CHAPTER 3

Fama, Notoriety, and the Due Process of Law

The adoption of inquisitorial procedure in secular criminal courts created a more powerful and theoretically impersonal justice system.[1] But medieval 'public justice' was never really impersonal justice, in the sense of a blind *Iustitia* that treats every defendant and every victim the same. That modern idea would make little sense in a world where vendetta and self-help fundamentally structured community relationships, and where reputation and honor held the weight of a legal status.[2] Class, wealth, gender, lineage—all these could and did affect a person's standing before the court, underscoring a particularly medieval view: if justice means giving each person his or her due, as Justinian's Code famously declares, then the nature of the person must be considered.

In medieval law, this consideration had a very specific vehicle. *Fama*, or public knowledge, of both persons and deeds was central to the concept of inquisition. *Fama* initiated trials, identified defendants, defamed witnesses, and reframed victims' narratives. It opened or closed the doors of the torture chamber, validated or invalidated testimony, and constituted the difference between rape and sex. *Fama* and its stronger manifestation, *notorium*, determined whether a defendant would be accorded a trial at all or whether the court would proceed to summary punishment. *Fama* was the foundation of medieval understandings of proof. Vallerani called it "the true keystone of the probatory system."[3] Considering the role of *fama* in initiations and in framing punishments, we might go even further, and say that *fama* was the *sine qua non* of the inquisition process.

Yet as centrally important as *fama* was, the concept eluded concrete definitions and even probatory rules. Jurists disagreed on the number of witnesses required to prove it, and the witnesses themselves struggled to define it. *Fama* was real, and it existed in the community consciousness, so therefore testimony

1 Kelly, "Inquisitorial Due Process and the Status of Secret Crimes," 409.

2 See Thomas Kuehn, "Fama as a Legal Status in Renaissance Florence," in *Fama: The Politics of Talk and Reputation in Medieval Europe*, eds. Thelma Fenster and Daniel Lord Smail (Ithaca: Cornell University Press, 2003), 27–46.

3 Vallerani, "How Procedures Think," 108.

to it followed the same rules as testimony to other kinds of evidence. And it is important to note that the medieval emphasis on *fama* was not incompatible with the distrust of hearsay found in Roman law: at least formally, these were very distinct.

Fama, Public Knowledge, and Proof

The idea of *fama* was quite literally an idea of 'common sense' or 'common perception.' *Fama* itself was not a medieval invention,[4] but difficult questions arose when this elusive idea was translated into a complex scholastic legal process. Inside the framework of an Aristotelian view that houses knowledge in sense perception, how does a person know and prove *fama*?

Jurists' definitions of *fama* acknowledged two primary types: *fama* of facts and *fama* of persons. *Fama* of facts stood as the basis of all trial initiations in the criminal court. No matter what other initiations were used—official denunciations or private *querele*—all inquisitions also name *publica fama* as an initiator, referring to the *fama* or public knowledge that the crime was committed and that the named defendant was known to have committed it. Personal *fama* became a legal status—*bona fama* or *mala fama*—and this status could confer or remove privileges in the same way that emancipation or even legitimacy could.[5] It reflected public knowledge of an individual's customs and public dignity. Durantis echoes the *Digest* in his definition: "A status of uninjured dignity, proven by life and customs."[6] The thirteenth-century Hostiensis wrote that *fama* is "public or famous insinuation or proclamation of a community, coming only from suspicion and uncertain origin."[7] Fourteenth-century canonist Johannes Andreae, in his commentary on Durantis's definition, distinguished between *communis fama* and *communis opinio*, emphasizing that *fama* only

4 On the development of ideas and legal categories of infamy, see Peters, "Wounded names."

5 Kuehn, "Fama as a Legal Status", 31.

6 Durantis, *Speculum iuris*, Book III, part. I, p. 45: "Fama est illaese dignitatis status vita ac moribus comprobatus . . ."

7 Fama is "publica seu famosa insinuation vel proclamation communis, ex sola suspicione et incerto authore provinens . . ." Quoted in Jean-Philippe Lévy, *La hiérarchie des preuves dans le droit savant du moyen-âge depuis la renaissance du droit romain jusqu'à la fin du XIV^e siècle* (Paris: Librairie du Recueil Sirey, 1939), 113.