THE
Pennsylvania
Magazine
OF HISTORY AND BIOGRAPHY

Reconstructing Rachel: A Case of Infanticide in the Eighteenth-Century Mid-Atlantic and the Vagaries of Historical Research

RACHEL FRANCISCO MAY HAVE BEEN A MURDERER. Like so many colonial women and men, Francisco's personal history is largely lost to us. She and her friends and neighbors are named, often obliquely, in only a handful of surviving documents, leaving us little evidence either of her daily trials and tribulations or of the trial that may have cost her her life. This essay is in many ways a tale of an archival adventure, an almost personal quest to learn more about Rachel Francisco, a woman of apparently modest means whose life intertwined rather unexpectedly with one of the eighteenth-century Delaware Valley's most prominent men—her defense attorney, John Dickinson. As we shall see, though the search for Francisco in the historical record met with several silences and dead ends, certain exploratory tangents also yielded unexpected fruit along the way.

Two undated documents in Dickinson's legal papers at The Historical

The author would like to thank Daniel Richter, Roderick McDonald, Michelle Craig McDonald, Wayne Bodle, and Patrick Spero for their continuing interest and advice in this study, and Leslie Hunt for making the Logan-Dickinson-Norris Collection available as a project.

Society of Pennsylvania relate the case of *Dominus Rex v. Rachel Francisco*, "Ind[ictmen]t for Murder of a Bastard Child."[1] A four-page document includes the testimony of Elizabeth Cremaine (Rachel's mistress), Susannah Whitman (also called Granny Whitman, a local midwife), Ann Stanton (either a close neighbor or member of the Cremaine household), Dr. Charles Ridgely (who gave medical evidence), and James Wrench (the doctor's apprentice), as well as some of Dickinson's queries and notes indicating how he planned to argue for the defense. The second document, a single page, outlines the main points of Dickinson's defense of Francisco, as well as expected objections to his arguments and his strategies for answering them. Nothing else in Dickinson's papers appears to mention Rachel Francisco, and nothing in the two documents indicates the year, location, or results of the trial; they provide only the names of those involved and the date of February 27. It is unclear whether this was the night of the alleged crime or the date on which Dickinson took the witnesses' depositions.

Did she do it? Not even contemporary witnesses seemed willing to venture a definite opinion. As historian Mark Jackson has noted, "much of the initial detective work and much of the subsequent investigation into the circumstances surrounding a child's death was carried out unofficially by members of the local community, in particular by local women."[2] Sure enough, months of neighborhood gossip and speculation preceded Francisco's arrest and trial. The female witnesses agreed that, since the previous August, "it was generally imagined by the neighbourhood that she was with child," but that Francisco almost uniformly denied it. She broke down only once; according to Elizabeth Cremaine's evidence, in October or November Francisco "Voluntarily confest that she

[1] All quotations related to the case of *Dominus Rex v. Rachel Francisco (Francesco)* come from the two documents I reference, which may be found in the Logan-Dickinson-Norris Collection, box Legal Papers [John Dickinson] 1790–1806, n.d., folders 2 and 5, Historical Society of Pennsylvania.

[2] Mark Jackson, *New-born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester, UK, 1996), 60. See Jackson's chapter on detecting the signs of concealed pregnancy and childbirth, 60–83. Changes in a woman's size were most likely to be noticed, as in this case when Cremaine noted Francisco's apparent "swelling." Complaints of back pain or nausea would have been other indicators. Though other early signs could be known only to the pregnant woman (unless she allowed herself to be examined), ongoing concealment would have been extremely difficult in the intimate household life of the eighteenth century, particularly in the winter months as Francisco neared the end of her pregnancy. As Jackson points out, "many suspects were servants living and sleeping in close proximity to other servants. . . . In these conditions, without the luxury of privacy and under the watchful eye of rate-paying neighbours and employers, concealing an expanding waist-line could cause problems." Jackson, 62.

believd she was with Child," although she "Afterw[ar]ds denied it & never again confest it and tho she app[eare]d swelled, said it was other Disorders."[3] Granny Whitman, the midwife, questioned her persistently throughout the months preceding the birth, but Francisco shrugged off the inquiries. According to Whitman, "Some time in Aug[us]t on my charg[in]g her with being with child—she denied it. Awhile after that I chargd her with it again—& said are you not with Child now—She laughd & said if she was—she would send for me." In addition, Francisco "wanted [a] Diet Drink to remove some obstructions—Said she woud not ask it if she thought she was with Child."

At first glance such evidence seems to condemn Francisco, but her apparent request for an abortifacient "Diet Drink" was not necessarily an indication of guilt. Women in early America who missed a period often ingested some kind of medicine meant to induce their menses, for blocked or obstructed menses was viewed as a medical condition requiring treatment as well as a possible sign of pregnancy. Legally, and often morally, a woman was not considered pregnant until she felt the child move—the quickening, which in the seventeenth century indicated the mystical moment of ensoulment but by the eighteenth century simply indicated the viability of the fetus—and so these treatments were not necessarily considered signs of criminal intent.[4] This was not the only view on the matter, however. Authors of manuals for midwives and mothers

[3] According to the next line of Cremaine's testimony, Francisco "said she had hurt herself in bring[in]g in a Log." How that might account for "swelling" is unclear, leading me to suspect that this notation may refer an attempt by Francisco to give an explanation for a stillborn birth. Francisco's remark is very similar to enslaved sixteen-year-old Alice Clifton's story that she fell down some stairs while carrying a heavy log, thus rendering her infant stillborn. Philadelphia authorities first seemed to accept this story, which was verified by Clifton's master's family, but later found that the infant's throat had been cut. What I find interesting is that both women felt that the difficulties of carrying heavy timber provided a plausible explanation for sustaining an injury serious enough to cause a stillborn birth. Other women accused of infanticide also recited a litany of recent injuries and overexertions, including falls, heavy lifting, and strenuous activity, while certain vigorous physical activities were commonly prescribed treatments for women seeking to restore "obstructed" menses. See *The Trial of Alice Clifton, for the Murder of her Bastard-Child . . .* (Philadelphia, 1787); and Susan E. Klepp, "Lost, Hidden, Obstructed, and Repressed: Contraceptive and Abortive Technology in the Early Delaware Valley," in *Early American Technology: Making and Doing Things from the Colonial Era to 1850,* ed. Judith A. McGaw (Chapel Hill, NC, 1994), 68–113.

[4] See Klepp, "Lost, Hidden, Obstructed, and Repressed"; and Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly* 3rd ser., 48 (1991): 19–49. It is also true that such sentiments were applied selectively; a married woman who had already borne children and was looking to limit her reproduction might have met with more understanding than an unmarried woman whose motives were more suspect.

routinely warned against the use of abortifacients; some pointed out the danger to the mother while others presented the issue in moral terms. Nicholas Culpeper, in his guide published in London in 1762, cautioned, "Give not any of those to any that is with Child, lest you turn Murtherers, wilful Murther seldom goes unpunished in this World, never in that to come."[5] Furthermore, women who took midwives' oaths in both Britain and its colonies pledged, among other duties, to prevent the harming and murder of infants and to urge the mother of a bastard child to name the father.[6] This tradition may explain Granny Whitman's dogged inquisition of Francisco throughout her pregnancy.

If Whitman did give Francisco a "Diet Drink," however, it was not effective. On the wintry night of the alleged murder, Elizabeth Cremaine testified that Francisco complained of a stomachache and had trouble sleeping. She remembered that they "sat up late till near 12 oClock" as the "p[riso]ner complain'd very much of a Pain in her side." The household spent a sleepless night, for "after she had been in Bed some time, [Francisco] calld the girl to come and cover her [and] compl[aine]d of Stomach Ache." Also awakened, Cremaine knowingly suggested that "something else" was the matter, but again Francisco denied it. She went back to sleep, only to complain again at the cock's crow and request "someth[in]g for her stomach." Upon rising at daybreak, Cremaine found evidence that Francisco had been out of doors in the night, which she admitted, still complaining of pain and cold. But Cremaine had seen enough. She announced she was sending for Granny Whitman, whereupon Francisco threatened to run away if she did so. Going outside to summon the midwife, Cremaine testified that she "saw a Likelihood that [Francisco] had had a young one." In the yard, she "saw the Child" with the "after Birth partly coverd up." She also discovered "Marks of it in the Kitchen & near the Fence." Francisco "said the Child dropt from her in the Kitchen."

Ann Stanton, either a close neighbor or another resident of the Cremaine house—perhaps "the girl" Francisco had called to cover her—agreed that Francisco had complained of pain the night before. Left alone

[5] Nicholas Culpeper, *A Directory for Midwives: Or, A Guide for Women in their Conception, Bearing, and Suckling their Children* (London, 1762), 69. See also William Buchan, *Domestic Medicine: Or, A Treatise on the Prevention and Cure of Diseases by Regimen and Simple Medicines* (London, 1792), 531. Buchan dwells on the "horror" of this "most unnatural crime," but first notes, "Every mother who procures an abortion does it at the hazard of her life."

[6] Thomas Rogers Forbes, *The Midwife and the Witch* (New Haven, CT, 1966), 145–47.

with Francisco sometime that morning, Stanton "askd her if she had a little one. She said she had & had hid it behind the Stable & desird Me to go & tell the G[rann]Y & bring it to her." Stanton refused to take the corpse to Granny Whitman but agreed to tell the midwife, at which point Francisco insisted "she would tell G[rann]Y herself." Stanton also testified that she found a bloody knife on the kitchen hearth but noted that there was very little blood on the hearth, some of which had been covered over with ashes. As all witnesses agreed that there were "No marks of any Hurt or Wound on the child," and Whitman and Stanton in particular noted that there was "No Blood where the child lay," it was assumed that Francisco used the knife to cut the umbilical cord.

When Granny Whitman arrived, she and Cremaine pressed Francisco for the truth. "I said to p[riso]ner she was in Labour," Whitman recalled, but "She denied it—I then told her she had a Child sev[era]l Times—She said noth[in]g." Although Francisco had already confessed to Ann Stanton, Whitman had to confront her with clear evidence of the birth before she again acknowledged it. While John Dickinson seemed to interpret this indecision as evidence of Francisco's deep state of denial about what had occurred, Whitman's statement offers clues to another explanation. After an interval of meeting Whitman's interrogation with denials or silence, Francisco finally said, "G[rann]y after the Boys are done [with] Breakfast—I will tell you—Accord[in]gly told me after they were gone." This suggests that Francisco was uncomfortable with a nearby male presence at such a time, and was perhaps waiting for "the Boys" to leave before making her confession. It is difficult to imagine that she still hoped to be saved by denials at that point, or that she was still in denial herself, but she may have been trying to control the terms of her confession. It is even possible that one of these "boys," perhaps one of Elizabeth Cremaine's five sons from two previous marriages, was the unnamed father of her child.[7]

[7] The hypothesis that Francisco was involved with one of her mistress's sons might explain why no one—not even the midwife—appeared to question her about the identity of the father or why this information was never recorded in the surviving documents. I tend to believe that neighbors generally knew this man's identity and chose to cover it up. The lack of any reference whatsoever to the baby's father is simply too striking an absence in the existing record, meager as it is. Also, in order for her neighbors to become suspicious as early as August about a pregnancy which probably began in late May or early June, Francisco must have already been linked to some paramour. It was relatively easy for a woman in the first months of pregnancy to hide the changes in her body under loose layers of clothing, so unless she aroused suspicion by wearing too many clothes on hot August days (or removing too many), it seems likely that the community at large already suspected an affair. For more information on Elizabeth Cremaine's changing marital status during the 1740s through the 1760s,

When Whitman presented Francisco with her infant's corpse, she took its hand and appeared to mourn her child, calling it "my poor baby." Whitman asserted, "She said it was stillborn—& that she let it lye some time to see if it was alive—& it was not—then she hid to hide her Shame."[8] Whitman and Cremaine agreed that the child had "come to its full time" (in other words, the fetus was viable) but saw no obvious cause of death. There were no open wounds, and though Whitman checked for litter around the nose, eyes, and mouth trying to detect signs of suffocation, she found "very little." Whitman claimed, however, that she "Took up the child—but did not examine" so it is uncertain how extensive her inspection was. She could not say whether the child was live- or stillborn, but she believed it had not been dead long before she saw it. Responding to Dickinson's questioning, she admitted, "If the child was live born, the neglect of the navel string, I believe was the cause of its Death."

Dickinson also asked Cremaine about the umbilical cord, and she concurred that it had been cut to only about an inch and a half, a point crucial to his defense. "If navel string cut less than 3 or 4 inches," Dickinson observed, it "would bring on immediate Death by bring[in]g on Convulsions." Cutting the cord too short was not, according to his interpretation, a deliberate attempt by Francisco to kill her infant, but a tragic mistake. "It was well enough," he argued in the one-page document, "if it had been securd. Besides, if a malicious Intent how much more strongly might she have exprest it? Ignorance." While one of the challenges of reconstructing this case is deciphering Dickinson's sometimes enigmatic notes to himself, one interpretation of this statement is that if Francisco had meant to kill her baby she would have employed some surer means than cutting the umbilical cord too short.[9] In the longer document, Dickinson acknowledged this act as a mistake and downplayed

see Leon De Valinger Jr., *Calendar of Kent County, Delaware, Probate Records, 1680–1800* (Dover, DE, 1944). Cremaine appears to have been the widow (and, often, the executrix) of David Morgan, Joseph Freeman, Thomas "Crumeen," and Philip McCain or McKean. Further research is needed to clarify these relationships and might also shed light on whether any of her sons were involved with Francisco.

[8] It is unclear whether Francisco intended to hide the corpse to hide her shame or whether she hid herself by fleeing back to bed. As she made little effort to conceal the infant or evidence of the birth, the latter scenario rings true. It also accords with Dickinson's admittedly overstated interpretation of Francisco as a woman without foresight, who was easily overwhelmed and sought easy and ultimately ineffective remedies to her problems.

[9] Whatever Dickinson's precise meaning, it seems clear that he suggested that whatever inappropriate action Francisco may have performed it was not enough to assume malicious intent on her part, thus leaving the door open for him to argue ignorance.

intent: "Cutting navel string might occasion [the death of the infant] & that done thro[ugh] Ignorance and Foolishness not Malice."

In Dickinson's reconstruction of the events of that night, he portrayed Francisco as "surprized—by its being dropt in the Kitchen." She had made no secret of the fact that she felt unwell, even asking for something to ease her back and stomach pains; to Dickinson, this was not the behavior of a woman intending to hide the imminent birth (and death) of an illegitimate child, but of an ignorant woman who did not even know she was pregnant and in labor. In this scenario, Francisco had risen in the night to find some relief from her pains only to be surprised by childbirth, whereupon she rushed instinctively into the yard to give birth in the foolish hope of avoiding discovery. She returned to the kitchen to cut the umbilical cord, and perhaps to "let it lye . . . to see if it was alive," before depositing—not burying—the body in the yard. Dickinson pointed out that Francisco tried to conceal evidence of the birth only minimally before returning to bed, and only because "Decency comm[an]ded that—Even a savage would have done" so.

Dickinson emphasized the fact that there was no visible cause of death, suggesting that the presence of so little blood supported Francisco's claim that the child had been stillborn.[10] This contention may also be corroborated by something he did not mention: despite the fact that at least some members of the household were up and about during the hours from midnight to daybreak—Cremaine and "the girl" as well as Francisco—no one in what must have been a rather small house reported hearing the newborn cry. But then, no one admitted to hearing Francisco moving about, either, and despite Whitman's findings, it is possible Francisco smothered the baby before it could make much noise or left it unconscious and exposed in the winter night.[11]

[10] According to Klepp, "prosecutorial standards became increasingly lenient as standards of evidence changed. The woman would not be convicted if she told anyone of her pregnancy, if she had assistance in childbirth, or if she had collected baby linen. These were taken to be proofs that she had not intended concealment. In addition, it became accepted that the body of the infant had to show marks of violence sufficient to convict under the murder statute." Klepp, "Lost, Hidden, Obstructed, and Repressed," 75. This explains Dickinson's emphasis on the lack of marks of violence despite the fact that Francisco could have killed the infant in subtler ways. It also shows why he focused on Francisco's earlier confession to her mistress that she was pregnant even though she reneged on that confession, as well as on her possession of baby linens even though her intent to provide was far from clear.

[11] The kitchen in question may not have been attached to the main body of the house. When Cremaine inquired if Francisco had been out of doors in the night, "she said she had and that find[in]g herself very cold, took the Keys went into the Kitchen & made a Fire to warm herself." The keys may indicate Francisco entered another building.

But the question of whether or not Francisco committed infanticide that February night was not necessarily the most pertinent issue in the case. The most damning legal charges related to concealment. Francisco's attempts to hide, however ineffectively, both her pregnancy and the childbirth could send her to the gallows even if the child was stillborn or died accidentally. According to Parliament's 1624 "act to prevent the destroying and murthering of bastard children":

> if any woman . . . be delivered of any issue of her body . . . which being born alive, should by the laws of this realm be a bastard, and that she endeavour privately . . . to conceal the death thereof . . . whether it were born alive or not, but be concealed: in every such case the said mother so offending shall suffer death as in case of murther, except such mother can make proof by one witness at the least, that the child . . . was born dead.[12]

In practice, this meant that any woman who hid her pregnancy and gave birth in secrecy was guilty of infanticide if the infant was found dead. This act was officially brought to Pennsylvania by "an act for the advancement of justice, and more certain administration thereof" in 1718.[13] Distinct from a murder charge, in which the defendant was presumed innocent until proven otherwise, infanticide laws assumed that the defendant's child had been live-born and that she was responsible for its demise.

Against the charge of concealment, Dickinson stuck to his argument that Francisco was in a state of denial. Indeed, the documents do suggest that, if not totally unaware of her pregnancy, Francisco, as she once told Granny Whitman, "hoped she was not." Failing that, she apparently hoped that her pregnancy would not come to term, either through natural causes or the "Diet Drink" she requested from Whitman. Dickinson depicted Francisco as at times suspecting she was pregnant and wishing to confess; for proof, he pointed to her acknowledgment to her mistress the previous autumn, her frequent visits to the midwife on various pretexts, and her "quick Confession" to Ann Stanton that she had had a child. On most other occasions, however, she was driven by anxiety to an imprudent secrecy. Dickinson wanted to show that fear and ignorance

[12] 21 Jac. 1, c. 27 (1624). From Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England 1558–1803* (New York, 1981), 20. Hoffer and Hull used Danby Pickering, ed., *Statutes at Large*, vol. 7 (Cambridge, 1793), 298.

[13] James T. Mitchell and Henry Flanders, comp., *The Statutes at Large of Pennsylvania from 1682 to 1801*, 18 vols. ([Harrisburg, PA], 1896–1915), 3:199–214, esp. 202–3.

were at work, not a malicious intent to deceive and kill. One point of his defense simply reads, "Foolishness—app[aren]t from believ[in]g it co[ul]d be conceald."

Indeed, Whitman and Cremaine seemed to agree with Dickinson about Francisco's overall character and intentions, despite their damning evidence. While it might seem as though Francisco's friends and neighbors badgered her incessantly in the months of her pregnancy, they may have hoped not to ruin her but to save her. Women like Cremaine and Whitman may not have been out for justice and punishment, at least not according to the terms of the 1624 and 1718 statutes that mandated Francisco's execution if found guilty. If they could induce her to admit her pregnancy and to give birth openly, she could not be charged with concealment or suspected of infanticide. To be sure, she would face other charges—including fornication—and suffer a certain amount of public shame, but these were not life-threatening.[14] In this light one can imagine, as a counterpoint to Francisco's anxiety and fear, Cremaine's frustration. Cremaine stated that Francisco had been with her for about a year and a half, and described her as "a very good girl, w[hic]h made me fond of keep[in]g her." Similarly, Granny Whitman called Francisco "An Industrious Innocent inoffencive Creature" and claimed she was "Very ignorant & brout up in very low Lifes. The other Bastard she was deliv[ere]d of in my Kitchen."

Clearly, this revelation changes the complexion of events. Dickinson's documents reveal that Francisco had had another illegitimate child, who had died, apparently of natural causes, by the time she became pregnant again. "She had ano[the]r Bastard before she came to me, w[hic]h is now dead," Cremaine testified; "A little before its Death she told me that she desired I would get ano[the]r girl—because she did not think herself able to work for wages." This statement implies Francisco worked for wages as a live-in servant, but it could also be an indication that she did not want to start working solely for wages if that was a direction Cremaine was heading in her household economy. That is, if Francisco worked for room

[14] Sharon Ann Burnston found two entries in the Philadelphia Mayor's Court Docquet for 1759–64 revealing that both the men and women charged and convicted of fornication were fined ten shillings, and the men were obliged to pay for the maintenance of the resulting children. She notes that "only in the presence of 'the Child' could fornication be proved, or in other words that concealment of the birth of the bastard would have prevented the possibility of being convicted on a morals charge." See Sharon Ann Burnston, "Babies in the Well: An Underground Insight into Deviant Behavior in Eighteenth-Century Philadelphia," *Pennsylvania Magazine of History and Biography* 106 (1982): 173.

and board rather than wages (perhaps with her first child also under Cremaine's roof until his death), she may have meant to refuse a demotion to live-out wage work, which might have made subsistence more difficult for a single mother. While this speculation does not shed further light on the charges for which she was indicted, it does reveal something about Francisco's place in the Cremaine household. She was neither an indentured servant nor a slave. She could apparently come and go as she pleased, and at some point, she had thought about going. Cremaine's statement does not indicate precisely why Francisco "did not think herself able to work for wages," but one implication is that her decision was influenced by her need to care for her first child. That child died, and Francisco stayed.

The existence of a prior illegitimate child was also crucial to Dickinson's defense. Cremaine revealed that Francisco had kept the clothing of her first baby, and this act may have worked in her favor with a jury; having openly given birth to, maintained, and kept the clothing of an earlier illegitimate baby, why would she kill another? Dickinson's vague notes about honor seem to indicate that, from his point of view, Francisco no longer had much to preserve. More important from a legal standpoint, her possession of children's clothing could be construed as making provision for her baby, or as Dickinson noted, "Old Cloath[in]g of former Child left—therefore not necessary to p[ro]vide." Proving that she had made some preparation for the birth and support of an infant could save a woman accused of infanticide, although attempts at concealment worked against her. Elizabeth Cremaine seemed less satisfied, testifying, "She had some old Cloathg of her former child left & had little to make p[ro]vision with." Clearly, the extent to which Francisco had prepared for the infant—and whether that was even why she still possessed this "old Cloathg"—was in question. But Dickinson argued that there was "no Inst[ance] of a woman hav[in]g a Bastard before, being convicted under this act." Precedent was in Francisco's favor, as was Dickinson's observation that "Circumst[ance]s of Conc[ea]l[men]t never makes Guilty under Stat[ute] if any Evid[ence] in Favor before Birth." Dickinson opined that it was a "Harsh Statute" in any case, noting that "Women have suff[ere]d no doubt for conc[ea]l[men]t of a dead child."[15] He stressed the "misfor-

[15] Hoffer and Hull have agreed that this was a "severe statute." In their study of the legal and social history of infanticide, Hoffer and Hull argue that this law, the Stuart Bastard Neonaticide Act, 21 Jac. 1, c. 27, was the result of a noticeable increase in infanticide cases and was meant to squash this trend and punish "lewd women." However, by the eighteenth century, "growing toleration for

tune of condemning Francesco" if there was the "least Doubt." Finally, Dickinson jotted down another intriguing phrase relating to Francisco's earlier experience of motherhood in a list of ten points he planned to use in her defense: "Having a Bastard before—& behaving then as she has done now." Perhaps this cryptic statement implies that Francisco concealed her earlier pregnancy as well, but with happier results.

To be sure, a jury weighing the importance of child's linens and the undue severity of the law might also have felt that a woman who had previously experienced pregnancy and childbirth would be unlikely not to recognize the signs a second time. How, during that long night of stomachaches and back pains, could Francisco not have realized she was in labor? She certainly did not fool Cremaine, and she must have understood the tacit meaning behind her mistress's pointed remarks about what was really the matter. Even as Dickinson tried to make Francisco's history of motherhood work in her favor, it is doubtful that she could have been quite that foolish or that ignorant. Moreover, the mere facts of the existence of a previous child and its clothing did not preclude infanticide in this case.

The jury also had to consider the medical evidence provided by Dr. Charles Ridgely and his apprentice, James Wrench. About a week after the birth, Ridgely sent Wrench to disinter the infant and conduct an experiment. According to Ridgely's testimony, "It is an opinion long rec[eive]d & I believe with good Foundation, that where an animal p[articu]larly a human creature had once breath[e]d, the Lungs will swim, if it has not, they will sink." Ridgely was on firm medical ground by the standards of the day, although medical authorities also recognized that the process of putrefaction might create pockets of air and cause the lungs to float without the infant ever having breathed.[16] In any case, Wrench's experiment was inconclusive: the lungs at first seemed to float, then sank

illicit sexuality and improving material conditions joined with the rise of romantic sentimentality to alter the views of judges and jurors, with modifications of the law of infanticide soon following" (*Murdering Mothers*, x–xi). Parliament repealed the 1624 law in 1803, though lawmakers had put forward such bills as early as 1772. The bill that was finally passed, 43 Geo. 3, c. 58 or Lord Ellenborough's Act, was actually tough on crime even as it recognized that juries sympathetic to mothers in the dock were no longer following the letter of the 1624 law. The 1803 act allowed two years of imprisonment for a woman found guilty of concealment and made abortion via drugs a capital crime.

[16] See William Hunter, "On the Uncertainty of the Signs of Murder in the Case of Bastard Children," *Medical Observations and Inquires by a Society of Physicians*, vol. 6 (London, 1783), 284–89; and John B. Beck, *An Inaugural Dissertation on Infanticide* (New York, 1817), 48–63.

partly underwater. Ridgely had to admit that he had never personally proven the truth of the theory, and this opened the door for Dickinson's suggestion that the lungs had simply putrefied to the extent that they were light enough to float somewhat and that Wrench lacked the expertise to realize how advanced the state of putrefaction really was. Dickinson also pointed to the constant evolution of scientific knowledge in an effort to discredit medical evidence on principle.

In the face of such uncertain testimony, Francisco—guilty or not—may have escaped punishment through legal loopholes and precedents, depending on how the jury chose to interpret the evidence. Several scholars have shown that by the second half of the eighteenth century juries were increasingly reluctant to convict women of infanticide, while those who were convicted faced imprisonment rather than execution. *The Laws Respecting Women*, published in London in 1777, acknowledged that "this severe law is at this day more mildly interpreted; and some kind of presumptive evidence is required that the child was born alive before the other constrained presumption is admitted, that the child was killed by its mother, because it is concealed by her."[17]

This attitude also prevailed in British North America, where, as historian Susan Klepp observes, attorney "William Bradford argued that pity was the appropriate and usual response of jurymen as long as the accused woman preserved her proper role by appealing to the court as a 'helpless woman' or as one of those 'unfortunate creatures.' In these cases, the male judiciary would view them 'with compassionate eyes' and acquit."[18] When Pennsylvania moved from colony to state, its lawmakers did away with the 1624 and 1718 statutes, decreeing in a 1786 amendment that "the constrained presumption that the child whose death is so concealed was therefore murdered by the mother, shall not be sufficient evidence to convict the party indicted without probable presumptive proof is given that the child was born alive."[19] Citing "changing perceptions of women" and "the growth of humanitarian ideas," historian G. S. Rowe explains how "changes in popular views of the law and of what constituted equitable punishment in an independent, republican society played their own roles in determining the resolution patterns even as they provided impetus

[17] *The Laws Respecting Women . . .* (London, 1777), 307.

[18] Klepp, "Lost, Hidden, Obstructed, and Repressed," 76.

[19] "An Act Amending the Penal Laws of this State," passed Sept. 15, 1786, in *Statutes at Large of Pennsylvania*, 12:1785–87, 280–84.

for transforming the criminal code."[20] Rowe notes, however, that after the amendment of 1786, prosecutions and convictions for infanticide both increased, probably because conviction was no longer tied to execution.[21]

The 1786 amendment could not have helped Rachel Francisco, but she may have benefited from social trends already underway prior to the American Revolution. In her study of the sexual culture of Philadelphia from 1730 to 1830, Clare Lyons notes that "indictments for murder of a bastard child" were scarce in the prerevolutionary city.[22] She found only six or seven cases actually prosecuted. Still, newspapers and personal papers recorded the more frequent discoveries of unidentified infant corpses, many of whom must have died unnatural deaths. Rowe, for instance, documents corpses found in the Delaware River and in the city's burial grounds as well as the body of one infant simply abandoned by a path.[23] Overall, Lyons contends that colonial Philadelphia's sexual culture was far more permissive than historians have previously realized; thus, she believes, "it is unlikely social disapproval of bastardy caused a large number of women to murder their children."[24]

As a counterpoint, however, Sharon Ann Burnston argues that "infanticide laws and bastard-concealment laws appear to have been prosecuted selectively, depending on the wealth, position and former reputation of the woman involved. Married women were almost never convicted, and likewise unmarried women of hitherto good character, especially if they were not servants."[25] Burnston views infanticides as relatively common in the eighteenth century; they simply failed to make much of a mark in the

[20] G. S. Rowe, "Infanticide, Its Judicial Resolution, and Criminal Code Revision in Early Pennsylvania," *Proceedings of the American Philosophical Society* 135 (1991): 201.

[21] Rowe identifies three phases of infanticide prosecution and conviction rates in Pennsylvania from 1682 to 1800. The first phase, 1682 to 1768, was a period of fewer prosecutions but a relatively high conviction rate and the highest execution rate of the three phases; however, most of this action took place after 1745. Rowe suggests that it was in response to a wave of executions that the second phase, from 1768 to 1785, was typified by a low number of convictions and even fewer executions, despite seeing somewhat more prosecutions than the first phase. The third phase, 1785 to 1800, saw the greatest number of prosecutions, accompanied by not only an increased tendency to convict once execution was no longer a mandatory sentence but also a trend of grand juries refusing to indict on infanticide cases. See Rowe, "Infanticide," 207–10.

[22] Clare A. Lyons, *Sex among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730–1830* (Chapel Hill, NC, 2006), 95. See also Lyons's section "Bastardy in the Pre-Revolutionary City," 62–100.

[23] Rowe, "Infanticide," 203.

[24] Lyons, *Sex among the Rabble*, 95n40.

[25] Burnston, "Babies in the Well," 174. Rowe would seem to agree that infanticide was a far more frequent crime in early Pennsylvania than revealed by the court proceedings against it.

historic record because so many women either escaped detection or used family resources to avoid punishment. She further suggests that "women in the service trades" were relatively more likely to commit infanticide than other classes of women because their livelihoods depended on good reputations; thus, "the primary motivation for infanticide and/or concealment of bastards was probably not shame, but fear of economic ruin."[26] Burnston, a historical archaeologist, participated in the excavation of an eighteenth-century Philadelphia privy pit that contained the remains of two newborn infants, marking two probable instances of women successfully concealing the death of an infant and suggesting the existence of many more.

Merril D. Smith has also observed a decline in infanticide prosecutions and executions in the mid-Atlantic region during the second half of the eighteenth century and sees the trend as part of a rise of sentimentality about motherhood and belief in the innate virtue of women in the early republic.[27] Smith's examination of the 1786 case of Elizabeth Wilson in Chester, Pennsylvania, shows how, despite bearing five illegitimate children, Wilson was commemorated as a virtuous woman and good mother after her execution for the murder of her infant twins. She refused to save herself by speaking in her own defense until after her conviction, whereupon she claimed that the father of the twins was the killer and that she had stayed silent out of fear. Wilson was granted a reprieve based on her new testimony, but the message arrived moments too late to save her from the gallows. This dramatic story captured the public's imagination, and the widespread publicity surrounding it helped ensure that other accused women received the benefit of the doubt by underscoring the vulnerability of many women to the wiles of unscrupulous men.[28] Indeed, Wilson was the last woman executed for infanticide in Pennsylvania in the eighteenth century.

[26] Burnston, "Babies in the Well," 185.

[27] Merril D. Smith, "'Unnatural Mothers': Infanticide, Motherhood, and Class in the Mid-Atlantic, 1730–1830," in *Over the Threshold: Intimate Violence in Early America,* ed. Christine Daniels and Michael V. Kennedy (New York, 1999), 173–84.

[28] Philadelphia diarist Elizabeth Drinker recorded on May 16, 1797: "Read a narrative of Elizabeth Wilson, who was executed at Chester, Jany '86, charged with the murder of her twin infants. A reprieve arrived 20 minutes after her execution, by her brother in Philadelphia. She persisted to the last in her account of the murder being committed by the father of the children, which was generally believed to be the truth. I recollect having heard the sad tale at the time of the transaction." See Henry Drinker Biddle, *Extracts from the Journal of Elizabeth Drinker, from 1759 to 1807, A.D.* (Philadelphia, 1889), 303.

Thus, Rachel Francisco could have benefited from the trend toward sentimental leniency or a more forgiving sexual culture, assuming she behaved herself according to William Bradford's sense of decorum. Much might have depended upon whether the identity of her lover was ever discovered and what his possible involvement may have been. Unfortunately, Dickinson's notes fail to even hint at the identity or role of the infant's father, information that could expose much about Francisco's motivation as well. This lacuna may indicate that Francisco never betrayed her partner, but it may also suggest that her community knew his identity all too well. If Francisco's lover was married or was an important man or the son of an influential family, his name might be not simply lacking but actively excised from these documents.

* * *

Where does this close reading of our two sources leave us? The documents do not disclose the results of the trial, and ultimately we cannot know Rachel Francisco's intentions and motivations. Ultimately, too, the question of her guilt is less interesting to historians than other questions these two documents raise: about gender, sexuality, crime and punishment; about household and community life; about the lives of working women and unmarried mothers; about medical science and law. To make these issues meaningful, rather than just intriguing, however, these documents need to be rooted in the historic record by ascertaining basic facts of time and place, and these facts are largely absent from the documents themselves. For all their salacious detail, what can we actually know and apply from these two obscure scraps of a long-forgotten, long-dispersed case file?

The title of the case, *Dominus Rex v. Rachel Francisco*, indicates that it took place during the colonial period. Since Dickinson was involved the trial likely took place after 1753, when he became a practicing attorney in both Philadelphia and Dover. While it may be surprising that Dickinson involved himself in this case at all, Rowe points to the willingness of lawyers, including some of "the best legal minds in Pennsylvania," to take on infanticide cases as one reason for the high rate of acquittals in the second half of the eighteenth century.[29] Dr. Charles Ridgely, prominent in the Delaware Valley as a physician, magistrate, politician, and member of

[29] Rowe, "Infanticide," 206.

the American Philosophical Society, was born in 1738 and began to practice medicine in the late 1750s. Therefore, we can roughly narrow the timeframe to between 1760 and 1775. The connections to both Dickinson and Ridgely also enable us to provisionally establish a general location. Ridgely was born, practiced, and died in Dover, Kent County, Delaware. And although often associated with Philadelphia, Dickinson was born in Maryland and lived in Delaware for many years. He served both Pennsylvania and Delaware, then under the jurisdiction of Pennsylvania, in political capacities and moved easily throughout the Delmarva Peninsula.

The probate records of the Delaware Public Archives reveal several individuals, both men and women, with variations of the name Francisco or Sisco.[30] With a single exception in New Castle County, these wills were probated in Kent County between 1748 and 1830, and several cited Little Creek Hundred as the home of the decedent. Along with Kent County Orphan's Court and other records, these documents comprise a sort of incomplete family tree, with clear familial links in some cases, but with several more individuals left floating, unattached to any particular branch. Still, all were connected through their unusual surname. More importantly, these records establish that there was an extended family of Franciscos in Kent County during the crucial period, and that many of these individuals can be even more specifically rooted in Little Creek Hundred.

Two brothers, John and Thomas Fransisco/Sisco, and possibly a third, David, represent one of the earliest generations of this family evinced in the records.[31] Intriguingly, when Thomas's widow and executrix, Patience, delivered an account of his estate to the Kent County Orphan's Court on November 29, 1750, she stood before Nicholas Ridgely—the father of Dr. Charles Ridgely—who approved and signed her account.[32] After his funeral expenses and debts were paid—including twelve shillings to John

[30] All references to probate records are from the Kent County Probate Records (microfilm) located at the Delaware Public Archives in Dover, Delaware, under the surnames Francisco, Fransisco, and Sisco.

[31] See also Paul Heinegg, *Free African Americans of Maryland and Delaware: From the Colonial Period to 1810* (Baltimore, 2000), 133–37. Heinegg has traced the Francisco/Sisco family from Northampton and Accomack Counties, Virginia, in the seventeenth century to Kent County, Delaware, by the 1720s.

[32] Patience Francisco's account to the Orphan's Court is in the Kent County Probate Records under "Fransisco, Thomas, 1748–1750." Other instances in the Orphan's Court, Levy Court, and probate records also indicate that the Franciscos were no strangers to the Ridgelys and other Kent

Sisco for the coffin and eight shillings, six pence to Elisabeth Fransisco to pay off her unspecified account—Thomas bequeathed just three pounds, six shillings, and nine and a quarter pence. Yet his personal estate included "a syth and Sickle" and "a part of a Field of Corn" as well as livestock like "2 Heifers, 2 Cows and Two Calves" and "one Sow, 5 Shotes and 5 head of Sheep," suggesting that Thomas and Patience were perhaps modestly subsisting renters of land. Thomas was also credited with "2 Wheels" and "a parcell of fine Thread," possibly indicating that Patience had the means and ability to spin thread. But this was not enough for Patience to maintain her family alone; later records show that Thomas left "an Infant Child which was Soon after [his death] Delivered into the Custody of A Certain John Swaney by his Widow Patience Sisco."[33] After Patience's death, Swaney was "reduced to such Low Circumstances as to be Quite Disabled from Rendering any Service to said Child, & wholly Incapacitated from Maintaining it, the said Child being likely to be Starved, for want of Subsistence." John Sisco stepped in and in 1756 petitioned the Orphan's Court for custody of his niece or nephew, "till such time as it will be fit to Bind out to some Trade." The court granted his request. If the Franciscos of Kent County were subsistence-level farmers in the 1740s and 1750s, they also demonstrated the kind of familial ties that could keep a woman like Rachel Francisco afloat through poverty, single motherhood, and perhaps even her prosecution for infanticide.

Besides Franciscos and Ridgelys, Kent County records reveal Cremaines, Whitmans, and Renches and help depict the rural community etched in John Dickinson's notes. Such evidence is largely circumstantial, but it is certainly suggestive. The 1752 inventory of David Fransisco, whose estate was administered by executrix Mary "Franksiscoe" as well as "John Fransiscoe," indicated an estate worth just over twenty-seven pounds before debts and funeral expenses. Like Thomas, his household goods included the tools and livestock of a humble renter, such as "one old hoe & his Part of a Crop of Corn." Also like Thomas, David owned some of the necessary gear for spinning: "a Persel of drest flax & old Lining

County elites, although of course the extent and nature of such relationships are open to question. But long-standing relationships between Franciscos and more prominent denizens of Kent County might indicate a degree of patronage, which might also offer an explanation for John Dickinson's involvement in Rachel Francisco's trial.

[33] John Sisco's request for the custody of his brother's child is in the Kent County Orphan's Court case files under "Sisco, Patience (decd) 1756," located at the Delaware Public Archives.

wheel" and "about one bushel of flax Seede & some wolin yarn." These items indicate an agricultural household whose female members might be supplementing the household economy with their own skilled labor. Thomas Fransisco's account to his relative Elizabeth may well have been for such work performed in his household.[34]

This supposition is made more noteworthy by evidence of the Franciscos' racial and ethnic heritage. Francisco was an uncommon surname in the colonial mid-Atlantic, but it and its variations were less uncommon on the Delmarva Peninsula.[35] T. H. Breen and Stephen Innes have linked Portuguese-sounding surnames like Francisco with the Portuguese slave trade and suggest that after the Dutch takeover of much of the Portuguese trade in the mid-seventeenth century, Africans with Iberian-influenced names arrived in Virginia via New Amsterdam. The relatively sizable black population, visible presence of freedmen, and relaxed race relations of New Amsterdam shaped the expectations of these Atlantic creoles upon their arrival in Virginia. Though they arrived enslaved, they believed they could improve upon their status and condition, and many did, largely through the creation of tenacious ties of family and friendship within the free black community but also by forming patron-client relationships with white Virginians. As racial lines hardened on Virginia's eastern shore, some free blacks migrated northward, pursuing opportunity in more pliant societies in Maryland and beyond. The Franciscos of Kent County, Delaware, may fit into this model as it played out in the eighteenth and early nineteenth centuries.

At the same time, people with the surname Francisco and several variants have been associated in Delaware with a community called the Delaware Moors. This is a group whose history is obscured by both local lore and silences in the historical record, but which might well have had its origins in racial and cultural mixing of native, European, and African American populations during the colonial period. Historian C. A. Weslager called these communities "forgotten folk who are neither white

[34] For more on women, gender, spinning, and household economies, see Laurel Thatcher Ulrich, *The Age of Homespun: Objects and Stories in the Creation of an American Myth* (New York, 2001); and Adrienne D. Hood, "The Material World of Cloth: Production and Use in Eighteenth-Century Rural Pennsylvania," *William and Mary Quarterly*, 3rd ser., 53 (1996): 43–66.

[35] See Heinegg, *Free African Americans*, 133–37; and T. H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640–1676* (New York, 1980). Breen and Innes mention Franciscos several times. John Francisco and his wife, Arisbian, were a free black couple in Northampton County, Virginia, during the period of their study. Many blacks in New Amsterdam also had Portuguese-influenced names, including a black planter named John Francisco.

nor black nor pure Indian."[36] Accordingly, in 1760 a man named Abraham Siscoe took part in a delegation to the Pennsylvania governor as a Nanticoke Indian; the Delaware tax assessment list for 1782 names Charles, Ephrim, George, John, and Marget Sischo without reference to race; Charles, George, and three John Siscos were all labeled "n" (for "negro") in a reconstruction of the 1790 Delaware census; and in 1811 the white administrators of Esther Fransisco's estate identified her more ambiguously as a "free woman of Colour."[37]

Yet, in most of the probate and court records relating to Franciscos or Siscos, no racial designation was used. Other than census takers, contemporary recorders rarely saw the need to denote the racial status of the Franciscos, perhaps indicating the community's acceptance of their status as free people and community members without need to emphasize race. While Franciscos seemed to live modestly in the 1740s and 1750s, by the turn of the century some had accumulated valuable estates; John Francisco left an estate worth over £830 upon his death in 1791, while one of his heirs, Charles Fransisco, came closer to £960 in 1798. From the probate records, Charles, identified as a yeoman, appears to have been just another prosperous man with a six-room house (with a separate kitchen and meat house) equipped with walnut furniture and silver teaspoons, spinning wheels and wooling cards, books and livestock. Esther Francisco, whose will was probated 1810–11, left just short of £100 to her heirs, but in her lifetime she was the owner of a lot of land at a place called Fast Landing, adjoining the properties of Jacob Stout (the administrator of her estate) and William Ruth, Esquires. Her heirs had to sell this lot to pay Stout's expenses, however, and by 1814 William Sisco, "free man of colour," was renting a lot in Duck Creek Hundred from Stout.[38]

Why would it matter if the Franciscos were of African, European, and

[36] C. A. Weslager, *Delaware's Forgotten Folk: The Story of the Moors and Nanticokes* (Philadelphia, 1943), 11. Weslager intended this study as a popular rather than academic history and examines the history of the Moors and Nanticokes from the perspective of his own interest in what he considered a rather mysterious group of people. While useful information can be found in this text, Weslager's treatment of race and ethnicity is firmly rooted in the 1940s context in which he wrote and by today's standards is neither sophisticated nor particularly sensitive.

[37] C. A. Weslager, *The Nanticoke Indians: Past and Present* (Newark, DE, 1983), 72. Abraham Siscoe and Jacob Sinascoe are listed as Nanticoke representatives to Governor Hamilton in Philadelphia on August 14, 1760. See also Ralph D. Nelson Jr., et al., comps., *Delaware 1782 Tax Assessment and Census Lists* (Wilmington, 1994), for unlabeled Siscos; Leon De Valinger Jr., *Reconstructed 1790 Census of Delaware* (Washington, DC, 1954), 38, for Siscos labeled "n"; and Kent County Probate Records, Delaware Public Archives for Esther Fransisco.

[38] H. F. Brown Collection, box 25, folder 12, Historical Society of Delaware, Wilmington.

Native American descent, or if Rachel Francisco was a free woman of color? For one thing, it would mean that John Dickinson's legal notes lead to a wholly unexpected find: an extended family of those particularly forgotten folk whose lives rarely make an impression on the historical record unless something extraordinary occurs. That the Francisco clan appears to have been endowed with supportive familial connections and quite possibly white patronage as well might allow historians to extend the argument of Breen and Innes from seventeenth-century eastern Virginia to eighteenth-century—perhaps even nineteenth-century—Delaware, albeit in modified form. Furthermore, what might Rachel Francisco's family's status and race have meant for the course of her indictment and trial? Dickinson's notes give no indication of her race but the notes are only a reflection of what may have happened at the trial and do not preclude race as a factor; indeed, whether Dickinson chose to reference her race or not, his decision is suggestive.[39]

But there was no indication of Rachel Francisco in any of the probate, Ophan's Court, or census records for Kent County.[40] The county records of the Court of Oyer and Terminer—the court in which infanticide cases were usually tried—are spotty for most of the colonial period. Other court records survive, however. In the Levy Court of Kent County minutes for 1732–1817, Dr. Charles Ridgely first made an appearance in 1758, collecting his "Physick Acc[ount]."[41] Ridgely made regular appearances in the Levy Court minutes for decades, both for administering to the poor of Kent County and as an officeholder, suggesting that he might know a local family like the Franciscos fairly well in a variety of capacities.

More striking than Ridgely's distinguished public service is an entry from the 1766 court: the court granted just over ten pounds to James Stirling "for keep[in]g Ruth Franscissco a poor Woman . . . & for Sundry Articles found for her as Cloth[in]g &c." At least since the records began in 1732, numerous poor women—as well as men and children—had been "kept" in the households of the more fortunate, who in turn were reim-

[39] For more on race and infanticide see Sharon M. Harris, *Executing Race: Early American Women's Narratives of Race, Society, and the Law* (Columbus, OH, 2005).

[40] The will of a Rachel Sisco was probated in Kent County in 1826, but this woman is identified as the wife of Isaiah Sisco, indicating that Sisco was her married name, while I believe Francisco to be the maiden name of the woman tried for infanticide. It also seems unlikely that this Rachel Francisco would have lived into the 1820s. It is within the realm of possibility, however, that these Rachels are one and the same.

[41] All references to Levy Court records are from the Kent County Levy Court minutes, 1732–1817, on microfilm at the Delaware Public Archives.

bursed by the Levy Court. But 1766 marks the first time a Francisco was among this company. At the same court, "Ruth Scisscoe" was also granted twelve pounds for the coming year, "to be paid monthly at the Des[cretio]n of Mr. James Sterling," and Elizabeth Fransiscoe was granted seven pounds "liable to Doctr. Ridgelys Draught." Ruth and Elizabeth Francisco were probably not new to Kent County—this may be the same Elizabeth mentioned in the 1750 probate of Thomas Fransisco's estate—but they were newly laid to the public charge. That the magistrates of Kent County, including Ridgely, acknowledged these women as community members deserving of public expenditures indicated that Franciscos had deep enough roots there to merit assistance.

In 1767, Charles Ridgely was once again a justice. James Sterling had been appointed assessor for Little Creek Hundred. And Elizabeth "Crumman" was awarded three pounds, nine shillings "for Sundry Services concerning Rachel Franisco about her Deliv[er]y Burial &c." Apparently, the court reimbursed Cremaine for expenses relating to Francisco's delivery to jail to face trial, but this curt entry does not clarify whether the burial was of a convicted and executed mother or of her infant. The following entry recorded the payment of twelve shillings "To Samuel Whitman on his wife['s] Attendance as an Evid[en]ce about Rachel Fransicsco," proving that Granny Whitman had given evidence at Francisco's trial. A couple of lines down, the Levy Court officers noted that John Smithers was given ten shillings "for Serv[in]g & Summ[onin]g Sundry Persons concerning Rachel Fransciscoe &c." Unfortunately, beyond Cremaine and Whitman, the identities of those "sundry persons" are not clear, though we can make guesses from the depositions recorded by John Dickinson. Finally, during the second day of the 1767 court session, John Winterton was paid seven pounds "for keeping Rachel Sisco a Criminal that was tryed for her life." Winterton was the Dover jailer.

The fact that the magistrates of the Levy Court could casually refer to Rachel Francisco as a criminal in December when she was indicted and tried the previous spring indicates that the jury found her guilty. She was tried for her life—but there was still no telling if she had lost it. The year of her trial, 1767, indicated that she might have been spared even if convicted, as seen in the trends discussed above. Furthermore, with Rachel Francisco securely fixed in Kent County, we must consider how Little Creek Hundred, Delaware, might differ from Pennsylvania—particularly Philadelphia—in the prosecution of infanticide cases. Lyons and

Burnston addressed issues of sexuality, gender, and infanticide explicitly set in the cosmopolitan urban world of Philadelphia. With an estimated population of 25,000 by 1765, Philadelphia was the largest city in British North America for much of the eighteenth century.[42] In contrast, according to one calculation, by 1792 the whole of Kent County contained only 18,920 souls.[43] Few studies exist on rural Delaware in the colonial period, and fewer on infanticide in this region, but some scholars have tackled the subject for rural Pennsylvania. Rowe, for one, has observed variations through space as well as time, noting that the "great majority" of infanticide prosecutions took place beyond Philadelphia. While he could not determine the factors involved, he identified an "arc" of activity that moved west and north away from Philadelphia throughout the eighteenth century, following the progression of Euro-American settlement. The implications for Rachel Francisco are ambiguous. It seems clear that rural communities were more likely to prosecute those suspected of infanticide, and punish those who were convicted, but Rowe ties this likelihood to "development stages within individual communities, and . . . local ethnic and religious patterns" that at present are not fully understood.[44] Moreover, rural Delaware was not the Pennsylvania frontier; these were long-settled, tight-knit agricultural communities touching on the Chesapeake Bay, not remote, far-flung villages on the edge of the British Empire.

Unfortunately, none of the surviving court dockets for Kent County mention the case. Still, those four entries in the Levy Court minutes are akin to buried treasure—and buried they were, amid thousands of similarly scrawled, similarly obscure lines representing the scantest outlines of so many lives. With Rachel Francisco and her kin fixed in time and place there is always the possibility that personal papers may reveal further information. As all historians know, however, personal papers can be fickle sources, rewarding diligence indifferently with both unexpected largess and frustrating silence. For instance, both Dickinson and Ridgely—men we might assume to have a vested interest in Francisco's trial—seemed far more interested in discussing their families, business matters, and politics in their letters than making even an offhand comment about Rachel Francisco during the pertinent years.

[42] Russell F. Weigley, ed., *Philadelphia: A 300-Year History* (New York, 1982), 79.
[43] De Valinger, *Reconstructed 1790 Census of Delaware*, 2.
[44] Rowe, "Infanticide," 210–11.

But others were also concerned. Besides the date and other details, the Levy Court records include the names of various officeholders in Kent County at the time of the trial. As it appears in the existing record, John Vining, the chief justice of the Supreme Court of the three lower counties of Delaware, was even more interested in the life and death of Rachel Francisco than Dickinson or Ridgely. On April 13, 1767, Vining wrote to fellow jurist Benjamin Chew in Philadelphia to discuss the potential reprieves of two convicts awaiting execution; one was a horse thief and the other was Rachel Francisco. "I now by our Shereff send the Governor a Record of a Conviction of Rachel Francisco," he wrote; "a free mollatto woman at a Court of Oyer & Terminer & Goal Delivery held at Dover on the 28 March last for the murder of her bastard Child." Vining sent these documents because "some applications will be made for her Reprieve [and] I wish they may succeed." He concluded, "I have wrote to the Governor upon the Subject as you no Doubt will see."[45]

Chew did see. He was one of only three men other than John Penn, the lieutenant governor, to attend a meeting of the Provincial Council of Pennsylvania on April 24. As the last business of the day, "The Governor . . . laid before the Board Transcripts of two Records of conviction." The first was of John Scarlet, the horse thief. Under advice from the board, who found Scarlet an "Object of Mercy," the Governor pardoned him. Then,

> The Governor also laid before the Board another Transcript of a Record of Conviction, whereby it appears, that at a Court of Oyer and Terminer and general Gaol delivery, held at Dover, for the County of Kent, on the 28th Day of March last, before John Vining, Esquire, and other his Associates, Justices of the said Court assigned, Rachel Francisco was tried and convicted of Felony and Murder, committed on her own Bastard Male Child . . . and had received Sentence of Death for the same.
>
> The Board took this matter into Consideration, and it appearing that the Justices of the said Court were of Opinion that there were several favourable Circumstances in the Tryal of the said Rachel Francisco, and had strongly recommended her as an Object truly worthy of Compassion and Mercy, The Governor, by the advice of the Members present, was pleased to grant the said Rachel Francisco A Reprieve for twelve Months,

[45] John Vining to Benjamin Chew, Apr. 13, 1767, Supreme Court of Pennsylvania, Gratz Collection, case 2, box 13, Historical Society of Pennsylvania.

> Provided no Orders should come from the Crown for her Execution before the Expiration of the said Term.[46]

Together, Vining's letter and this entry in the *Minutes of the Provincial Council of Pennsylvania* reveal that Francisco was a free woman of color, that her child had been male, and that she was tried and convicted. Just as striking, however, is that Vining, his fellow justices, and the board members "strongly" found her to be "an Object truly worthy of Compassion and Mercy," an effusion of sentiment all the more salient next to the plain recitation of John Scarlet as merely an "Object of Mercy." It appears that Dickinson did persuade the jury, or at least the judges, with "several favourable Circumstances," and perhaps Francisco conducted herself suitably as a distressed and helpless victim even as Dickinson portrayed her as such. Indeed, that this jury convicted according to the letter of the law, by which she was clearly guilty, instead of acquitting according to the more sympathetic trends in contemporary criminal justice in the mid-Atlantic region, is rather surprising. Yet, it appears that Francisco did benefit from a society increasingly inclined to view women like her with compassionate eyes, and she was probably not executed unless the king himself chose to intervene in the life of a poor mulatto woman. Justice Vining himself personifies this trend toward mercy and compassion, for Francisco's was only one of many reprieves he championed; perhaps the cosmopolitan chief justice brought a touch of Philadelphia's urbanity to Kent County.

Moreover, the evidence of Rachel Francisco's complex racial and ethnic heritage offers a rare glimpse into the lives of an extended family of free people of color as they negotiated within a colonial and early republican society. Some Franciscos, if not all, appeared well-entrenched in Kent County society. If few matched the wealth of John or Charles Francisco, most clearly had financial and personal resources and even Rachel Francisco had friends to elicit the representation of John Dickinson and to pursue her reprieve. Rachel Francisco probably lived out the rest of her life obscured from the historic record, just as she had before February 1767, though she may yet surface again in some unex-

[46] *Minutes of the Provincial Council of Pennsylvania, from the Organization to the Termination of the Proprietary Government*, vol. 9 (Harrisburg, PA, 1852), 384. This source cites the date of the birth and death of the infant as February 7, 1767, which might indicate that February 27 was the date Dickinson took the depositions rather than the night of the alleged crime; however, the disparity is also conceivably the result of an error in the *Minutes* themselves.

pected spot. It is far more remarkable how the trial of Rachel Francisco, indicted for the murder of a bastard child, leads us into the complicated issues of gender and jurisprudence; of race and Atlantic communities; and of the vastly understudied world of colonial Delaware. The quest to learn what happened to Rachel Francisco has led not to any certain conclusion, but to a multitude of new and tantalizing research agendas to pursue. Instead of one Francisco, we have dozens worthy of our attention. Such are the vagaries—and the riches—of historical research.

University of Pennsylvania LAURA T. KEENAN