁶ *Id.*

In 1956 Maud Edalji filed one last petition with the Home Office to reopen the case and obtain complete exoneration of her brother.⁵²⁷ It was rejected.⁵²⁸

Maud Edalji lived until 1962.⁵²⁹

⁵²⁷ *Id.* at 343–44.

⁵²⁸ *Id.*

⁵²⁹ At least. BARNES, *supra* note 1, at 388 (author’s [non-fiction] note). Barnes says that “[s]he returned for a last visit to Great Wyrley in 1962, when she gave photographs of her father and brother to the church. Today, they hang in vestry of St. Mark’s Church.” But as with Charlotte, I have found no reference to the specific date of her death.