



The University of Iowa College of Law

University of Iowa Legal Studies Research Paper

Number 05-37

January, 2006

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STRANGER THAN FICTION:

A REVIEW OF MIDNIGHT ASSASSIN

BY PATRICIA L. BRYAN AND THOMAS WOLF

Margaret Raymond¹

I. Introduction

A brutal murder. An isolated rural home. A wife whose reaction to the death of her husband seems radically inconsistent with the expected behavior of a grieving wife. And a likely explanation: that the wife was herself the murderer, motivated by a history of spousal abuse. The abuse, of course, would not constitute a defense to the crime of murder: the justification of self-defense would require an imminent threat of death or substantial bodily harm, a threat that under traditional doctrine would clearly not be posed by a sleeping husband. So a wife subjected to physical or psychological abuse at the hands of her husband would have no legal right to respond with lethal force. Such a situation would clearly raise issues requiring legal thinkers to appraise existing legal regimes critically. How should the criminal law address the situation of a battered spouse, which falls outside the paradigm of traditional self-defense?

Law teachers and legal scholars have contemplated these issues, and many others, through the use of a work of fiction.² Susan Glaspell's play, "Trifles,"³ and the short story, "A Jury of Her Peers,"⁴ both took as their starting point a homicide that took place in rural Iowa in 1900. Glaspell, a journalist, covered the story.⁵ The facts--wife Margaret Hossack

¹ Professor, University of Iowa College of Law. Thanks to Justin McCarty for excellent research assistance in the preparation of this Review.

² Professor Bryan noted in an earlier article that "[b]ecause of its relevance to criminal responsibility and moral judgments, *A Jury of Her Peers* has been cited and discussed in many law review articles and included in traditional law school courses, such as civil procedure and criminal law." Patricia Bryan, *Stories in Fiction and in Fact: Susan Glaspell's A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack* (hereinafter *Fiction and Fact*), 49 *Stan. L. Rev.* 1293, 1295 (1997).

³ Published in Susan Glaspell, *Trifles and Six Other Short Plays* (1926).

⁴ Susan Glaspell, *A Jury of Her Peers* (1927).

⁵ Glaspell wrote more than twenty articles concerning the case, covering it from December 1900 until April 1901. Patricia L. Bryan and Thomas Wolf, *Midnight Assassin: A Murder in America's Heartland* xii (2005). Immediately after the trial, Glaspell resigned her position and began writing fiction; as she was a full-time journalist for only one year, "the Hossack murder case...was the central story of her brief journalistic career." Linda Ben-Zvi, "Murder, She Wrote": The Genesis of Susan Glaspell's *Trifles*, 44 *Theatre Journal* 141, 143-44, 151 (1992).

told investigators that she had been asleep by her husband's side while he was murdered by an unidentified assailant⁶—were evidently so compelling to Glaspell that she used the case as fodder for her fictional retelling not once but twice.

Law teachers, in turn, have used both the play and the short story as pedagogical tools.⁷ The story suggests a subtle and pervasive environment of psychological abuse; the wife, unseen in both story and play, is portrayed as suffering, largely in silence, a lonely life of abuse, isolation, and privation; only the intuitive wisdom of the community of women, and their sensitivity to “trifles” overlooked by the male investigators, points to the likely motive for the crime. The literary works enjoyed a “surge of popularity” when feminist scholars discovered them in the early 1970s,⁸ and are used well beyond the law school sphere.⁹

Now, Patricia Bryan and Thomas Wolf have written a book setting out the results of an exhaustive historical investigation of the Hossack murder, the real-life case that inspired Glaspell.¹⁰ In *Midnight Assassin*, the authors set out, in narrative form, all that can be known about the Hossack murder and the Hossack murder case. Their painstaking research process is plainly reflected in this page-turning work. On one level, the book operates as a

⁶ Noted one of Glaspell's dispatches: “The most suspicious circumstance in connection with the crime is the testimony of Mrs. Hossack that she lay in bed by the side of her husband while his skull was crushed in two places, and was not awakened in time to see any one leave the house.” Des Moines Daily News, Dec. 5, 1900, quoted in Bryan and Wolf, *supra* note 5, at 58.

⁷ A compelling short film of the play was also produced and is sometimes used in teaching as well. See Rachel F. Moran, Taking Stock: Women of All Colors in Legal Education, 53 J. Leg. Educ. 467, 473 (2003) (discussing showing of the film at a conference on women in legal education and describing the film as “rich in pedagogical possibilities” in “topics as diverse as jurisprudence, criminal law, and evidence.”) Bryan & Wolf indicate that this version, produced, directed and edited by Sally Heckel, was nominated for an Academy Award in 1981. Bryan & Wolf, *supra* note 5, at 270. I have used the videotape to explore the legitimacy of the traditional doctrine of self-defense in a first-year course in Criminal Law.

⁸ Bryan, Fiction and Fact, *supra* note 2, at 1294; Elaine Hedges, Small things reconsidered: Susan Glaspell's “A Jury of Her Peers,” 12 Women's Studies 98, 98-99 (1986) (terming the story “a small feminist classic” and “a paradigmatic one for feminist criticism”); see also Sherri Hallgren, “The Law Is the Law—and a Bad Stove is a Bad Stove”: Subversive Justice and Layers of Collusion in “A Jury of Her Peers,” in Deirdre Lashgari (ed.), Violence, Silence and Anger: Women's Writing as Transgression 203 (1995) (“Susan Glaspell's 1917 short story ‘A Jury of Her Peers’ has been quietly stunning women readers since its reappearance in a feminist anthology nearly twenty years ago.”); Linda Ben-Zvi, Susan Glaspell: Her Life and Times (hereinafter “Life and Times”) xiii (2005) (“In the late 1960s and 1970s, with the reemergence of a feminist movement similar to her own, Glaspell's one-act classic play Trifles and its short story offshoot “A Jury of Her Peers” were reprinted and became central texts in gender studies, performed and read around the world.”).

⁹ See, e.g., Phyllis Mael, *Trifles: The Path to Sisterhood*, 17 Literature/Film Q. 281, 281-82 (1989) (discussing use of the Glaspell materials in a course in “Images of Women and Literature” and the “questioning of the legality and morality of the women's choice” it inspires).

¹⁰ In Bryan, Fiction and Fact, *supra* note 2, Prof. Bryan discussed some of the same material here expanded in book form.

murder mystery, complete with a dog that did not bark.¹¹ Was the family ax the murder weapon? Why did Mrs. Hossack call on her children, not her husband, for help if she thought she heard an intruder in the night? How did the garment Mrs. Hossack wore to bed on the night of the murder come to be deposited in a bucket of bloody water, its value as evidence destroyed?¹²

On another level, this is a trial story, essentially a retelling of the facts, the evidence, and the argument that was set before the jury (in this case, the two juries) that heard the Hossack case. Trial stories are inevitably lawyering stories, and here the reader can assess the strategic choices and decisions that drove each of the two trials. Any assessment of lawyering decisions compels the reader to confront issues of factfinder expectations, stereotypes, and assumptions. So this trial story asks us to consider the mindset of a white, male Midwestern jury at the turn of the twentieth century, confronted with a wife accused of the brutal murder of her husband. The authors do a masterful job of setting the case in its social and political context, from the factors affecting the contemporary perception of the female ax murderer¹³ to local views of women murdering their husbands¹⁴ to the hardships of the farm woman's life as revealed through the diary of one of Mrs. Hossack's contemporaries.¹⁵

On a third level, given the context of the pedagogic use that is routinely made of the Glaspell works, the book raises compelling questions about the relationship between fact and fiction. Does the "true" story of this murder, as unearthed by Bryan and Wolf, alter the utility of Susan Glaspell's fictionalized accounts of it? Does truth matter? Is there something to be gained from using truth to teach rather than the convenience of fiction? What are the "facts" of the Hossack murder, and how can legal educators use them to enhance how we teach and how our students think?

In this review, I first analyze the fictionalized accounts of the Hossack murder and the uses that have been made of them in the context of legal education. I then turn to a discussion of the authors' "true" story of the Hossack murder and trial. The review

¹¹One fact that the prosecution used to argue that the assailant must have been Mrs. Hossack was that the family dog, known to bark at the approach of strangers, was quiet on the night of the murder. Bryan and Wolf, *supra* note 5, at p. 123 ("Wouldn't Shep have alerted the family to the presence of an outsider?") In response, the defense raised the possibility that the dog had been poisoned. The dog behaved strangely—refusing to accompany a member of the family on an outing—and appeared limp and sick to the family after the assault. Bryan and Wolf, *supra* note 5, at 22; see also *id.* at 153-54. The State Supreme Court alluded to the possibility of poisoning, nothing that "the family dog was very stupid, acting as though he were drugged, shortly before the murder." *State v. Hossack*, 89 N.W. 1077, 1079 (Iowa 1902).

¹² Bryan and Wolf, *supra* note 5, at 36.

¹³ The authors remind us, for example, of the famous Lizzie Borden case only eight years before. *Id.* at 90. See *infra* notes 108-109 and accompanying text.

¹⁴ *Id.* at 88-90.

¹⁵ The authors located and describe at some length the diary of Emily Gillespie, an Iowa farmwife and daily diarist, and her experience with an abusive and erratic husband. *Id.* at 106-113.

concludes with some thoughts about the pedagogic value of both stories of the Hossack murder.

II. Susan Glaspell's Fictionalized Accounts: *Trifles* and *A Jury of Her Peers*

A. *Trifles*

Trifles, a short play written in 1916,¹⁶ deals with a murder in an isolated farmhouse. We learn from conversation during the one-act play of the events that preceded the first act. Mr. Hale, a neighboring farmer, had stopped in at the home of John Wright and found Wright's wife sitting in her rocking chair, looking "queer."¹⁷ Mrs. Wright reported that Mr. Wright was dead, and he was found lying in his bed strangled, with a rope around his neck. Mrs. Wright, "unconcerned," told Mr. Hale that "[s]omebody slipped a rope around his neck and strangled him," but that she did not wake up notwithstanding the fact that she was asleep beside him.¹⁸ She said that she "was on the inside," and told Hale, "I sleep sound."¹⁹

The play opens with the arrival of County Attorney Henderson, Sheriff Peters, Mr. Hale, Mrs. Peters, and Mrs. Hale at the Wright home. Mrs. Wright has been taken into custody. The men are present to investigate the murder, while the women have come to gather some personal items for Mrs. Wright's use in prison. The men intend to search the house, looking for a "motive; something to show anger, or—sudden feeling,"²⁰ but they disparage the notion that domestic detail—"kitchen things"—could have any relevance to the investigation.²¹ The county attorney also seems singularly uninterested in how Mr. Wright treated his wife; when Mr. Hale tells the sheriff that "I didn't know as what his wife wanted made much difference to John," the county attorney postpones the conversation, suggesting that they "talk about that later."²²

While the men proceed upstairs to the scene of the crime, the two women remain in the kitchen and proceed to discuss Mrs. Wright's married life: its penury, difficulty and lack of joy,²³ the absence of children, the isolation and loneliness she must have experienced, and

¹⁶Ben-Zvi, *supra* note 5, at 143.

¹⁷ Glaspell, *supra* note 3, at 10.

¹⁸ *Id.* at 11.

¹⁹ *Id.*

²⁰ *Id.* at 16.

²¹ *Id.* at 12.

²² *Id.* at 10. A subsequent opportunity to discuss Mr. Wright's manner is similarly put off; a mention by Mrs. Hale, who states, "I don't think a place'd be any cheerfuller for John Wright's being in it," is met by the county attorney's assertion that he'd "like to talk more of that a little later." *Id.* at 14.

²³ These suggestions are subtle, at least in the presence of the men; Mrs. Hale, the farmer's wife, notes that the Wright home "never seemed a very cheerful place," *id.* at 13; and that she didn't "think a place'd be any cheerfuller for John Wright's being in it," *id.* at 14. When the men depart to investigate the scene of the crime, the women speak more frankly, Mrs. Hale noting that Mrs. Wright kept to herself because her husband was "close," or cheap; "She didn't even belong to the Ladies

the coldness and inhumanity of her husband. Mrs. Hale, who knew Mrs. Wright as a girl, recalls her as Minnie Foster, a pretty and well-dressed girl who sang in the choir,²⁴ and voices remorse that she did not do more to relieve Mrs. Wright's joyless married life: "I tell you what I do wish, Mrs. Peters. I wish I had come over sometimes when *she* was here. I wish I had. . . . I stayed away because it weren't cheerful—and that's why I ought to have come. . . . It's a lonesome place, and always was. I wish I had come over to see Minnie Foster sometimes. I can see now."²⁵ Ultimately, their examination of the domestic details—the "trifles" of Mrs. Wright's life—reveal a series of events from which the women voicelessly piece together a motive: a quilt the last piece of which is sewn badly: "all over the place. . . as if she didn't know what she was about" and different from the nice, even work on the rest of the quilt;²⁶ an empty birdcage, with a broken door; the body of a pet bird whose neck has been purposely wrung.²⁷

Mrs. Peters, the sheriff's wife, at first seems prepared to believe the worst of Mrs. Wright and to assist the sheriff in investigating the case; in response to Mrs. Hale's comment that "it seems kind of *sneaking*. Locking her up in town and then coming out here and trying to get her own house to turn against her,"²⁸ Mrs. Peters responds, "But, Mrs. Hale, the law is the law."²⁹ The play reflects an evolution in Mrs. Peters' thinking, motivated by feelings of empathy towards Mrs. Wright and a diminution in her certainty that the law must be upheld regardless of the circumstances. By the end of the play, the two women are complicit in keeping from the investigating men the domestic details that pointed to a motive for murder. While Mrs. Peters is torn—"The law has got to punish crime, Mrs. Hale"³⁰—she is ultimately moved by her connection to Mrs. Wright's experience, remembering when someone caused the death of her own beloved pet, and recalling the loneliness of her early marriage and the death of her first child. The women gradually move to conceal their knowledge from the men. Mrs. Hale alters evidence, repairing the bad sewing, and both Mrs. Hale and Mrs. Peters offer false evidence, suggesting that the bird is gone because the cat got him even though they know there was no cat. Ultimately, they comply in concealing evidence, both attempting, and Mrs. Hale ultimately succeeding, in hiding the body of the dead bird. Although the women know that the men are looking for "something to make a story about—a thing that would connect up with this strange way of doing it,"³¹ and are aware that the strangled bird would provide just such a connection, the women maintain their silence and cooperate in the concealment and presumably ultimate destruction of evidence. This ends the play.

Aid. I suppose she felt she couldn't do her part, and then you don't enjoy things when you feel shabby." Id. at 15. Mrs. Hale also describes Mr. Wright as "out to work all day, and no company when he did come in. . . . he was a hard man." Id. at 19-20.

²⁴"She used to wear pretty clothes," Mrs. Hale states, "and be lively, when she was Minnie Foster, one of the town girls singing in the choir." Id. at 15.

²⁵ Id. at 19.

²⁶ Id. at 17.

²⁷ Id. at 21.

²⁸ Id. at 16.

²⁹ Id. at 17.

³⁰ Id. at 23.

³¹ Id.

B. A Jury of Her Peers

This 34-page short story adds narrative to the tale told in *Trifles*. The characters have the same names, and some of the dialogue is virtually identical. In its insistence on voicing what is left subtly unsaid in the play,³² it is somewhat less effective as a literary vehicle than *Trifles*.³³ It was, however, more readily available to readers and probably more widely read, and significantly added to the contemporary popular appeal of the pieces.³⁴

³² For example, Mrs. Hale voices to herself that her husband should keep his suspicions about the happiness of the Wright's marriage to himself, to protect Mrs. Wright. See e.g., Glaspell, *supra* note 4, at 10, 11. The county attorney expressly asks whether anything in the kitchen would be relevant to the investigation: "You're convinced there was nothing important here?" he asked the sheriff. "Nothing that would—point to any motive?" *Id.* at 14. The sheriff responds heavily: "Nothing here but kitchen things," he said, with a little laugh for the insignificance of kitchen things." The dialogue comes from the play; the characterization is an addition. The express direction to the sheriff's wife to participate in the investigation is similarly heavyhanded: "And keep your eye out, Mrs. Peters, for anything that might be of use. No telling; you women might come upon a clue to the motive—and that's the thing we need." *Id.* at 17-18. The tone of disrespect for the women is similarly clumsy; the farmer immediately responds with "But would the women know a clue if they did come upon it?" *Id.* at 18. And Mrs. Hale's discovery of the problem quilt block is elaborated perhaps to excess. "One piece of the crazy sewing remained unripped. Mrs. Peters' back turned, Martha Hale scrutinized that piece, compared it with the dainty, accurate stitches of the other blocks. The difference was startling. Holding this block it was hard to remain quiet, as if the distracted thoughts of the woman who had perhaps turned to it to try and quiet herself were communicating themselves to her." *Id.* at 26-27. The ultimate discovery of the body of the dead bird isn't subtle either: "Somebody wrung its neck," said she, in a voice that was slow and deep. The eyes of the two women met—this time clung together in a look of dawning comprehension, of growing horror." *Id.* at 31. And the women's agreement to conceal the evidence is more explicit and less nuanced. "Slowly, unwillingly, Mrs. Peters turned her head until her eyes met the eyes of the other woman. There was a moment when they held each other in a steady, burning look in which there was no evasion nor flinching. Then Martha Hale's eyes pointed the way to the basket in which was hidden the thing that would convict the third woman—that woman who was not there, and yet who had been there with them through that hour." *Id.* at 38.

³³ In this view, I disagree with at least one literary critic. See Leonard Mustazza, *Generic Translation and Thematic Shift in Susan Glaspell's "Trifles" and "A Jury of Her Peers,"* 26 *Studies in Short Fiction* 489, 496 (1989) (Glaspell "wrote a story that is much more interesting, resonant, and disturbing than the slighter drama from which it derives"). One author suggests that the modifications in the story between "Trifles" and "Jury" were designed to create in what was likely to be a more conservative audience empathy for Minnie Foster Wright. Ben-Zvi, *Life and Times*, *supra* note 8, at 176.

³⁴ See J. Ellen Gainor, *Susan Glaspell in Context: American Theater, Culture, and Politics, 1915-48* 42 (2001): "[O]ne of the keys to the popular success of *Trifles* and 'A Jury of Her Peers' may well have been her choice to rewrite the plot as prose. ... 'A Jury of Her Peers' originally had a significantly larger audience than the drama, which was not widely available until Glaspell published her collected dramas...in 1920."

C. Uses of the Fictionalized Accounts

Numerous authors have catalogued their use of *Trifles* and *A Jury of Her Peers* in their teaching. The uses of the material reflect concerns of doctrine, nullification, access, difference, and community responsibility. While the material can be used most obviously in a law and literature course, or a criminal law course, writers and teachers have described creative uses well beyond those most self-evident categories. More broadly, the materials can be used to help students develop sensitivity to and awareness of difference and the perception of subtle facts,³⁵ to consider the limits of the law, to recognize the importance of texture, context and narrative in telling a legal story, and to think more broadly about the way in which the legal system functions.

1. Doctrine

In terms of doctrine, the materials are often used in the criminal law class to address the adequacy of the legal doctrines of insanity, self-defense and provocation.³⁶ As critics have recognized, the doctrine of self-defense adapts only imperfectly to address an abused spouse who kills her abuser. Since the law recognizes only an imminent threat of substantial bodily injury or death as a justification for the use of lethal force, a person in a situation of persistent abuse may never satisfy the requirements for a killing in self-defense. As numerous critics have written, such requirements anticipate a “man’s fight” with “man’s rules,” and the requirement of imminence, it has been argued, should be interpreted differently when discussing a situation involving a situation of persistent abuse and asymmetry of physical strength and power. Given this understanding of current law, it is interesting for students to contemplate Mrs. Wright’s situation, one for which the law provided Mrs. Wright no remedy. Unless Mrs. Wright acted in the face of an immediate threat of death at the hands of her husband--hard to show since the husband was killed while sleeping--a history of abuse would not provide a justification for the killing of her husband.

³⁵This is one of the uses that Professor Bryan herself describes. “In order to counter the narrowness of the stories that are told and accepted under the law, as well as our own biases and expectations in judging other people, we must learn to recognize and appreciate experiences that are different from our own.” Bryan, *Fact and Fiction*, supra note 2, at 1305. In this context, one author recommends the use of the story in a business law course, sensitizing students to the possibility that cultural and professional biases blind individuals to certain facts. See E. Michelle Rabouin, *Walking the Talk: Transforming Law Students into Ethical Transactional Lawyers*, 9 *DePaul Bus. L. J.* 1, 45-46 (1996).

³⁶ See, e.g., Marina Angel, *Teaching Susan Glaspell’s A Jury of Her Peers and Trifles* (hereinafter “*Teaching Susan Glaspell*”), 53 *J. Legal Educ.* 548 (2003). Professor Angel notes that Glaspell “presents the most difficult abuse situation: an abused woman kills her abusive husband while he is asleep,” in a situation where there was evidence that the killer “was emotionally abused, but there is no direct evidence of physical abuse.” *Id.* at 549. The fact that the victim was asleep when he was killed “raises timing questions under the criminal law doctrines of self-defense and provocation.” *Id.*; see also *id.* at 554.

If the husband's abuse never amounted to what a reasonable person would believe constituted a threat of serious bodily injury or death, lethal force would never be justified. Nor would the history of abuse constitute provocation that would reduce the premeditated killing from murder to manslaughter.³⁷ Common law recognized only a limited number of distinct provocations, and a past history of psychological abuse was not one of them.³⁸

Similarly, criminal insanity under the traditional M'Naghten approach requires that the actor fail to appreciate the wrongfulness of her conduct; the decision to conceal a murder would ordinarily reflect consciousness of wrongdoing and would therefore be inconsistent with a claim of insanity.

2. Nullification

Once students have analyzed the legal situation of Mrs. Wright, they can turn to consider the actions of Mrs. Peters and Mrs. Hale. What is the obligation of an individual confronted with law that produces an unjust result? In the fictionalized accounts, Mrs. Hale alters evidence, fixing sewing that would have indicated agitation on the part of its creator; she also lies about evidence, telling the authorities that the cat got the canary when she knew that Mrs. Wright did not have a cat.³⁹ Ultimately, Mrs. Hale and Mrs. Peters tacitly conspire to conceal evidence that might have pointed to Mrs. Wright's motive for murder. They do so, one infers, because of their conclusion that it would be unjust, under the circumstances, to punish Mrs. Wright for the murder of her husband.⁴⁰ Is this the proper response to unjust law? The stories permit students to pursue these questions about what one author describes as "rebellion and nullification."⁴¹ What is the obligation of the individual to pursue the outcomes decreed by the law versus the obligation to pursue some other outcome, perhaps what the individual deems "true" justice?⁴²

³⁷ Id. at 558.

³⁸ A. J. Ainsworth, *The Doctrine of Provocation*, 35 *Cambridge L. J.* 292, 293 (1976). One author uses these materials as a way to contrast the Model Penal Code's approaches to self-defense and provocation with the common law's. Angel, *Teaching Susan Glaspell*, *supra* note 36, at 560-63.

³⁹ See Angel, *Teaching Susan Glaspell*, *supra* note 36, at 556; see also Marina Angel, *Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context*, 45 *Buffalo L. Rev.* 779, 794 (1997) (hereinafter Angel, *Literary and Legal Context*) ("Susan Glaspell's women engaged in jury nullification by making a trial of Minnie Foster Wright impossible.").

⁴⁰ See Angel, *Literary and Legal Context*, *supra* note 39, at 807 ("The women see different facts and believe in different laws than the men.").

⁴¹ Angel, *Teaching Susan Glaspell*, *supra* note 36, at 556.

⁴² See Marijane Camilleri, *Lessons in Law From Literature: A Look at the Movement and a Peer at Her Jury*, 39 *Cath. U. L. Rev.* 557, 588-89 (1990): "The women fear...that the legal system would not be receptive to the significance of their feminine insight. Thus, the women conceal the evidence. By doing so, the women admittedly impeded conventional justice. The women understand that without the evidence, Minnie Foster would likely go free, but they also surmise that with the evidence, Mr. Wright would not be exposed for emotionally destroying his wife. Only a jury of her peers could have understood the total import of the evidence, and inasmuch as the truly feminine insight was not officially relevant, true justice, which would have convicted both parties, was thwarted. A court of law could not have been any more just than the women of Dickson County."

3. Access

One might expect the nullification discussion ultimately to turn to the fact that Mrs. Hale and Mrs. Peters had no apparent alternative to their nullifying acts; as women at the turn of the twentieth century, they had no access to participation in the judicial process. Women at the time were excluded from jury service; they did not participate in legislative processes, did not, for the most part, serve as advocates, and were excluded from the process of law making and law application in its official spheres. Ultimately the stories present a significant jurisprudential issue: “whether those who are completely closed out of the law-making and law-applying processes of a society are bound by that society’s laws.”⁴³ In one author’s view, Glaspell “makes the point that no one class can afford to tailor the system narrowly to its singular perspective in a bid for dominance. The answer to patriarchy is not matriarchy, the story suggests, but the full participation of every member of society as a dignified and vital component.”⁴⁴

4. Difference

The stories can also be used as a vehicle for assisting students to analyze facts and to consider multiple perspectives in assessing a situation. The characters in the stories come from very different perspectives and view very differently the importance of the evidence they encounter. The stories encourage students to recognize that their perceptions may be culturally influenced and to be open to other perspectives and evaluations.⁴⁵ This is sometimes viewed in the context of gender: “A Jury of Her Peers further explores the implications of the gender experience on perception. The story suggests that the county attorney’s inquiry into the facts surrounding Mr. Wright’s death had a masculine bias, and that his masculine perspective hindered his ability to recognize evidence, not only of Minnie Foster’s guilt, but of her emotional desperation as well.”⁴⁶ It could also be viewed in terms of social class. The class aspects of the story—references to Mrs. Wright’s shabby clothes and their contrast with Mrs. Hale’s tidy but modest clothing and Mrs. Peters’ stylish outer garments, social role, and consequent social status—also reflect concern for perspective and its impact on perception. But the values of the stories can be understood more broadly, as an example of “factual blindness”: the tendency to discount facts that seem irrelevant in the

⁴³Angel, Teaching Susan Glaspell, supra note 36, at 549; see also Camilleri, supra note 42, at 583 (“The story [A Jury of Her Peers] was written before women’s suffrage, reflects male institutions, such as the law, privileged with a distinctly masculine world vision, lacking channels for truly feminine participation and undermining the assertiveness of women.”). Bryan and Wolf themselves comment that Margaret Hossack’s jury in her first trial, made up of upstanding farmers and local residents of the rough age of her husband, “constituted a jury of her husband’s peers.” Bryan and Wolf, supra note 5, at 120.

⁴⁴ Camilleri, supra note 42, at 585.

⁴⁵ Id.

⁴⁶Id. at 588.

context of culture, gender and class.⁴⁷ Recognizing and countering factual blindness is essential to effective law practice in any area.

Ultimately and more generally, the texts create an opportunity to encourage students to be openminded, perceiving facts and circumstances in the light of diverse viewpoints and opinions. “Literature offers the reader the opportunity to experience intimately another human being whose perspective may not be familiar.”⁴⁸ This particular story emphasizes the feminine perspective, suggesting that “institutions established by men and predominantly for men, such as the law, are deficient and even brutish without the feminine perspective.”⁴⁹ Yet its implications are broader: that any dominant perspective infects the investigative process, the concept of legal relevance, and the ultimate legal standard applied to a particular situation.⁵⁰ The message of the story is that difference must be recognized, and the challenges of accommodating difference into the law squarely faced: “[e]mpathy must crystallize into meaningful efforts to incorporate the nondominant or undervalued perspective.”⁵¹ This broader understanding, in turn, has the capacity to contribute to fairer outcomes: “Appreciation of different but equally valuable qualities does not grow out of or result in bias but rather reflects fairness and justice.”⁵²

Scholars in the storytelling area emphasize the need for lawyers to understand the full narrative of an event. A Jury of Her Peers can be used to explore the importance of narrative texture, and the need to tell a whole, nuanced story. Ultimately, the goal, as some articulate it, is to encourage students to develop empathy and to truly understand the human condition.⁵³

5. Community Obligations

The story also creates the opportunity to consider the “individual rights” approach of Western law and to consider whether communities bear some legal responsibility to and for their members. What, for example, do students think about Mrs. Hale’s statement that she, too, is guilty: “Oh, I *wish* I’d come over here once in a while! That was a crime! That was a crime! Who’s going to punish that?”⁵⁴ or her assertion “I might have known she

⁴⁷ Rabouin, *supra* note 35, at 45-46. Prof. Rabouin recommends the use of the film version of “A Jury of Her Peers” to help students recognize their own assumptions and biases in assessing a factual situation and to encourage them to develop a more sensitive, more nuanced, and more complete approach to investigation and fact finding.

⁴⁸ Camilleri, *supra* note 42, at 564. Continues the author, “By reading literature, the lawyer can learn to recognize the familiar human needs, hopes, and hurts in the unfamiliar situations of the people he represents.” *Id.* at 564-65.

⁴⁹ *Id.* at 589.

⁵⁰ *Id.* at 590.

⁵¹ *Id.*

⁵² Angel, *Literary and Legal Context*, *supra* note 39, at 796.

⁵³ See Elizabeth Villiers Gemmette, *Filling in the Silence: Domestic Violence, Literature, and Law*, 32 *Loy. U. Chi. L.J.* 91, 94-97, 107 (2000).

⁵⁴ See Glaspell, *supra* note 3, at 23.

needed help! I know how things can be—for women.”⁵⁵ Under traditional concepts of criminal law, an omission, or failure to act, cannot create criminal liability in the absence of a duty to act.⁵⁶ Mere membership in a community does not create a duty to act; such a duty is created only by law: through the operation of a statute or a contract, or through the existence of a legal relationship.⁵⁷ Is that law just? Would it be appropriate to create criminal responsibility for our failures to others, either by defining “duty” more broadly to include members of our communities to whom we lack a formal legal relation, or by redefining the notion that there can be no criminal liability for an omission in the absence of such a duty? Do and should individuals have an affirmative duty to assist others in difficulty?⁵⁸ The fictional accounts provide the opportunity to consider the responsibility members of society bear to each other, and what, if any, the legal consequences should be for the failure to meet that responsibility.

III. Reality Meets Fiction in the Murder of John Hossack

A. The True Story

We turn now to Bryan and Wolf’s version of the “true story” of the Hossack murder.⁵⁹ This is not to suggest that the authors have “solved” John Hossack’s murder. While they set out what happened at Mrs. Hossack’s two trials and beyond, and offer some theories about what might have occurred, ultimately they cannot, as they concede, definitively answer the question: who killed John Hossack? They do, however, outline the events of Mrs. Hossack’s trial and its aftermath, and place the events in the context in which they believe they should be considered.

The first—what happened—is easy. Notwithstanding an unseasoned—and somewhat incompetent—prosecutor,⁶⁰ Mrs. Hossack was convicted at her first trial and sentenced to life imprisonment at hard labor. She appealed, and the Iowa Supreme Court ordered a new trial; she successfully moved for a change of venue, and her second trial

⁵⁵ *Id.*

⁵⁶ The theory is that positive legal obligations to act interfere with individual liberty. Liam Murphy, *Beneficence, Law and Liberty: The Case of Required Rescue*, 89 *Georgetown L. Rev.* 605, 606 (2001). Prof. Murphy challenges this theory in the context of a limited duty to rescue.

⁵⁷ Hence *People v. Beardsley*, 113, N.W. 1128 (Mich. 1907), where the court held that a man had no duty to secure medical aid for his paramour, who died after taking a drug overdose, which he witnessed while she was in his home. *Beardsley* is discussed in Murphy, *supra* note 56, at 613. Some jurisdictions have moved beyond the traditional common law view to create a limited duty to rescue. See *id.* at 615.

⁵⁸ Angel, *Teaching Susan Glaspell*, *supra* note 36, at 554-55.

⁵⁹ This is how Bryan and Wolf characterize the book, see Bryan & Wolf, *supra* note 5, at p. xvi (“This is a true story, consistent with all the known facts.”).

⁶⁰ One beginner’s mistake was his failure to realize that he needed to secure samples of the victim’s hair, to be compared with the hairs found on the alleged murder weapon, before the victim’s funeral; he permitted the victim’s body to be buried, and then needed to exhume the body to secure the hair. *Id.* at 84.

ended in a hung jury. The state decided not to retry her. Ultimately, no one was ever convicted of the murder of John Hossack. There are suggestions in the book Margaret Hossack was indeed innocent, and was perhaps protecting the true killer, perhaps one of her children.⁶¹ But the authors unearthed no definitive proof of such allegations. There is a mystery here, and the authors do not purport to solve it.

The second task is accomplished through the subtle but pronounced editorial voice the authors bring to their analysis of the events that took place. They view Mrs. Hossack's situation as the product of a number of factors: family abuse, the lack of social and community resources to deal with abuse, and community norms that accepted domestic abuse as a common fact of family life and expected—and, indeed, pressured-- families to remain silent about it. They critique the absence of women from the processes of justice, and biases in the system that penalized women for failing to comply with stereotyped expectations of idealized femininity.

In the authors' view, Mrs. Hossack was plainly in an abusive situation. Her husband was prone to rages and violent behavior. Moreover, this was no secret. "There was a long history of conflict in the family,"⁶² with John "prone to sudden and unpredictable bursts of rage, when a deep, black anger boiled out of him."⁶³ This history of violent and angry behavior, and Mrs. Hossack's concern about it, was well known to the community.⁶⁴ Of the twelve neighbors called to testify at the inquest into John Hossack's death, "almost all" of them knew of a history of family conflict and strife at the Hossack home.⁶⁵ One testified that Mrs. Hossack told him that her life was a "misery," that her husband "abused her," that she was "afraid for her life, afraid he would do something to her or the children," and that her husband on one occasion acted "like a crazy man."⁶⁶ Neighbors knew of instances of violence perpetrated by Mr. Hossack, and knew also that Mrs. Hossack was afraid of her husband.⁶⁷ Not only Mrs. Hossack, but other members of the family as well, had reported

⁶¹ Id. at 205.

⁶² Id. at 5.

⁶³ Id. Moreover, John's "bad temper was easily triggered by" his wife Margaret and his son Johnnie. Id.

⁶⁴ See id. at 115 (one witness remembered that Hossack would get "kind of wild and cross" with his family); others noted that he had "nervous spells" or that he "was prone to 'something a little more than temper, something about his nerves that he would seem to be all unstrung and excited.'"

⁶⁵ Id. at 39-46.

⁶⁶ Id. at 40-41. Others reported that they had heard Mrs. Hossack speak of her husband's frequent threats, come to them to say that he was "wild" and that she feared he would kill a member of the family, and several had heard that Mr. Hossack "slapped and whipped his children, hit his wife with his fists, and once threw a stove lid at her." Id. at 41; see also id. at 130 (trial testimony that Mrs. Hossack said that her husband had "thrown stove lids and hit her on the foot and knocked her toenail off."). One commented that "[s]he always seemed afraid that he would kill some of them," id. at 43. It was not just Mrs. Hossack's opinion that Mr. Hossack's behavior was strange and frightening. Others noted that he had "spells" and could get "worked up over something so that he didn't seem to know what he was doing. Id.

⁶⁷ Id. See also id. at 114 ("In the worst of his rages, Hossack called his wife 'bitch' and 'whore' and threatened her and the children with physical harm.").

the situation and asked for help.⁶⁸ While the neighbors were sometimes sympathetic, they were often despairing about what to do, particularly because Mrs. Hossack feared Mr. Hossack's reprisal if he learned that she had reported his behaviors to others.⁶⁹ Mr. Hossack's behavior was observed by others outside the family as well,⁷⁰ who had discussed the possibility of arresting Hossack or committing him to an insane asylum to protect the family. Nothing came of either suggestion.⁷¹ Given the circumstances, the situation that ultimately arose was entirely foreseeable; one neighbor testified, "I rather expected that in some kind of a family row that someone would strike a harder blow than was intended."⁷²

The authors demonstrate forcefully the lack of social and community resources and support to assist women in abusive situations. The clear message Mrs. Hossack received when seeking assistance and support from her neighbors in dealing with her erratic, rageful and dangerous husband was that family abuse was a private matter, and that the family should keep its troubles to itself. After a significant quarrel, on Thanksgiving Day, 1899.⁷³ two friends of Mr. Hossack arrived at the house, gathered the family, and did three things. They urged the entire family to live together more peaceably; they instructed the children "to be more respectful of their father and to obey his wishes,"⁷⁴ and they instructed both Mrs. Hossack and the children that "they must stop talking to the neighbors about their troubles. Domestic disputes were private matters and should be settled without help from outsiders."⁷⁵ After that, until the murder, the neighbors heard nothing about troubles in the family.⁷⁶ Whether that was because there were none, or because the family had been admonished so strictly to keep their affairs to themselves, cannot be known.

⁶⁸ In this incident, when one son sought to prevent Mr. Hossack from assaulting one of his daughters, Mr. Hossack threatened to harm him. Noted the neighbor, "I understood that Hossack got up and went to kick Annie, and Johnnie jumped up and grabbed him...Mr. Hossack told him to let him alone, and Johnnie told him he would not do it unless he let her alone, and they said that Hossack says, If you don't I will cut your guts out. He went out and so they thought he was hunting a knife when May came for me." *Id.* at 42.

⁶⁹ Noted one neighbor, "I says, sister Hossack, what could I do? These things she would always tell me was secret, everything was secret and I must tell nobody about this. That if Hossack knew of this he would kill the whole family." *Id.* at 42.

⁷⁰*Id.* at 43.

⁷¹ *Id.* at 44; see also *id.* at 116.

⁷² *Id.* at 43.

⁷³ John Hossack had ordered his wife to "go upstairs and stay out of his sight." In response, Mrs. Hossack left the house secretly on foot, returning the next day, having spent the night at the home of her oldest daughter and her husband. *Id.*

⁷⁴ *Id.* at 6.

⁷⁵ *Id.* One participant in the discussion "concluded the discussion by exacting a promise from the family members: They were to "let the matter drop and never mention it among themselves, or to me or to Mr. Keller, and I told them I never wanted to hear anything more about it, and they were not to talk to outsiders." *Id.* at 49. Mr. Keller, too, said "that from that time forth, they should tell no man or woman, nor tell any person, about their troubles, were not to talk about it among themselves, were not to refer to it, and were, if possible, to forget it." *Id.* at 49.

⁷⁶ *Id.* at 49.

That Mr. Hossack had behaved in a violent and abusive way towards his family did not damage his public reputation. Notwithstanding the evidence of his violent and abusive behavior, the prosecution painted Mr. Hossack as a blameless paragon whose death had gone tragically unwept. In its desire to portray Mr. Hossack as an upstanding citizen, the state perhaps went a bit overboard. “Never since the crucifixion of Christ has there been a crime of more hideous nature than this. If there are tears to shed, prepare to shed them for John Hossack. I have known John Hossack all my life. I can say of him as was said of Abraham Lincoln, ‘God Almighty might have made a better man, but God Almighty never did.’ Who in this county knows of any wrong John Hossack ever did?”⁷⁷ In fact, many in the county knew of—and had testified to—Hossack’s violent behavior toward his wife and family, but that character of conduct evidently did not count. The authors view with wry irony the notion that care of one’s livestock was more important to one’s reputation in the community than the treatment of one’s family.⁷⁸

Nor did the history of family violence create much sympathy towards Mrs. Hossack. Much as committing family violence did not keep a man from attaining pillar-of-the-community status, suffering family violence did not entitle a woman to any particular solicitude or protection. On the contrary, in the prosecution’s view, the history of strife in the family created, much as in Glaspell’s version, a motive for murder.⁷⁹ Accordingly, the prosecution sought at every opportunity to elicit as much information as possible about the family’s conflicts and difficulties. Ironically, the community that had urged the family to keep its difficulties to itself was eager to hear about them during the legal proceedings.⁸⁰ Most incriminating, perhaps, were incidents in which Mrs. Hossack had indicated, in more or less overt fashion, her desire for the death of her husband;⁸¹ the state viewed some of those incidents as solicitations of murder.⁸² One witness testified that Mrs. Hossack had asked him to beat up her husband:

⁷⁷ Id. at 189. This notwithstanding the testimony that Hossack had called his wife “bitch” and “whore” and had thrown stove lids at her. Id. at 189.

⁷⁸Hossack “kept a close eye on his fences, buildings, and tools, which required constant attention and frequent repair. As Hossack knew, the farmer who abused his property or animals, whether through neglect or incompetence, lost not only the potential profit from his labor but also the respect of his peers.” Id. at 4.

⁷⁹ Id., at 124.

⁸⁰ While family members were praised for keeping their dirty linen, such as it was, private before legal proceedings began, they were assured that now, in a different situation, it was important to be forthcoming. “We have found that you as a family done the right thing in trying to keep your quarrels to yourselves,” one questioner noted while questioning the Hossacks’ eldest daughter at the inquest. Id. at 50.

⁸¹ See id. at 42 (“why is it that the Lord don’t remove him out of the way?”); id. at 44 (“it would be a God’s blessing if he were taken.”); id. at 145 (she had “no peace and . . . she wished he was dead.”).

⁸² One neighbor, on whom suspicion ultimately was cast by the defense at the trial, testified that Mrs. Hossack had told him that he and the other neighbors “should come and ‘fix’ her husband and ‘attend’ to him,” but that he had understood her to mean “only that her husband deserved a good beating for the way he treated his family.” Id. at 44-45. The neighbor’s wife, Rinda Haines, remembered the situation differently and in more incriminating fashion, saying that Mrs. Hossack had asked the neighbors “to mob him,” and that Mrs. Hossack had added, “if you touch him, finish him. Don’t touch him without you finish him.” Id. at 45.

“I then said, Mrs. Hossack, what can I do, you won’t allow me to speak to your husband about this thing, nor you won’t allow me to go with you, what can I do? Why she says, I will tell you what I want you to do, I want you to gather up two or three men, come in some night and beat him pretty near to death for abusing his family, tell him when you leave him, that if you ever hear of such an occurrence again, that the next time you will finish him up. I told her I couldn’t do such business as that. She said she couldn’t live with him, she wished to God he was dead...”⁸³

Because the facts that were most sympathetic to Mrs. Hossack—the abusive and irrational behavior of her husband—were the most likely to indicate a motive for murder, her lawyer’s strategy in the case was to ignore the allegations of abuse and mental illness that might have made her allegedly murderous response understandable.⁸⁴ Instead, he argued that disputes in the family had occurred in the past, but that recent relations had been harmonious.⁸⁵ The community’s own intervention facilitated this claim; if there had been conflict in the year immediately preceding Hossack’s murder, it was not known to outsiders; the family, as directed, had kept its own counsel. The defense sought to exclude and minimize the evidence of conflict and to tell the Hossacks’ story as a story of family struggle and joint effort, of argument and reconciliation, of family festivity and the image of the good wife and mother.⁸⁶ Mrs. Hossack, consistent with this view and in contradiction to the family’s well-known history, steadfastly denied that there was any trouble in the family.⁸⁷ The defense urged the jury to imagine the cheerful and unified family, together at the happy Thanksgiving table, only days before the axe that slaughtered the Thanksgiving turkey did in the master of the house.

This battle proved critical for the defense; ultimately, the defense claim that the jury should have been instructed that, if it found a family reconciliation, it could not consider past conflicts in assessing whether Mrs. Hossack had a motive for murder provided one ground for the reversal of her conviction by the Iowa Supreme Court.

The authors also make clear that decisionmakers relied on stereotypic visions of gender roles and behaviors, and that part of Mrs. Hossack’s problem was that she did not hew to the traditional behavior of the so-called “cult of true womanhood.” These characteristics of the ideal woman—piety, purity, submissiveness, and domesticity—were defining characteristics of a virtuous woman. Whether this is a chicken or egg problem is

⁸³ Testimony of Frank Keller, quoted *id.* at 149.

⁸⁴ The decisions made by defense counsel are discussed *id.* at p. 124-25.

⁸⁵ *Id.* at 125. Consistent with this strategy, he objected vigorously to inquiries about problems between the Hossacks which the prosecutor undertook to provide a motive for the killing. *Id.* at 145.

⁸⁶ *Id.* at 125.

⁸⁷ In her first interview with the county attorney and coroner, she denied that there was any trouble in the family. *Id.* at 30. Notwithstanding the fact that neighbors in the community were aware that there had been difficulties in the family, Mrs. Hossack persisted in this denial throughout the investigation and trial. See, e.g., *id.* at 51-53 (testimony at inquest).

not entirely clear; it is hard to tell whether Mrs. Hossack was viewed as unfeminine in order to make it possible for the community to believe her guilty, or whether she was viewed as guilty in part because she did not adhere to traditional concepts of stereotyped femininity. Either way, the authors make a strong if understated case that these themes permeated the investigation, trial, and reportage of the Hossack case.

Even during the investigation, one of the things that raised suspicion was Mrs. Hossack's "uncharacteristic" response to events. When she heard what she thought might be an intruder in the home at night, why did she call for her children rather than her husband? "If a woman were startled and frightened in the night, wouldn't her first thought, her natural instinct, be to call upon her husband for help?"⁸⁸ Evidence of her unnatural and unwomanly behavior, and her likely hostility to her husband, included testimony before the grand jury that Mrs. Hossack once refused to get supper for Mr. Hossack when he arrived home late.⁸⁹

The commentary on Mrs. Hossack's failure to comply with stereotyped notions of femininity persisted throughout the trial. As Prof. Bryan noted in her earlier article, juries were often lenient with women, viewing them as deserving of respect and protection.⁹⁰ The prosecution's goal at trial was therefore to portray Mrs. Hossack as lacking in the critical attributes of a "real" woman. Mrs. Hossack, therefore, "would be shown not to qualify as the type of woman to whom the jury owed its respect and regard."⁹¹ Tall and strong, unemotional and reserved, she lacked the aura of weak and damaged femininity that would be expected or appropriate under the circumstances. Strong in appearance, she was the "model farmwoman"—reserved, self-possessed, and determined.⁹² Yet these characteristics, in the authors' eyes, were not the characteristics of "true womanhood". Her size was frequently mentioned by the prosecution, most spectacularly during closing argument, when the prosecutor brought the Hossacks' marital bed, complete with bloody bedclothing, into the courtroom. The prosecutor argued that there was no way that Mrs. Hossack, "a large woman," could have been in the bed at the time Mr. Hossack was killed. Since she did not fit, he argued in effect, the jury must not acquit.⁹³ He argued strenuously for the death penalty.⁹⁴

The prosecution's theory of the case, as the authors see it, was that Mrs. Hossack had never truly acted as a proper wife and mother.⁹⁵ The prosecution claimed that the

⁸⁸ *Id.* at 28; see also *id.* at 69 (noting that Mrs. Hossack, on claiming to have heard an intruder, "made no attempt to awaken her husband at this point, although the man slept with a loaded Winchester rifle by his side").

⁸⁹ *Id.* at 86.

⁹⁰ Bryan, *Fiction and Fact*, *supra* note 2, at 1332-33.

⁹¹ *Id.* at 1334.

⁹² *Id.* at 94.

⁹³ *Id.* at 176-77.

⁹⁴ *Id.* at 179.

⁹⁵ "Women who kill evoke fear because they challenge social constructs of femininity—passivity, restraint, and nurture—thus the rush to isolate and label the female offender, to cauterize the act.

defendant had always hated her husband, had sought to humiliate him in the community with her stories about him, and ultimately decided to do the deed herself when she could find no other way to rid herself of him.⁹⁶ Argued the prosecutor, in his closing argument, “[s]he had never been a loving wife, she had never been a woman of strong affections.”⁹⁷ In that regard, the strife in the family could be viewed as Mrs. Hossack’s fault, since she had never shown adequate devotion to her husband: she did not cry often, appeared unemotional, and had obviously failed to “drive away with pleasant smiles the clouds that gather[ed] around her husband’s gloomy brow.”⁹⁸ And a suggestion by the prosecutor at trial (which the authors’ research reveals to be accurate) that Mrs. Hossack conceived her first child out of wedlock and married Mr. Hossack only after she became pregnant might further have persuaded the jury that she was lacking in virtue, and therefore unworthy of the usual presumptions and protections that society afforded to females.⁹⁹ Ultimately, the prosecution urged the jury to disregard entirely the fact that Mrs. Hossack was a woman.¹⁰⁰

On appeal, the prosecution continued its argument that Mrs. Hossack was not appropriately womanly: she was “large, broadshouldered and ‘masculine in appearance,’” and her failure to follow the “natural impulse of a woman” and seek help from her husband when awakened in the night proved that she was “an inhuman wife and mother.” “The implication was clear: Either she was lying or she was not a proper caretaker of her family.”¹⁰¹

The media coverage also suggested that Mrs. Hossack’s behavior was not consistent with expectations of womanhood.¹⁰² Perhaps it was her lack of display of what was

Her behavior *must* be aberrant, or crazed, if it is to be explicable. And explicable it must be; her crime cannot be seen as societally driven if the cultural stereotypes are to remain unchallenged.” Linda Ben-Zvi, *supra* note 5, at 141.

⁹⁶ Bryan and Wolf, *supra* note 5, at 170-71.

⁹⁷ *Id.* at 171. So evil was she that when “[t]he good old family dog rose to meet her,” “she gave him a vicious cuff.” *Id.* The prosecutor explained dog’s peculiar behavior by the possibility that the dog had observed the events of the evening and “felt the shame which the family had not shown on the stand.” *Id.* at 174.

⁹⁸ *Id.* at 95, quoting “Godey’s Lady’s Book”.

⁹⁹ *Id.* at 175. This was, the authors assert, correct; based on their research, Bryan and Wolf assert that the Hossacks’ oldest child was conceived prior to their wedding and that the Hossacks lied about the date of their marriage once they reached Iowa. The prosecutor’s assertion was not, however, based on what would have been available documentary proof of the date of the Hossack wedding. *Id.* at 176. The suggestion that Mrs. Hossack had been pregnant at the time of her marriage was ostensibly offered to provide an explanation for the dislike the Hossacks appeared to have for each other.

¹⁰⁰ “[Y]ou have no right to acquit her because she is a woman or even because she is an old woman.” *Id.* at 189.

¹⁰¹ *Id.* at 211.

¹⁰² “One thing it is entirely safe to say. Margaret Hossack is a very unusual woman.” *Id.* at 164 (quoting the Daily Capital, April 6, 1901).

considered appropriate feminine emotion; after her conviction, one journalist noted that her emotional outburst, during which “for hours she cried with a violence that brought at length relief in utter hysterical exhaustion,” proved her femininity, in sharp contrast to her behavior during the trial; “Mrs. Hossack has proven at least that she is a woman.”¹⁰³ Mrs. Hossack’s show of distress at the time of the closing arguments was similarly commented upon by the press: “Her whole attitude answered at last the question that has been asked so many times since the trial began: does she suffer as a woman on trial for murder would be supposed to suffer?”¹⁰⁴ One journalist’s comment on Mrs. Hossack’s testimony at her first trial was that she had done well: “at all times her voice was soft and her manner womanly, not at all evidencing the shrewish character that some of the witnesses would lead one to believe.”¹⁰⁵ “[T]here are many,” wrote one newspaper article, “who insist that no woman of her character and standing could be so vicious and depraved as to commit a deed so revolting and unnatural.”¹⁰⁶

The authors place the Hossack case in the context of two contemporary homicides alleged to have been committed by women. One, a local case, involved the poisoning of a husband by his young wife while the two were on bologna-and-beer picnic. There, the authors contend, it was not just the evidence but the socially reprobate conduct of the wife that resulted in her conviction. The young woman, accused of having poisoned her husband, denied having done so but admitted that they had quarreled about his impotence and his inability to have sexual intercourse. In the view of the authors, “the defendant’s personal conduct violated the moral strictures of the community. This was a woman, pretty and wily, who had a young lover, talked about sex with her husband, drank beer, and appeared emotionless in the courtroom.”¹⁰⁷ By contrast, Lizzie Borden, notwithstanding substantial circumstantial evidence against her, was viewed as unlikely to have committed the ax murder of her parents because of her demeanor. Demonstrating, through “her tears and her downcast eyes, her fainting spells and her devotion to her home and church,” that she possessed the cardinal virtues of womanhood, she was acquitted.¹⁰⁸ The characteristics of a True Woman were fundamentally inconsistent with the characteristics of a cold-blooded ax murderer.¹⁰⁹

So the prosecutor sought to place Mrs. Hossack outside the scope of respected and honored womanhood. By contrast, the defense argued that that was precisely where Mrs. Hossack belonged, because of her status as a good wife and mother.¹¹⁰ Such a woman could

¹⁰³ Des Moines Daily Capital, April 11, 1901, quoted in Bryan & Wolf, *supra* note 5, at 196.

¹⁰⁴ *Id.* at 179.

¹⁰⁵ *Id.* at 169.

¹⁰⁶ *Id.* at 68.

¹⁰⁷ *Id.* at 89.

¹⁰⁸ *Id.* at 91-92.

¹⁰⁹ “‘To find her guilty, you must believe her to be a fiend,’ the defense lawyer shouted to the jury at the end of the argument. ‘Does she look it?’” *Id.* at 92.

¹¹⁰ “All her life she has been a good mother. She has raised nine children and has helped her husband build up a home....” *Id.* at 182. Whether Mrs. Hossack’s holding her three-year-old granddaughter on her lap during a day of trial, *id.* at 148, was a strategic decision in furtherance of this strategy does not appear.

not commit murder.¹¹¹ Indeed, the defense argued that a woman would have been incapable of it. “It was a crime that only a few men could have done. Jesse James might have done it, but from what you know of her, do you think it was within the power of Margaret Hossack?”¹¹² To the extent he asked the jury to “consider the life of Margaret Hossack, its trials and burdens and those difficulties of wifehood and motherhood,” he asked them only to “[c]onsider the tempests of unfortunate disagreements in the light of the reconciliation that followed.”¹¹³

While the entire case turned on Mrs. Hossack’s womanhood, women played no role, as the authors make clear, in the process of investigating or trying the case; as it turned out, Mrs. Hossack’s first jury was, in fact, “a jury of her husband’s peers.”¹¹⁴ While the women in the community knew much about the family’s situation, few were called as witnesses; the story of the family’s history, and of Margaret Hossack’s claims of abuse, was “mostly told by the men who knew John Hossack best.”¹¹⁵ “The stories of many other women in the community” were not deemed relevant to the case; “[i]n both trials, the number of male witnesses, and the time they spent on the stand, was far disproportionate to the actual make-up of the community in which John and Margaret Hossack lived.” While many women knew of the family’s history and “could have spoken to her character or shared their sense of the context of her life with her family,” these women’s accounts were not, for the most part, deemed relevant in the courtroom.¹¹⁶

Bryan and Wolf thus tell a story of culture and stereotype: the virtuous wife, the happy marriage, and the industrious farmer were the accepted models. Deviation from those models was itself suspicious, and perhaps incriminating.

B. The Story Truth

In her earlier article on the case, Prof. Bryan suggested that the real Hossack case raised similar issues and created the same teaching opportunities as Glaspell’s fictionalized accounts.¹¹⁷ One author even suggests that the fictionalized account “has a reality that the

¹¹¹ “I want to ask you whether you would be justified in thinking that, with her husband sleeping by her side and her children asleep in the rooms above, with no provocation in all the world, she lay there and deliberately planned a brutal murder.” *Id.* at 183.

¹¹² *Id.*

¹¹³ *Id.* at 186.

¹¹⁴ *Id.* at 120.

¹¹⁵ *Id.* at 194. “To many in the courtroom,” the authors commented, “John Hossack’s abusive behavior towards his family was less damning than his wife’s conversations with the neighbors; but among some of the women who silently watched the legal proceedings there was subtle, perceptible support for the accused.” *Id.*

¹¹⁶ *Id.* at 241-42.

¹¹⁷ See Bryan, *Fiction and Fact*, *supra* note 2, at 1304-05 (“Like Glaspell’s story, the case of Margaret Hossack raises questions about the potential narrowness of the legal perspective, how the stories told and the issues addressed in the court room may be distorted by the norms and expectations of those in authority.”).

court missed in its report of the actual case.”¹¹⁸ As told by Bryan and Wolf, and as they recognize,¹¹⁹ the true story of the Hossack murder is profoundly different from the grave, remote, lonely and silenced story of family abuse and extralegal justice portrayed by Glaspell.

It is different in detail, of course—while Glaspell chose the method of killing to reflect revenge for the strangulation of Mrs. Wright’s dead bird, Mr. Hossack was in fact killed by two hard blows to the head.¹²⁰ In Glaspell’s portrayal, only the arrival of an unexpected visitor caused the disclosure of John Wright’s death, while, in real life, Mrs. Hossack was the first to cry out that her husband had been hurt, and she tended him through the ten hours he survived after the assault.¹²¹ While, in Glaspell’s portrayal, law enforcement carelessly misses important clues in the isolated house, numerous Hossack neighbors took upon themselves a law enforcement role, engaging in a vigorous search for clues throughout the farm.¹²² While Glaspell’s vision was that the abuse of the wife was a secret, unknown to society at large, the allegations of abuse in the Hossack case were hardly dark secrets that needed to be inferred from obscure facts; the problems in the family had been discussed with neighbors for over fifteen years.¹²³ The lonely and childless life Susan Glaspell created for Minnie Wright was a fiction; the Hossack family was large, and of the nine children living at the time of the murder, five, aged between thirteen and twenty-six, were living at home.¹²⁴ Mrs. Hossack, unlike Mrs. Wright, was not sleeping “on the inside” of the bed. This made Mrs. Hossack’s claim considerably harder to swallow than the fictional Mrs. Wright’s; an unknown assailant would have had to reach over Mrs. Hossack with the ax to deliver lethal blows to Mr. Hossack without waking her or douse her with blood.¹²⁵

¹¹⁸ Angel, *Literary and Legal Context*, supra note 39, at 797. There, the county attorney’s “narrow view” of the case rendered him blind to the underlying issues, which would have pointed to a motive for murder. *Id.* at 801.

¹¹⁹ “*Trifles* is not a retelling of the story of Margaret Hossack.” Bryan and Wolf, supra note 5, at 242.

¹²⁰ *Id.* at 19 (“Hossack had been hit twice, his head first struck with a sharp blade and his skull then fractured by a blow from a blunt instrument.”).

¹²¹ *Id.* at 24 (“To those who saw her, it seemed that she did everything she could to ease her husband’s pain and to make him more comfortable in the last hours of his life.”).

¹²² See, e.g., pp. 24-26 (discussion of treatment of the ax); *id.* at 26 (neighbors pointing out blood droplets to sheriff).

¹²³ Susan Glaspell’s report that “developments since the murder that the members of the Hossack family were not on pleasant relations with each other is a complete surprise, as Hossack was not supposed to have an enemy in the world,” *id.* at 58, apparently reflected a lack of adequate investigation.

¹²⁴ *Id.* at xi; see also *id.* at 149 (testimony of Frank Keller that Mrs. Hossack said, “I will tell you what I want you to do, I want you to gather up two or three men, come in some night and beat him pretty near to death for abusing his family, tell him when you leave him, that if ever you hear of such an occurrence again, that next time you will finish him up....She said she couldn’t live with him, she wished to God he was dead...and says O, why is it the good Lord don’t remove him out of our way?”).

¹²⁵ *Id.* at 69. Some of Glaspell’s fictional details, on the other hand, were, as might be expected, consistent with the real-life Hossack case, including Mr. Hossack’s stinginess. One neighbor noted, “Mr. Hossack always sold lots and had plenty of money, but that woman never got a cent of his money for anything.” *Id.* at 47; see also *id.* at 1143 (“He was also careful with his money—some called him tight-fisted.”).

More significantly, however, the true story presents a different situation, for a number of reasons. First, of course, is the fact that it is real. Mrs. Hossack's case was tried to a court of law. The decision made in the Glaspell works by the women, to avoid the legal system in favor of the application of rough justice by the jury of Mrs. Wright's peers,¹²⁶ was unavailable in the Hossack case. The evidence of motive was not buried in a sewing box in the kitchen; it had been communicated to friends and neighbors numerous times in a desperate plea for assistance.¹²⁷ As the Glaspell play suggested, once the information got to the formal legal system, the men who did the investigating, prosecuting, and deciding in that system considered that evidence to be critically important. Mrs. Hale and Mrs. Peters were savvy, not naïve, in destroying it. Indeed, Mrs. Hossack's sharing of that information was plainly inconsistent with her community's values; the community's message to Mrs. Hossack had been, quite unequivocally, to keep the matters to herself and her family and not to expect the community to offer any assistance. Only once pre-reconciliation evidence of prior conflict was as a matter of law excluded from the jury's consideration, though the action of the Iowa Supreme Court in granting Mrs. Hossack's appeal, did Mrs. Hossack's second jury find itself deadlocked.

Yet the true story, intriguingly enough, used the legal system to produce its result. For whatever reason—and the authors hazard a few—Margaret Hossack's second trial ended in a hung jury. Whether that was because, as Bryan and Wolf posit, the aftermath of the verdict convicting Mrs. Hossack caused the members of the community to feel guilt about their failure to act,¹²⁸ or because some believed in Mrs. Hossack's innocence, perhaps thinking that she was concealing the identity of the true murderer,¹²⁹ the result did not require the intervention of a jury of her peers. It appeared to the authors that, at the second trial, the family's history inspired compassion rather than suspicion: "The damning evidence that had been used so successfully by the prosecution to prove motive in the first trial—the many stories from neighbors about John Hossack's treatment of his family—now seemed to arouse sympathy for his wife and children."¹³⁰

Second, unlike the story, Margaret Hossack does appear as a character in her own story. The noted theatrical device employed by Susan Glaspell—that Minnie Foster Wright

¹²⁶ One author describes this as the happy ending. "The ending is a happy one: Minnie Foster is to be set free, no motive having been discovered by which to prosecute her." Annette Kolodny, *A Map for Rereading: Gender and the Interpretation of Literary Texts*, in Elaine Showalter (ed.), *The New Feminist Criticism: Essays on Women, Literature and Theory* 46, 58 (1985).

¹²⁷ That is, if the harsh and penurious life of a farm woman with nine children, the youngest borne when the woman was 44, could not itself be understood to create some motive.

¹²⁸ Members of the community ultimately came "to acknowledge their own role in what had happened: They had ignored or failed to act in regard to the dangerous situation that they knew had existed within the Hossack household." Bryan & Wolf, *supra* note 5, at 205.

¹²⁹ The media's coverage suggested that a combination of pity for Mrs. Hossack and doubts about the purely circumstantial nature of the evidence caused the community to agitate for parole for her. *Id.* at 207.

¹³⁰ *Id.* at 216.

never appears in the play¹³¹-- requires the other women in the story to piece together likely events from the trifles left to them.¹³² In real life, Mrs. Hossack played an essential role in her own story.

These are critically important points. While the use of fiction has unquestioned value in law teaching, there is also tremendous potential from the opportunity to bring real events into the classroom, in a way that provides a richer and more complex narrative than the bare bones of a judicial opinion. Ultimately, the true story of the Hossack murder continues—though with somewhat different emphases—to offer rich pedagogic value.

As a basis for learning and questioning doctrine, the circumstances of Mrs. Hossack's abuse and whether they should provide a basis for a claim of self-defense are as useful as ever. Perhaps more so. In *Trifles*, the husband's abuse appears to be psychological in nature. What he is really guilty of is killing the soul of Minnie Foster Wright, squeezing the joy, color and music out of her life in the same way he strangled her pet canary. Margaret Hossack was subjected to both physical and psychological abuse, posing squarely the still-critical question about when an abused spouse is justified in responding to abuse with lethal force.

As a vehicle for the discussion of nullification, the true story is even more potent than the fictional one. It is possible, of course, that the jurors who ultimately held out for acquittal at Mrs. Hossack's second trial believed that the government had not met its burden of proof, or that they found that the family had reconciled and in line with the court's instructions did not therefore consider the family's history of conflict in determining whether Mrs. Hossack had a motive for murder. It is even possible—though the defense did not argue it—that they believed Mrs. Hossack was really covering up for someone else, perhaps one of her children, whom she knew had killed John Hossack. It is also possible, however, that they voted to acquit Mrs. Hossack because they believed, notwithstanding the legal instructions, that rough justice had been done and either that Mr. Hossack, in the end, had gotten nothing more than he deserved, or that Mrs. Hossack had suffered enough,

¹³¹ See Ben-Zvi, *supra* note 5, at 154 (“Since the audience never actually sees Minnie, it is not swayed by her person, but by her condition.”); see also Ben-Zvi, *Life and Times*, *supra* note 8, at 174 (“In the play Minnie never appears. Since the audience never sees the accused woman, it is not swayed by her person but, rather, by her assumed condition, that of an abused wife, driven to commit a terrible act.”); Jackie Czerepinski, *Beyond The Verge: Absent Heroines in the Plays of Susan Glaspell*, in *Susan Glaspell: Essays on Her Theater and Fiction* (Linda Ben-Zvi, ed.) 145-53 (1995). This phenomenon in the context of Glaspell's work is commented upon in Marsha Noe, *Reconfiguring the Subject/Recuperating Realism: Susan Glaspell's Unseen Woman*, 4 *American Drama* 36 (1995). The author suggests that this “unseen woman” could project Glaspell's “most radical ideas, emotions, and drives without violating the ideal of the self-effacing, supportive spouse that she tried to exemplify in her relationships with men.” *Id.* at 50.

¹³² These items speak a profound indictment. See *id.* (“the jury on the stage and the jury who observe them from the audience presume the wife's ‘right’ to take violent action in the face of the violence done to her.”)

particularly in light of her advanced age—she was then fifty-nine.¹³³ This real-life possibility of jury nullification—and the resulting questions about whether it produces justice—are well worth exploring.

Issues of access speak with even more force in the context of the real-life case. One needs no imagining to understand that women would not have played any role in law-making, law-finding, or fact-finding in the case. They did not. Mrs. Hale and Mrs. Peters—as optimistic proxies for the voices of absent women—simply do not appear.

Glaspell's play still presents issues of difference more effectively than the true-life story does. It may well be that members of Mrs. Hossack's community would have understood her experiences differently in light of their genders and backgrounds, but they were not permitted to do so. Glaspell's work thus permits an imaginary—and very valuable—window into how differently oriented investigators might understand the same set of facts.

The issue of community obligation is set out more effectively by the true story than by Glaspell's tale. In "Trifles," it was her failure to attend to the needs of a lonely and isolated member of her community that Mrs. Hale thought worthy of condemnation. In Mrs. Hossack's case, the community, advised that her husband was violent, erratic and dangerous and that Mrs. Hossack was unable to cope, admonished her to keep such details to herself. Whether a community has a duty under those circumstances to do more, and whether that duty is purely moral or has a legal component flows effectively from that conversation.

Prof. Bryan suggested in her earlier article that the Glaspell stories reflected the impoverished stories that both defense and prosecution sought to tell in the real-life Hossack case. The same, of course, is true of the real story. Ultimately, perhaps reality posits a more hopeful story than its fictional counterpart. In Glaspell's stories, the legal system cannot be relied upon to produce fair results; the private justice that Mrs. Hale and Mrs. Peters secure is extrasystemic. Ultimately, they do nothing to alter the system, though they do succeed in subverting it.¹³⁴ That the real legal system, flawed, biased, and skewed,

¹³³ Mrs. Hossack was portrayed in the press for the most part as "an elderly and even pitiable woman." *Id.* at 216.

¹³⁴ Ultimately, "although the women rebel against traditional mores, they are all effectively silenced....[Minnie's] two neighbors dare to protect her by hiding the evidence their shared experiences lead them to uncover, but they are clearly not going to oppose man's justice by actively speaking out for Minnie. Accordingly, although Glaspell condones the breaking of codes of behavior that strangle women, she does not alienate the men who make them up. *Trifles* represents an awakening to the dilemmas of womanhood, but it offers no solutions." Barbara Ozieblo, Susan Glaspell: A Critical Biography 84 (2000); see also Veronica Makowsky, Susan Glaspell's Century of American Women 63 (1993) ("If one regards Mrs. Hale and Mrs. Peters as the heroines of *Trifles*, their rebellion must be characterized not as active insurrection but as passive resistance, which is all

produced the outcome it did in the Hossack case is worthy of the consideration it receives in this volume, and worthy of our contemplation as well.

these women can realistically achieve under the circumstances. If Minnie Wright is the central figure of *Trifles*, the play may seem different since she does murder her oppressor, but the glimpses we get of her after the killing, through Mr. Hale's spoken memories, indicate the ineffectual nature of her act...Even a rebellious woman like Minnie knows that men may be laughable in their blindness but that they still have overwhelming power.") As Judith Stephens argues, *Trifles* "perpetuates the romantic notion that each woman can secretly and individually subvert the largest system, if she so desires....*Trifles* both challenged and reinforced the dominant gender ideology of this period." Judith Stephens, *Gender Ideology and Dramatic Convention in Progressive Era Plays, 1890-1920*, in Sue Ellen Case (ed.), *Performing Feminisms: Feminist Critical Theory and Theater* 282-93 (1990).