

# Draft

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Women: The Good, Bad or Ugly in Law & Literature Text

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*Antigone*,<sup>1</sup> *Trifles*,<sup>2</sup> *A Jury of Her Peers*<sup>3</sup> and *Presumed Innocent*<sup>4</sup>. What do these literary pieces, a Greek tragedy, an early twentieth century play and short story, and a contemporary film have in common? The common thread between them is that they depict women who where compelled to murder, or defy the law. As the title<sup>5</sup> of the paper suggests one of the women did something good. Antigone's act of defiance represents a good deed, a moral act that moved critics to describe her as the "heroine of civil disobedience". An act of civil disobedience that eventually produced legal and political reform.<sup>6</sup> Minnie Wright represents the bad in the title; she allegedly murdered her husband in *A Jury of Her Peers*. The admitted murderess in the film *Presumed Innocent* definitely represents the ugly in her carefully planned murder of her husband's former lover.

The woman's perspective - what we do, the way we do things, and why - is the subject of articles, dissertations, books, and courses; departments in universities and colleges are dedicated to studying the world from a female or feminist perspective. On the contrary, the law or jurisprudence is often viewed as masculine.<sup>7</sup> The Law still sees itself with "male eyes".<sup>8</sup> Judith Resnik, Carolyn Heilbrun, Robin West, among others, have written extensively on law, literature, and feminist jurisprudence. I am not wedded to any particular theory or position on feminist jurisprudence and this paper is not an attempt to necessarily contribute to that body of literature.

What I propose to do in this paper is discuss some of the legal issues and theories that spring from these texts and the film. Many tomes and articles have been written about *Antigone*. The play has elicited more than one hundred different interpretations.<sup>9</sup> *A Jury of Her Peers* has enjoyed, though not to the same extent as *Antigone*, great notoriety. After reading numerous articles and books on both of them, (and those particular readings were merely a fragment of the body of work available), I came away with few, if any, new viewpoints or original thoughts. The following is merely a brief synthesis of interpretations and readings on two female giants (Antigone and Minnie Wright) in the land of law and literature and a “not so critically acclaimed” film. The film *Presumed Innocent* is full of imagery of the female identity. It is about two women, an attorney/victim who is murdered by a jealous wife; what I call a “female on female” crime.

There are many legal issues in the texts and film. Natural (divine) law and positive (man made law or law of the state/polis) law, civil disobedience and male/female perspectives of the law are central issues in a discussion of *Antigone*. Physical/psychological abuse or domestic violence and an exclusively female jury's perspective of murder are the central focus of *Trifles* and *A Jury of Her Peers*. *Presumed Innocent* is, unfortunately, about everything that is wrong with the legal system and questions the relationship between law and justice. The film introduces us to the question of how we “know” what we know about guilt, innocence, truth, and falsity, and whether we can truly “know” anything with enough certainty to believe that the legal system can ever “do justice”.<sup>10</sup> The murderess in *Presumed Innocent* is not the central character but the entire film is based upon her hidden, slovenly act. An act that ultimately goes unpunished. The law and life are inseparable. And that is precisely why there are so many novels, plays and films based on legal issues or with lawyers as central characters.

## Antigone

### *The Story and Setting*

Modern psychologist and clinical sociologist use the phrase “dysfunctional family”<sup>11</sup> to describe a family unit which suffers from serious problems such as alcohol or drug abuse or incest. Antigone, the main character in this ancient Greek tragedy,<sup>12</sup> comes from such a family. Her father, Oedipus, once king of Thebes and solver of the riddle of the sphinx (what walks on four legs in the morning, two legs at noon, and three legs in the evening? - man)

“...comes to realize the underlying horror of his existence. Throughout the play his insatiable hunger for knowledge propels him down a dreadful path of self-discovery. His relentless inquiry into the causes of King Laius’ death reveals that he has unknowingly killed his father and married his mother, and has incestuously begotten four children by her. Overcome by disgrace, he gouges out his eyes and goes into exile, attempting to escape the misery that he alone has wrought.”<sup>13</sup>

After wandering for years in exile with Antigone, Oedipus finally settles at Colonus, a sacred grove, an appropriate place to die and find peace for his wretched soul. Creon, Antigone’s uncle, tries to lure Oedipus back to Thebes to no avail. Oedipus dies, so no longer needing to care for their father, Antigone and her sister Ismene return to Thebes. Antigone’s brothers, Polynices and Eteocles, fight for control of the kingdom and slay one another in combat. Creon succeeds to the throne. Eteocles died fighting for his country and is thus entitled to a proper burial.<sup>14</sup> But for Polynices, Creon issued an edict:

“...But the body of Polynices, who died miserably-why, a city-wide proclamation, rumor has it, forbids anyone to bury him, even mourn him. He’s to be left unwept, unburied, a lovely treasure for birds that scan the field and feast to their hearts content.

Such, I hear, is the martial law our good Creon lays down for you and me

yes, me, I tell you-and he's coming here to alert the uninformed in no uncertain terms, and he won't treat the matter lightly. Whoever disobeys in the least will die, his doom is sealed: stoning to death inside the city walls!"<sup>15</sup>

Polynices's body is left exposed to the elements, to rot and be eaten by beasts and birds because he fought against his native city and is deemed a traitor. Antigone is left with a moral dilemma. Should she abide by her familial obligation to her brother and the holiest laws of the gods which require one to bury one's deceased kin?<sup>16</sup> The law of the gods is divine law, natural law. Or obey the edict - man made law of king Creon? In the end, Ismene, Antigone's sister obeys the law. Ismene feels that because they are only women they are too weak to resist men and the state. Haemon, Creon's son and Antigone's fiancé, contests the law, but Antigone boldly and openly defies it. She buries Polynices. Creon plans Antigone's punishment and banishes her to a sealed cave to die a slow and agonizing death. Creon wrestles a bit with his decision and only relents when the blind prophet Teiresias informs him that his son Haimon will die because of Creon's refusal to arrange a burial for Polynices and for sentencing Antigone to death for disobeying his decree. Creon reverses himself, buries Polynices and orders Antigone's release from the cave. But his change of heart came too late. Antigone hangs herself in the cave, and when Haemon finds her body he stabs himself. Creon's wife, Eurydice, commits suicide upon learning of her son Haemon's death leaving only Creon and Ismene to agonize over all the deaths in the family. Creon blames his stubborn will for causing the death of his wife and son.

### **Multiple Legal and Philosophical Issues**

Legal thinkers, scholars and philosophers continue to analyze *Antigone* and its numerous themes. What follows is a sample of what recent critics say about this powerful literary figure from several different perspectives. In Costas Douzinas' philosophical article on ontological and

psychoanalytical ethics he maintains that:

*Antigone* is as important for the exploration of the origins and the force of law as Oedipus is for the foundation of identity. We are all aware of the jurisprudential and speculative readings of *Antigone*. The tragedy concerns the unfolding of a series of conceptual juxtapositions, embodied and represented by the two diametrically opposed protagonists. The key conflict may be that between divine and human law, or between law and justice, family and state, or individual and society; but its narrative presentation always follows the same path. ...But it is Antigone, the daughter of Oedipus, who has guided the steps of philosophy and psychoanalysis to the primal scene from which jurisprudence emerges, and from which it never leaves.<sup>17</sup>

In a comparative piece that examines the difference between the *Antigone* written by Sophocles and a twentieth century adaptation by Jean Anouilh, written and performed in France in 1944 during the German Occupation, Susan Tiefenbrun noted the following regarding civil disobedience:

Antigone, one of the first great heroines of civil disobedience and the inspiration of resistance movements against tyranny is the prototype of alterity in her resistance to the law. The myth, the character, and the play *Antigone* have inspired more than one hundred recreations and interpretations by writers of stature and prominence in the legal and literary communities. Scholars of law, literature, and feminism continue to analyze the play to understand better its jurisprudential underpinnings and, in particular, the difference between natural law and legal positivism as well as the effectiveness of civil disobedience for legal reform. ....Antigone claimed, an obligation to obey a higher, natural, or divine law whose authority preempts man-made laws. ...In Sophocles' *Antigone*, civil disobedience is represented by the tension between Antigone and Creon, most dramatically in Antigone's act of defiance, which effectively causes legal reform in Thebes. Despite the obvious similarities between Antigone and Creon, Sophocles stresses the differences between their opposing jurisprudential positions on natural law and legal positivism. Sophocles espouses the argument that illegal protest can accomplish legal reform....<sup>18</sup>

In Phyllis Goldfarb's article on the ethics of feminism and clinical education she suggests

that:

A feminist reader of *Antigone* might note that, although only Ismene explicitly evokes gender to support her stance, tying her refusal to resist the state to her womanhood, the genders of the other characters are more than incidental features. *Antigone* reveal[s] the disastrous folly of both Creon's and *Antigone*'s rigid morality, displayed in their mutual refusal to consider the merits of each other's position. At the same time however, the play challenges the possibility of transforming moral discourse by including both voices when the power to declare truth is unevenly distributed. Because Creon commanded the force of law, his truth could officially annihilate *Antigone*'s truth, casting it as deviant and dangerous. A feminist reader might also note that although, as a woman, *Antigone* was an outsider to the political machinations of her male relative, the course of her life was determined by her male relatives, particularly by their moral choices.<sup>19</sup>

If *Antigone* were a feminist living in the twenty-first century she might ask herself a version of the questions Catherine MacKinnon asks in her book, *Toward A Feminist Theory of the State*:<sup>20</sup> "What is state power? Where, socially does it come from? How do women [in my situation and in other situations] encounter it? What is the law for women [in my situation and in others]? How does law work to legitimate the state,[privileged] male power, itself? Can it do anything about... [the] status [of women in my situation and in others]? Does how the law is used matter?"<sup>21</sup>

Finally, in Mark S. Howenstein's critique he states:

The aura of *Antigone* envelops law as no other work of art in the history of Western civilization. In no other work of art are so many divergent understandings of law to be found in such direct, dynamic opposition to one another. In no other work of art are the mysterious depths of law probed more deeply, passionately or reverently-leaving the spectator in awe and wonder, and in complete bewilderment regarding the meaning of it all. In no other work of art is law treated with such clarity and precision in such a profoundly mystical way.

*Antigone* stands at the height of Greek tragedy and at the origins

of legal philosophy.<sup>22</sup> Hegel described it as “one of the most sublime, and ...consummate works of the aesthetic spirit.”<sup>23</sup> Scholars are inspired by Antigone’s “unflinching firmness which shakes the entire foundation of arbitrary government.”<sup>24</sup> In this great work, the tragedy of law and the law of tragedy come together in a distressingly all-too-familiar way.

How Antigone is interpreted depends purely upon the perspective of the reader. A mainstay of the law and literature curriculum, Sophocles’ Antigone is among the purest examples of natural law theory.<sup>25</sup> It contains the moral absolutism that underscores natural law theory and suggests dramatic contrasts with legal positivism, the dominant force in modern western law. The play dramatizes the possible superiority of natural law by depicting Antigone’s moral victory and Creon’s remorse over his audacity. Whatever *Antigone* stands for, it is an important text whether you read it for the first time in high school or in a law and literature course. Whether she is a heroine of civil disobedience or an exemplary model for feminism. Either way, Antigone remains an important symbol in law and literature.

### **Trifles and A Jury of Her Peers**

True life events are often the source of plays, novels and movies. Susan Glaspell<sup>26</sup> based the play *Trifles*,<sup>27</sup> which was a year later transformed into the short story *A Jury of her Peers*, on an actual case. Decades later in 1981, it was adapted by Sally Heckel into an Academy-Award nominated film.<sup>28</sup>

The actual case was the 1901 trial of Margaret Hossack, in *State v. Hossack*, 89 N. W. 1077 (Iowa 1902). Hossack was convicted of murdering her husband with an axe while he was sleeping in bed.<sup>29</sup> There was evidence introduced at the trial of Mr. Hossack’s physical and emotional abuse of his wife. Susan Glaspell became familiar with the case as a reporter for a Des

Moines newspaper. She was assigned to cover the case shortly after the murder of John Hassock.

Prior to her assignment to the case, her writing had consisted of assignments where she focused on statehouse and legislative reports.<sup>30</sup> She had no experience or exposure to the law or the courtroom. The investigative reporting of the murder would be her introduction to the criminal justice system. There is no doubt that the Hossack (1901) case inspired the play *Trifles* and *A Jury of her Peers*. But it took Glaspell fifteen years to pen *Trifles* (1916) and *A Jury of Her Peers* (1917). She explains the process of writing the play in *The Road to the Temple*:

So I went out on the wharf, sat alone on one of our wooden benches without a back, and looked a long time at that bare little stage. After a time the stage became a kitchen- a kitchen there all by itself. I saw just where the stove was, the table, and the steps going upstairs. Then the door at the back opened and people all bundled up came in - two or three men, I wasn't sure which, but sure enough about the two women, who hung back, reluctant to enter that kitchen. When I was a newspaper reporter out in Iowa, I was sent down-state to do a murder trial, and I never forgot going into the kitchen of a woman locked up in town. I had meant to do it as a short story, but the stage took it for its own, so I hurried in from the wharf to write down what I had seen.....<sup>31</sup>

The setting for all three works - the play, short story and the film - is the same: a gloomy farmhouse kitchen. John Wright, recently strangled, and his wife Minnie, who claims innocence and is in prison for the crime, are never seen. Five people travel to the Wright farmhouse to investigate—the sheriff, Mr. Peters, the prosecuting attorney, Mr. Henderson, Mr. Hale a neighboring farmer, Mrs. Peters, the prosecuting attorney's wife who has come specifically to gather clothing for the accused woman and Mrs. Hale, the farmers wife. Throughout the short story you never hear the voice of Mrs. Wright. You only hear her words through the account of the conversation Mr. Hale has with Mrs. Wright when he comes to her house to speak with her husband John. He came to the farmhouse to ask John if he would like to have a telephone



installed in his house.

“‘Can I see John?’ ‘No,’ says she kind of dull like. ‘Ain’t he home?’ says I. Then she looked at me. ‘Yes,” says she, he’s home.’ ‘Then why can’t I see him?’ I asked her, out of patience with her now, ‘Cause he’s dead,’ says she, just as quiet and dull, and fell to pleatin’ her apron. ‘Dead?’ says I, like you do when you can’t take in what you’ve heard. .... ‘Why, what did he die of?’ ‘He died of a rope round his neck,’ says she; and just went on pleatin’ at her apron. “Who did this Mrs. Wright?” ‘I don’t know,’ she says. You don’t know?’ ..... ‘Weren’t you sleepin in the bed with him?’ ‘Yes,’ says she, but I was on the inside.’ ‘Somebody slipped a rope round his neck and strangled him and you didn’t wake up?’ says Harry. ‘I didn’t wake up.’ she said after him’.”<sup>32</sup>

The different perspectives of the men and women are immediately evident.<sup>33</sup> The men carry the weight of authority, they are charged with the investigation of the murder. Based upon the time of the setting, 1916, the men would decide what is relevant under the law and act as judge and jurors, responsible for deciding the fate of Mrs. Wright. The women are marginalized, they can’t serve on juries, their abilities are perceived to be limited to domestic duties of cooking, sewing and housekeeping. After the men enter the house they take charge attempting to solve the crime based upon the evidence at the scene. Although they are searching for a motive for the killing, “something to show anger—or sudden feeling,”<sup>34</sup> they spend only a few minutes in the kitchen, where Mrs. Wright has spent most of her life. The things in the kitchen are irrelevant to the men, and they laugh at their wives and Mrs. Wright for their concern over domestic “trifles” and criticize her poor housekeeping.

The men move to another part of the house, upstairs, to search for clues while Mrs. Hale and Mrs. Peters remain downstairs in the kitchen to piece together the real story of Mrs. Wright, her sad life that led to the killing of her husband. The women act as the true judge and jury. In the most significant dialogue and scenes in the play and story, the women discover the evidence, a clue that the men, if they discovered it could point to the motive of the crime, the specific event that could have triggered Mrs. Wright's violent reaction. The women study every piece of evidence in the kitchen, the unfinished tasks, the irregular sewing on one piece of a quilt and a broken bird cage that looks like someone intentionally broke it. They find the most incriminating evidence, the dead body of a songbird - canary in Mrs. Wright's sewing box, gingerly wrapped in a beautiful piece of silk, as if in preparation for a sacred burial. The bird's neck was broken, twisted, the life "choked out of him". The women deduce that Mr. Wright strangled Mrs. Wright's bird, her only source of joy in that lonely house. It was that final act of cruelty that made her commit her violent act of revenge.

In the final scenes of the play, Mrs. Hale and Mrs. Peters silently decide to conceal the lifeless body of the bird. Mrs. Peters tries to stuff the box in her purse, but as it is unable to fit, Mrs. Hale takes it from her, hiding it in her large coat pocket just as the men come back into the kitchen. The final lines communicate the entire point of the short story and play:

"Well, Henry," said the county attorney facetiously, "at least we found out that she was not going to quilt it. She was going to-what is it you call it, ladies?" Mrs. Hale's hand was against the pocket of her coat. "We call - it knot it Mr. Henderson."<sup>35</sup>

### **Images, Metaphors, Symbols and the Female Jury**

*A Jury of Her Peers* is sated with literary images and metaphors. Many critics have analyzed it to the point where every action, inaction, every object; the dead bird, the bird cage, the broken stove, and particularly the quilt and the knot, represent specific social, legal or philosophical norms, beliefs and stereotypes relating to men, women, or the human condition. The language is intentional, the pauses, specific tones in character voices and even the silence communicate. For much of the play the women are silent, communicating only through looks and pauses. For Susan Glaspell, character is action as she slowly creates the identities of two people who never appear- the murdered man and his wife. She also used this device in two of her other plays *Bernice* (1919) and *Allison's House* (1930). Glaspell's open ended ending is itself a metaphor for all the possible ends the characters might experience.<sup>36</sup>

The setting, the kitchen, is feminine, the "quintessential "woman's room""<sup>37</sup>. Martha Hale left her kitchen when she was called away:

"As she hurriedly wound that round her head her eye made a scandalized sweep of her kitchen. It was no ordinary thing that called her away; it was probably further from ordinary than anything that had ever happened in Dickinson County."<sup>38</sup>

The women are confined in the kitchen. The men are free to explore the farm, and the entire house,<sup>39</sup> including the upstairs portion of the house where the murder occurred. They are limited by rigid notions that won't allow them to seek evidence in the kitchen, so they move to the upstairs to find what they consider the most important factor of the crime - motive. The men looked for a motive for the killing "something to show anger - or sudden feeling",<sup>40</sup> in the bedroom, the barn, and outside the house. The men did not look in the kitchen, dismissing it with, "nothing here but kitchen things."<sup>41</sup> The women find the motive acting in their usual manner, in

their usual room, the kitchen. They form a jury of her peers, serve as prosecutors and defense counsel and ultimately the judge, and in silence agree to conceal what they discover in the silk scarf - the dead bird - the evidence that could suggest motive.

The women can walk into another woman's kitchen and know things about her life, because they have a "look of seeing into things, of seeing through a thing to something else...."<sup>42</sup> The result of the brief trial the women held in the kitchen would make it difficult if not impossible for a real courtroom of 1916 to convict the wife for killing her husband.<sup>43</sup>

The word "queer" is used repeatedly in the story. Women's realities are sometimes "queer" when viewed from the dominant male perspective.<sup>44</sup> Mr. Hale used the word to describe Mrs. Wright as he reviewed what he saw when he initially visited the Wright farmhouse:

"How did she- look?" the county attorney was inquiring. "She looked queer," said Hale. "How do you mean queer?". ... "Well, as if she didn't know what she was going to do next. And kind of - done up."<sup>45</sup>

The word queer is used several times in the text but only in context to the women<sup>46</sup>

The word "trifles" is used to define and denigrate the women's perceptions, concerns, and values which are critical to understanding the story.

"Well, can you beat the woman! Held for murder and worrying about her preserves!"..."Oh well," said Mrs. Hale's husband, with good-natured superiority, "women are used to worrying over trifles."<sup>47</sup>

Repeated images of things half-done, of isolation, and of abuse are prevalent. Mrs. Hale leaves her kitchen hastily with "her bread all ready for mixing, half the flour sifted and half unsifted."<sup>48</sup> "Her eye was caught by a dish towel in the middle of the kitchen table..... One-half of

it was wiped clean, the, other half messy. Her eyes [turned] to the bucket of sugar and the half empty bag beside it.”<sup>49</sup> Maryjane Camilleri suggests that these things half done, “things begun and not finished”<sup>50</sup> is a metaphor for the incomplete nature of our law and culture that does not appreciate the different but equally valuable viewpoints and contributions of women and men. She further suggests that Glaspell’s story seeks to foster communication and cooperation among those with different viewpoints—not replace patriarchy with matriarch but to replace isolation with connection.<sup>51</sup>

Mrs. Hale joins her husband along with Sheriff Peters, his wife and Mr. Henderson, in a “big two-seated buggy.”<sup>52</sup> The buggy according to Camilleri provides a metaphor for a society which has two essential components, male and female. Law and custom relegate the female component to the “back seat” of the buggy as they travel to the scene of the incident.

Glaspell uses names to convey multiple symbolic identities. The men identify the women through their marital relationship: they are Mrs. Hale, Mrs. Peters, also referred to as the sheriff’s wife, and Mrs. Wright. As the story develops so do the characters. The accused wife changes from Mrs. Wright, to Minnie Wright, to Minnie Foster Wright and finally to Minnie Foster her birth name.<sup>53</sup> Martha Hale’s full name represents feminist independence; she is introduced as the first character and sets the stage for the story. Mrs. Peter’s, the most conventional character of the story, first name is never revealed. She eventually adopts a feminist perspective as she bonds with the other women.<sup>54</sup> Because she is the sheriff’s wife the men perceive her to be “married to the law”, and “one of us”.<sup>55</sup> They depend on her to keep the other women in line; to stay in their place, and to maintain the male value system. For a while, she does. In the kitchen she states: “the law is the law.” Martha Hale’s response is “ the law is the law and a bad stove is a bad stove.”

Marina Angel suggests that those lines mirror Antigone's call for respect to a higher law, as opposed to the positive law of Creon. In *A Jury of Her Peers* and *Antigone*, positive law is not essential to women's realities. The ordinary, everyday task of life, the proper burial of the dead in one instance and cooking and serving food in the other are not addressed or acknowledged by man-made law.<sup>56</sup>

The broken stove, represents Mr. Wright's miserliness. A stove, in those days was a source of nurturance, food and warmth for farm families. He wasn't a poor man but still the house was grim, the rocking chair sagged and had a missing rung. Mrs. Wright's clothes were worn and shabby:

"Her black skirt bore marks of much making over".... "Wright was close! ... " I think maybe that's why she kept so much to herself. I s'pose she felt she couldn't do her part; and then, you don't enjoy things when you feel shabby. She used to wear pretty clothes and be lively when she was Minnie Foster...."<sup>57</sup>

These images, her apparent loss of pride in her appearance represent her isolation, and emotional abuse.<sup>58</sup>

The most powerful symbols in the story are the bird, the birdcage and the quilt. The quilt, and in particular the poorly stitched places, was a source of information for the women. They piece together the actual scenario by observing the quilt pieces, finding one uneven quilt piece that looks "as if she didn't know what she was about!"

"Their eyes met - something flashed to life, passed between them."<sup>59</sup>

Mrs. Hale then proceeds to pull out the stitches "that are not sewed very good" and "replace[s] bad sewing with good."<sup>60</sup> The women make a connection between the type of quilting Minnie

performed and the way the husband was killed, strangulation with a knotted rope. The men do not make the connection. Quilting and knotting are two different ways of holding together the filling and the individual pieces that make up the quilt. Quilting is very artistic and more time consuming. Knotting only requires a quick, simple single stitch.<sup>61</sup> Minnie's knotting, rather than quilting, is symbolic of a joyless, empty life and the method she used to kill him.<sup>62</sup>

The bird in a cage image is an enduring symbol of the constant constraints of women's lives. Maya Angelou used that powerful image in *I Know Why the Caged Bird Sings*. For someone like Minnie Wright, the bird in the cage was a symbol of her constraints and her only source of light, color and a song.<sup>63</sup> The women compare Minnie to a bird:

“She - come to think of it, she was kind of like a bird herself. Real sweet and pretty, but kind of timid and-fluttery. How she did change.”<sup>64</sup>

When they find the birdcage they note that it looks like someone had been “rough with it.” Mr. Wright probably broke the cage door when he broke open the cage, then pulled out the bird and broke its neck. Mrs. Hale noted:

“No, Wright wouldn't like the bird.....a thing that sang. She used to sing. He killed that too.”<sup>65</sup>

The dead bird convicts Mr. Wright as much as it convicts Mrs. Wright. The cumulative effect of his abuse, emotional or physical, and the abhorrent killing of the bird motivated Minnie Foster to kill her husband.<sup>66</sup>

It is not ironic that Mr. Wright “died of a rope ‘round his neck”. When he broke the neck of the bird he declared his power to destroy the only thing his wife loved. It was his way of showing her she was worthless and utterly powerless.<sup>67</sup> The moment she allegedly placed the rope around

her husband's neck, she rejected the notion that she was pitiful and broken and asserted her own power against him. The jury of her peers know that without that evidence - the bird - Minnie Foster could go free and that Mr. Wright's emotional abuse would remain concealed.<sup>68</sup> This same jury, and only this jury, understand the significance of the evidence. Even though the feminist perspective was not acknowledged as relevant, true justice was served. A court of law could not have been more just than the women in the kitchen.<sup>69</sup>

The women never state definitively who committed the crime. The only crime they know has been committed is their failure to visit Minnie Foster Wright over the years. They think that if they had come to see her, perhaps they would not be standing in her kitchen under these circumstances.

"Oh, I wish I'd come over here once in awhile!"..."That was a crime! Who's going to punish that?"... "I might 'a' known she needed help! I tell you it's queer, Mrs. Peters. We live close together and we lived far apart. We all go through the same things, it's all just a different kind of the same thing! If it weren't-why do you and I understand? Why do we know what we know this minute?"<sup>70</sup>

Susan Glaspell's short story *A Jury of Her Peers* plays an important part in the evolving canon of the study of law and literature. It was popular for about forty years after it was written. In the 1970's feminist scholars rediscovered it. It is often referred to as a "feminist classic".<sup>71</sup> It raises questions about women's oppression in society, gender differences in perception, and the empowerment of women through female bonding. The story is related to the law because it involves a woman accused of murdering her husband and the search of her home for clues to the crime. The short story has been cited and discussed in law review articles and included in



traditional law school courses, such as civil procedure and criminal law. It is also one of the most frequently selected stories in law school courses that focus on law and literature.<sup>72</sup>

Today, women are not as repressed as the women in *A Jury of Her Peers*. Two women sit on the U.S. Supreme Court and women make up approximately 50% of law school enrollment.<sup>73</sup> Women are beginning to hold important and influential positions in society and the legal system.<sup>74</sup> The answer to the question the county attorney asks in *A Jury of Her Peers* is quite fitting.<sup>75</sup> “The county attorney was looking around the kitchen. ‘By the way,’ he said, ‘has anything been moved?’ He turned to the sheriff. ‘Are things just as you left them yesterday?’” The answer to that question is no. Things have changed for women since 1916.

### **Presumed Innocent**

I chose to include a film, a different literary medium, in this paper to point out the difference in contextual communication between written word and film. Sometimes film is a better vehicle for expressing images that relate to identity and power. Novels, whether intentionally or unintentionally often shroud the story from the reader. Although this literary device works for some readers, it can also be confusing. Dr. Michael Shaw, a Classics Professor at the University of Kansas, illustrates my point. I visited Dr. Shaw to discuss *Antigone*, to gain insight on his interpretation of the classic Greek tragedy and to invite him to join me at my class presentation and discussion. When I told him I was also discussing the film *Presumed Innocent* his response was, “Good, I read that book’s ending four times and still couldn’t figure out who committed the murder!”<sup>76</sup>

When a novel is eventually made into a movie you often hear people comment that “the book was better than the movie”. In the case of *Presumed Innocent*, arguably the movie was better

than the book. Seeing the characters visually on screen as opposed to through the mind's eye clarified who the players were in the legal system and in day-to-day life. The “ugly” woman in the title of the paper; “Women, the Good, Bad or Ugly in Law and Literature” is visible in the film. However, the contrast between the act and the person who committed it is striking. Both women, the perpetrator and the victim, are beautiful. And because you see their beauty on screen it can have more impact than when you read about it in text.

### **The Story - In Brief**

Rusty Sabich chief deputy district attorney investigates the rape and murder of female attorney, Carolyn Pohlemus, another deputy. His boss, the D.A., is up for election, he loses, and new D.A. Della Guardia takes office. After the election Sabich is charged with the murder of Pohlemus based on evidence at the scene of the crime. His fingerprints are found on a glass, a semen sample taken from Pohlemus matches Sabich's blood type, phone records indicate they communicated, and after a search of his home they find traces of Pohlemus's blood and traces of her carpet fiber. In the meantime the D.A.'s office is under internal scrutiny. A bribery file (b-file) points to a D.A. that took a \$1,500 bribe which was paid to a judge, the judge who just happens to preside over Sabich's trial.

Sabich's attorney Stern is very good, but he has help from an informant friend Lipranzer who hides the most damaging evidence, the fingerprinted glass. They never find the murder weapon. Witnesses lie on the stand. Stern trips up the pathologist. Pohlemus's tubes were tied so she wouldn't have used a spermicide and somehow they deduce then that the semen sample had to be from someone other than Sabich. Stern threatens to disclose the judge's involvement with the b-file. The judge dismisses the case, Sabich walks. But that is not the end.

One afternoon as Sabich is rummaging through his toolbox he finds the murder weapon, a small hammer soaked with blood and blond hair. Barbara, his wife, enters as he's cleaning off the murder weapon. "I did it", she says. The words have double meaning; she's speaking of her job interview, he thinks she's confessing. In the final scene of the movie she tells her husband what she did and why. She claims she would have confessed in time to save her husband's life. But would she really have done so? And who would believe her?<sup>77</sup>

### **Female Identity - Women and Power**

The image of the woman attorney in the film is not based upon her legal prowess, but on her sexuality. In fact, the overall message of the film suggests that it was her sexuality that caused her murder: "the lady was bad news." is the phrase used repeatedly to describe her. Even though she is violently murdered before the narrative begins she remains a sexualized presence throughout the film through flashbacks and reminiscent day dreams.<sup>78</sup> One of the lines in the film summarizes the way the male attorneys viewed Pophlemus. Note the order of each descriptive word or phrase used to describe her. "What a waste, (referring to the murder) beautiful, sexy gal, hell of a lawyer." She was a "hell of a lawyer" last, beautiful and sexy first. The film portrays her as an ambitious and talented, yet promiscuous, attorney who had a sexual relationship with almost every male character in the movie.

Many female attorneys of contemporary film are not role models for emerging female law students and lawyers.<sup>79</sup> They are instead images of women attorneys who cannot have both professional and personal lives.<sup>80</sup> Women must move away from this image. In order to change this they must ask and answer these questions posed by E. Ann Kaplan: "When women are portrayed as powerful and in the dominant position are they in the masculine position? Do we

envision a female dominant position that is different qualitatively from the male form of dominance? Or is it theoretically and practically possible for both genders to occupy the positions we know now as masculine and feminine?<sup>81</sup>“

We must envision a place, real or imagined, where women can simultaneously have and operate in a personal and professional sphere. It is the responsibility of women to recreate the image of the female attorney in film.

The women have control and power through their sexuality and violence in *Presumed Innocent*. The legal system is portrayed as a bumbling machine that is more concerned with hiding human flaws and frailty than serving justice. As often is the case, the real criminal remains free. The “ugly” referred to in the title of the paper could apply to everyone, not just the women, in this film.

### **The Authors Perspective**

In previous sections of this article the author cites philosophers and others who have analyzed the lives of Antigone, Minnie Wright and Barbara Sabich. Finally, I will briefly interject my viewpoint of these three women.

As the title suggests, one of the women was good, one bad and the other ugly. Which one was which and why? Antigone probably best represents “the good” woman. I could describe her in many ways but I can’t decide whether she was so damn good or a damn fool. I do agree with many commentators who have come to the conclusion that she represents one of the quintessential examples of civil disobedience. She broke the law and decided she had a higher calling; to obey natural law and show her love for her family. Her life though was doomed at the onset; she came

from a horrible family life, she was a product of unbeknownst incest; her brothers hated one another and died proving it. Yet, she like many human beings, loved her family members despite their horrific flaws; and this is good . She believed in doing the right thing.

No one in their right mind would leave their brother unburied, to be devoured by animals and birds and to rot in public view. What when you think about it is so noble about that act. The nobility comes in her dying for what she believed in. And of course it had to end this way with everyone killing themselves or dying before they could be saved because after all, *Antigone* is a greek tragedy.

Minnie Wright gains the designation of “the bad” woman because I think she did kill her husband. Even if you have a good reason to kill your husband, simply put, it is a bad thing to do on any given Sunday, unless of course you kill in self-defense. The battered woman syndrome was not a defense in the early 20<sup>th</sup> century, today it is.

Battered women’s shelters were nonexistence and few women spoke out against their husbands or complained about ill treatment of any sort. Physical abuse, emotional abuse and neglect in the minds of many does not warrant the taking of a life. I argue though, that although the alleged act was bad, if Minnie did kill her husband, she acted out of desperation, desolation, rage, and mental anguish. Although her alleged act was in response to years and years of mental and emotional abuse she is culpable. But I don’t blame her exclusively. I also blame the time, space and place in our society that gave her little or no recourse and failed to provide her protection from, or alternatives to her predicament. She was in a bad place in a bad time. Her situation was bad, and she in turn behaved badly. And much like Mrs. Hossack in the Iowa case,

which A Jury of Her Peers was based on, Minnie Wright will never escape the past trauma in her life whether she is found innocent, or guilty. This is the entire point of the evocative open ended ending in the short story. The reader is left to decide in their own mind the fate of Minnie Wright. An ending which would have explicitly stated her guilt or innocence, was not necessary.

Ugly is the perfect way to describe Barbara Sabich's act of murder. She, in fact is the impetus for the title. The other women are arguably good or bad, perhaps they are not. But there is no doubt Barbara is ugly. I prefer the word ugly over any other because what she did was brutal, painstaking, cold, calculating and twisted. I must admit that the process of saving the DNA, freezing it, and inserting into Pohlemus was brilliant. Ugly, yet brilliant. She meant to kill her husbands career and kill his lover. She acted at times as though she was a loving, caring mother and wife while she was instead a jilted, insanely jealous murdering wife. That is also what is so ugly about her, she appeared to be one thing while she was something else entirely.

In the last scenes of the film this pretty and often pathetic looking character's ugly act is so vivid and clearly described. Almost every character, except the young son, had an ugly side. The entire film is ugly and adequately depicts our society, our faulty legal system and the people affected by our inability to dispense justice. And once again a guilty person goes free; that is always an ugly situation.

### **Conclusion**

Who are Antigone, Minnie Foster Wright, and Barbara Sabich and why did they do what they did? One woman was compelled by natural law and familial love to defy the law, the others were motivated by anger or desperation to kill. Did they have purely female reactions to their circumstances or did they behave simply as human beings? What all three women have in

common is that they felt they had no other choice; each one could have ended her story with the same words of Barbara Sabich:

“You understand what happened had to happen. It couldn’t have turned out any other way. A woman’s depressed with herself, her life.....She feels power, control, the sense that she’s guided by a force beyond herself.... And life begins again.”<sup>82</sup>

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<sup>1</sup> Sophocles The Three Theban Plays Antigone, Oedipus The King, Oedipus at Colonus (Translated by Robert Fagles, Penguin Books, 1982, 1984).

<sup>2</sup> Plays by Susan Glaspell, (C. W. E. Bigsby ed., Cambridge Univ. Press 1987).

<sup>3</sup> Susan Glaspell, A Jury of Her Peers, (Creative Education Inc. 1993)(1917).

<sup>4</sup> Presumed Innocent (Warner Bros. 1990).

<sup>5</sup> The title of the paper is a play on words from the Clint Eastwood Film “The Good, The Bad And The Ugly” (MGM Inc., 1966).

<sup>6</sup> Susan W. Tiefenbrun, *Classical Greek Themes in Contemporary Law: On Civil Disobedience, Jurisprudence, Feminism and the Law in the Antigone of Sophocles and Anouilh*, 11 Cardozo Stud. L. & Lit. 35, 39 (1999).

<sup>7</sup> Robin West, *Jurisprudence and Gender*, 55 U. Chi.L.Rev.1, 58 (1988).

<sup>8</sup> Carol Heilbrun & Judith Resnick, *Comments, Convergences: Law, Literature, and Feminism*, 99 Yale Law Journal 1913, 1929 (1990).

<sup>9</sup> Tiefenbrun, *supra*, note 5 at p. 38.

<sup>10</sup> Christine Corcos, *Presuming Innocence: Alan Pakula and Scott Turow Take on the Great American Legal Fiction* 22 Okla. City L. Rev. 129, 142 (1997).

<sup>11</sup> The word “dysfunctional” is jargon used in twelve step programs; by clinical social workers and others in the work of family system theory.

<sup>12</sup> Sophocles wrote Antigone approximately 441 or 442 B.C. . Some believe Sophocles owed his election to office to the popularity of Antigone. Theban Plays, *supra* note 1 at p. 35.

<sup>13</sup> Mark S. Howenstein, *Law and Literature: The Tragedy of Law And The Law of*

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*Tragedy in Sophocle's Antigone*, 24 Legal Stud. Forum 493 (2000).

<sup>14</sup> *Id.* at 495.

<sup>15</sup> Sophocles, *supra* note 1 at p. 60 (lines 32-43).

<sup>16</sup> Greeks believed that if the body of the dead was not given a proper burial, the spirit would suffer a torturous and restless afterlife, wreaking revenge upon those who neglected their duty to provide the proper burial. See Howenstein, *supra* note 12 at 496.

<sup>17</sup> Costas Douzinas, *Law And The Postmodern Mind: Law's Birth And Antigone's Death: On Ontological and Psychoanalytical Ethics*, 16 Cardozo L. Rev. 1325, 1327 (1995).

<sup>18</sup> Tiefenbrun, *supra* note 5 at 35.

<sup>19</sup> Phyllis Goldfarb, *A Theory Practical Spiral: The Ethics Of Feminism And Clinical Education*, 75 Minn. L. Rev. 1599, 1611 (1991).

<sup>20</sup> *Id.* at 1612, citing C. Mackinnon, *Toward a Feminist Theory of the State*, 51, 52 (1989).

<sup>21</sup> *Id.*

<sup>22</sup> Howenstein, *supra* note 12 at 493.

<sup>23</sup> G.W.F. Hegel, 2 *The Philosophy of Fine Art* 215 (New York: Hacker Art Books, 1975) (Osmaston trans.).

<sup>24</sup> David Daube, *Civil Disobedience in Antiquity* 8 (Edinburgh: Edinburgh University Press, 1972).

<sup>25</sup> The study of natural law theory dates back to antiquity. The debate surrounding legal positivism and natural law is naturally as old. For contemporary discussions of both theories see among others, H.L.A Hart, *The Concept of Law* (1961), *Natural Law and Modern Society* (John Cogley et.al., Center for the Study of Democratic Institutions, A Meridian Book, 1966), Ronald Dworkin, *Taking Rights Seriously*, (Cambridge: Harvard University Press, 1977), John Finnis, *Natural Law and Natural Rights*, (Oxford, Clarendon Press, 1980), *Taking Dworkin Seriously*, Tallahassee: Department of Philosophy, Florida State University, (1980), John Finnis, *Natural Law*, *The International Library of Essays in Law and Legal Theory*, 2 vols., (New York University Press, (1991), Robert P. George, *Natural Law Theory, Contemporary Essays* (Oxford, Clarendon Press, ed. 1992), Michael H. Hoffheimer, *Justice Holmes and the Natural Law*, (Garland Press, 1992) Robert P. George, *The Autonomy of Law: Essays on Legal Positivism* (Oxford, Clarendon Press, 1996), David F. Forte, *Natural Law and Contemporary Public Policy* (Georgetown University Press, 1998), Rodney Jay Blackman, *Procedural Natural Law*, (Carolina



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Academic Press, 1999), *Natural Law and Public Reason*, (Robert P. George & Christopher Wolfe, eds., Georgetown University Press, 2000)

<sup>26</sup> Susan Glaspell was born in Davenport, Iowa. The actual date of her birth is disputed. Her literary biographer, Marcia Noe concludes that although Glaspell often asserted that she was born in 1882, the evidence points to 1876. See, Veronica Makowsky, *Susan Glaspell's Century of American Women a Critical Interpretation of Her Work*, 12 (New York: Oxford University Press 1993). After graduating from Drake she became a reporter for the Des Moines Daily News. In 1913 she married George Cram Cook, a classics scholar. They spent summers in Provincetown, Massachusetts, and the remainder of the year in Greenwich Village, New York. See, Mary E. Papke, *Susan Glaspell: A Research and Production Sourcebook*, 2 (Westport, Connecticut, Greenwood Press 1993) She was one of the founders of Heterodoxy, a New York feminist organization. "Every other Saturday in New York, Glaspell left her husband to his own devices and joined the "unorthodox women" at their Heterodoxy luncheons at the Liberal Club. Marie Jenney Howe, "a rare person who did a great deal for the liberation of women," started these luncheons in 1912 in an effort to free women, even if only for a few hours, from the burden of their daily obligations. Her sharp intelligence and affectionate nature inspired them to cathartic self-expression; they defied taboos and forbidden topics discussing men, women suffrage, and even birth control, then a criminal offense." See, Barbara Ozieblo, *Susan Glaspell: A Critical Biography*, 60 (The University of North Carolina Press, 2000)

<sup>27</sup> *Trifles* was written in 1916, it was a one-act play first performed at the Wharf Theatre in Provincetown, Massachusetts.

<sup>28</sup> *A Jury of Her Peers*, (Creation Films 1981).

<sup>29</sup> Patricia L. Bryan, *Stories in Fiction and in Fact: Susan Glaspell's A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack*, 49 *Stan. L. Rev.* 1293 (1997).

<sup>30</sup> *Id.* at 1298.

<sup>31</sup> Susan Glaspell, *The Road to the Temple* 255 (New York, 1927).

<sup>32</sup> Glaspell, *supra* note 3 at 14-16.

<sup>33</sup> Bryan, *supra* note 28 at 1306.

<sup>34</sup> Glaspell, *supra* note 3 at 27.

<sup>35</sup> *Id.* at 48.

<sup>36</sup> C.W.E. Bigsby *supra* note 2 at 10.

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<sup>37</sup> Richard Posner, *Law and Literature—A Misunderstood Relation* 113 (Harvard University Press 1988).

<sup>38</sup> Glaspell, *supra* note 3 at 4-5.

<sup>39</sup> Mariana Angel, *Criminal Law and Women: Giving the Abused Woman Who Kills A Jury of Her Peers Who Appreciate Trifles*, 33 Am. Crim. L. Rev. 229, 236 (1995).

<sup>40</sup> Glaspell, *supra* note 3 at 27.

<sup>41</sup> *Id.* at 17.

<sup>42</sup> *Id.* At 29.

<sup>43</sup> Angel, *supra* note 36 at 236.

<sup>44</sup> *Id.*

<sup>45</sup> Glaspell, *supra* note 3 at 13.

<sup>46</sup> Glaspell, *supra* note 3 at 32, 33, 43.

<sup>47</sup> *Id.* at 18.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.* at 28.

<sup>50</sup> *Id.*

<sup>51</sup> Marijane Camilleri, *Comment: A Look At The Movement And A Peer At Her Jury*, 39 Cath. U. L. Rev. 557, 585 (1990).

<sup>52</sup> Glaspell, *supra* note 3 at 6.

<sup>53</sup> Marina Angel, *Susan Glaspell's Trifles and a Jury of Her Peers: Woman Abuse in a Literary and Legal Context*, 45 Buff. L. Rev. 779, 799 (1997).

<sup>54</sup> *Id.* at 799.

<sup>55</sup> Glaspell, *supra* note 3 at 21.

<sup>56</sup> Angel, *supra* note 49 at 803.

<sup>57</sup> Glaspell, *supra* note 3 at 25.

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<sup>58</sup> Lillian Schanfield, *The Case of the Battered Wife: Susan Glaspell's "Trifles" and "A Jury of Her Peers"*, 5 Circles, Bu.W.J.L. & Soc. Pol, 69, 72 (1997).

<sup>59</sup> Glaspell, *supra* note 3 at 31.

<sup>60</sup> *Id.* at 32

<sup>61</sup> See, Thelma R. Newman, *Quilting, Patchwork, Applique, and Trapunto*, 62, 74, 238 (1978), Carter Houck, *The Quilt Encyclopedia Illustrated*, 131 (1991) and Judy Hopkins, *Fit To Be Tied* (1990).

<sup>62</sup> Angel, *supra* note 49 at 804.

<sup>63</sup> *Id.* at 806.

<sup>64</sup> Glaspell, *supra* note 3 at 37.

<sup>65</sup> *Id.* at 41

<sup>66</sup> Camilleri, *supra* note 47 at 588.

<sup>67</sup> Schanfield, *supra* note 54 at 77.

<sup>68</sup> Camilleri, *supra* note 47 at 589.

<sup>69</sup> *Id.*

<sup>70</sup> Glaspell, *supra* note 3 at 43.

<sup>71</sup> Patricia L. Bryan, *Stories in Fiction and in Fact: Susan Glaspell's a Jury of Her Peers and the 1901 Murder Trial of Magaret Hossack* 49 Stanford 1294. (1997).

<sup>72</sup> See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 Val. L. Rev. 665, 682-86 (1995). It is also included in Richard Posner, *Law and Literature: A Misunderstood Relation* 112-13 (1988) (considering the difference between male and female "conception[[s] of justice").

<sup>72</sup> Jonathan D. Glater, *Women are Close to Being Majority of Law Students*, N.Y. Times, March 26, 2001, at A1.

<sup>74</sup> Camilleri, *supra* note 47 at 591.

<sup>75</sup> *Id.*

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<sup>76</sup> Quote cited with permission. Dr. Shaw and I met in his office, 2101 Wescoe Hall, Univ. of Kansas on Wednesday, March 29, 2001.

<sup>77</sup> Paul Bergman & Michael Asimow, *Reel Justice* (Universal Press Syndicate, 1996).

<sup>78</sup> Carolyn Lisa Miller, *"What a Waste, Beautiful, Sexy Gal, Hell of a Lawyer": Film and the Female Attorney*, 4 Colum. J. Gender and L. 203, 229 (1994)

<sup>79</sup> *Id.* at 231.

<sup>80</sup> *Id.*

<sup>81</sup> E. Ann Kaplan, *Is the Gaze Male?*, in *Women and Film*, 23, 28 (1983).

<sup>82</sup> *Presumed Innocent* (Warner/Mirage 1990).