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ARTICLES

Stories in Fiction and in Fact: Susan Glaspell's *A Jury of Her Peers* and the 1901 Murder Trial of Margaret Hossack[†]

Patricia L. Bryan*

In this article, Professor Bryan discusses the classic short story A Jury of Her Peers and the questions it raises about the stories told and accepted under the law. Relying on historical documents and contemporaneous newspaper reports, Professor Bryan describes the actual case that inspired Susan Glaspell to write her work of fiction: the 1901 trial of Margaret Hossack, who was convicted of murdering her husband with an axe while he lay asleep in bed. During the trial, neighbors testified that Margaret Hossack had been abused during her marriage and had sought their help on numerous occasions. That evidence was heavily relied on by the prosecution in arguing that Margaret Hossack had a motive for the crime. The story of Margaret Hossack, both during the trial and thereafter, leads us to ask the question suggested by Susan Glaspell: whether justice will be denied until we recognize the biases and assumptions that shape the narratives told in the courtroom.

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* Professor of Law, University of North Carolina at Chapel Hill. I want to thank my friends and colleagues at the University of North Carolina School of Law, especially Walter Bennett, Jack Boger, Lissa Broome, Elizabeth Gibson, and Rich Rosen, who read early drafts of this article and offered constructive suggestions and constant support. Barbara Babcock, Marion Crain, Linda Kerber, Sherryl Kleinman, John Orth, Judith Wegner, and Larry Zelenak read the article at later stages and also gave me useful comments. I had outstanding research assistants, whose help was invaluable to me. My heartfelt thanks goes to them, including Laura Devan, Lance Koonce, Susan Campbell, and Eric Gordon. I am deeply grateful to Carol Ballou, Julie Bosworth, John and Doris Bryan, and Tom Wolf for their valuable editorial comments, as well as their unfailing encouragement and faith in this project. Finally, I appreciate the help of the staff members in the Warren County and Madison County Courthouses and the conversations I have had with the descendants of Margaret Hossack, who shared with me what they knew of her story. This article was supported, in part, by a grant from the Law Center Foundation.

INTRODUCTION

Susan Glaspell's short story *A Jury of Her Peers*,¹ written in 1917, occupies an important place in the emerging canon of the study of law and literature. Although it was often included in anthologies during the forty years following its initial publication,² the story has enjoyed a surge of popularity since feminist scholars rediscovered it in the early 1970s.³ During the last twenty years, *A Jury of Her Peers* and the play *Trifles*,⁴ from which Glaspell adapted the story, have frequently been republished in collections of works by female authors depicting women's experiences.⁵ Many essays of literary criticism, most of them written from feminist perspectives, have discussed both the story and the play.⁶ Referred to as a "feminist classic,"⁷ *A Jury of Her Peers* raises sig-

1. Susan Glaspell, *A Jury of Her Peers*, in *SOCIAL INSIGHT THROUGH SHORT STORIES* 62 (Josephine Strode ed., Harper & Brothers 1946) (1917).

2. For a listing of those anthologies, see MARY E. PAPKE, *SUSAN GLASPELL: A RESEARCH AND PRODUCTION SOURCEBOOK* 124-25 (1993).

3. See, e.g., Linda Ben-Zvi, *Introduction* to *SUSAN GLASPELL: ESSAYS ON HER THEATER AND FICTION* 2 (Linda Ben-Zvi ed., 1995) [hereinafter *GLASPELL: ESSAYS*]; Elaine Hedges, *Small Things Reconsidered: Susan Glaspell's "A Jury of Her Peers,"* 12 *WOMEN'S STUD.* 89, 89 (1986).

4. SUSAN GLASPELL, *Trifles*, in *PLAYS* 1 (1920). The play was first performed in 1916, although it was not published until four years later. See PAPKE, *supra* note 2, at 19, 102. One of Glaspell's biographers has referred to *Trifles* as "one of the most popular one-act plays ever written in America . . . [and one which is] frequently anthologized and used as an example of structure and craftsmanship in texts on dramatic technique." ARTHUR E. WATERMAN, *SUSAN GLASPELL* 69 (1966).

5. In 1973, *A Jury of Her Peers* was anthologized in *AMERICAN VOICES, AMERICAN WOMEN* (Lee R. Edwards & Arlyn Diamond eds., 1973). In that same year, *Trifles* was selected for the first edition of *IMAGES OF WOMEN IN LITERATURE* (Mary Anne Ferguson ed., 1973), which, in the subsequent five editions, has included either *Trifles* or *A Jury of Her Peers*. See Ben-Zvi, *supra* note 3, at 2. For a listing of the many anthologies that have included *Trifles* and *A Jury of Her Peers* through 1993, see PAPKE, *supra* note 2, at 102-03, 124-25.

6. Essays focusing on *A Jury of Her Peers* and *Trifles* include Karen Alkalay-Gut, *Jury of Her Peers: The Importance of Trifles*, 21 *STUD. IN SHORT FICTION* 1 (1984) [hereinafter Alkalay-Gut, *Jury of Her Peers*]; Karen Alkalay-Gut, *Murder and Marriage: Another Look at Trifles*, in *GLASPELL: ESSAYS*, *supra* note 3, at 71 [hereinafter Alkalay-Gut, *Murder and Marriage*]; Linda Ben-Zvi, "Murder She Wrote": *The Genesis of Susan Glaspell's Trifles*, 44 *THEATER J.* 141 (1992); Judith Fetterley, *Reading About Reading: "A Jury of Her Peers," "The Murders in the Rue Morgue," and "The Yellow Wallpaper,"* in *GENDER AND READING: ESSAYS ON READERS, TEXTS, AND CONTEXTS* 147 (Elizabeth A. Flynn & Patrocínio P. Schweickart eds., 1986); 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 *VIOLENCE, SILENCE, AND ANGER: WOMEN'S WRITING AS TRANSGRESSION* 203 (Deidre Lashgari ed., 1995); Hedges, *supra* note 3; Annette Kolodny, *A Map for Rereading: Or, Gender and the Interpretation of Literary Texts*, 11 *NEW LIT. HIST.* 451 (1980); Phyllis Mael, *Trifles: The Path to Sisterhood*, 17 *LITERATURE/FILM Q.* 281 (1989); Beverly A. Smith, *Women's Work—Trifles? The Skill and Insights of Playwright Susan Glaspell*, 5 *INT'L J. WOMEN'S STUD.* 172 (1982); Karen F. Stein, *The Women's World of Glaspell's Trifles*, in *WOMEN IN AMERICAN THEATER* 253 (Helen Krich Chinoy & Linda Walsh Jenkins eds., 1987). For a complete listing of criticism on Susan Glaspell's work through 1993, see PAPKE, *supra* note 2, at 164-288. Another bibliography of selected critical works on Susan Glaspell's work appears in *GLASPELL: ESSAYS*, *supra* note 3, at 339-44.

In 1981, Glaspell's story was made into an Academy Award nominated film by Sally Heckel. See *A JURY OF HER PEERS* (Texture Films 1981). For a discussion of that film, see Mael, *supra*, at 284.

Other than *Trifles* and *A Jury of Her Peers*, much of Susan Glaspell's work had gone out of print by the time of her death in 1948. However, her other work has also enjoyed significant renewed popularity and scholarly attention in recent years. See note 20 *infra*.

7. Ben-Zvi, *supra* note 3, at 3; see also Hedges, *supra* note 3, at 90 (referring to the story as a "paradigmatic one for feminist criticism"); Robin West, *Invisible Victims: A Comparison of Susan Glaspell's Jury of Her Peers and Herman Melville's Bartleby the Scrivener*, 8 *CARDOZO STUD. L. & LITERATURE* 203, 231 (1996) (referring to the story as "canonical within the feminist legal community").

nificant questions about women's oppression in a society dominated by men, gender differences in perception, and the empowerment of women that comes from consciousness-raising and female bonding.⁸

The story also has obvious connections to the law, since it concerns a woman accused of murdering her husband and the subsequent search of her home for clues to the crime.⁹ The accused, Minnie Wright, is already in prison for the crime when the sheriff, the prosecutor, and a male neighbor go to her home to investigate the murder. Two women—the wives of the sheriff and the neighbor—accompany the men. Glaspell contrasts the way in which the male characters, as representatives of the law, look for dry facts with the manner in which the women, who are there only to gather clothes for the accused, are able to piece together and better understand what has happened. When the women discover evidence indicating that the wife has been mistreated by her husband, they know that it will be used in the courtroom to help to convict her by showing that she had a motive for the murder. Empathizing with the accused woman, as well as recognizing their own moral failure in not coming to her aid, the women decide to conceal the crucial evidence from the men. Because of its relevance to questions of criminal responsibility and moral judgments, *A Jury of Her Peers* has been cited and discussed in many law review articles¹⁰ and included in traditional law school courses, such as civil procedure¹¹ and criminal law.¹² The story is also one of the most frequently selected works in law school courses that focus on law and literature.¹³

8. See note 6 *supra* (citing a collection of authorities that discuss the feminist themes in Glaspell's work).

9. For a discussion of the story, see text accompanying notes 47-88 *infra*.

10. See, e.g., 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, 230-52 (1996); Marion Crain, *Feminism, Labor, and Power*, 65 S. CAL. L. REV. 1819, 1856 n.172 (1992); Roberta K. Flowers, *Does It Cost Too Much? A "Difference" Look at J.E.B. v. Alabama*, 64 FORDHAM L. REV. 491, 517-18 (1995); Joanna L. Grossman, Note, *Women's Jury Service: Right of Citizenship or Privilege of Difference?*, 46 STAN. L. REV. 1115, 1145-46 (1994); Nancy S. Marder, *Beyond Gender: Peremptory Challenges and the Roles of the Jury*, 73 TEX. L. REV. 1041, 1073-74 (1995); Toni M. Massaro, *Peremptories or Peers?—Rethinking Sixth Amendment Doctrine, Images, and Procedures*, 64 N.C. L. REV. 501, 552-53 (1986); Linda C. McClain, "Atomistic Man" Revisited: *Liberalism, Connection, and Feminist Jurisprudence*, 65 S. CAL. L. REV. 1171, 1264 (1992); Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1692-93 (1990); Carol Sanger, *Feminism and Disciplinary: The Curl of the Petals*, 27 LOY. L.A. L. REV. 225, 234 (1993); Carol Weisbrod, *Images of the Woman Juror*, 9 HARV. WOMEN'S L.J. 59, 75-76 (1986).

11. See, e.g., PROCEDURE 1168 (Robert M. Cover, Owen M. Fiss & Judith Resnik eds., 1988).

12. See Angel, *supra* note 10, at 246.

13. See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665, 682-86 (1995). Gemmette surveyed American law schools to determine the number of schools offering some form of a course in law and literature and then put together bibliographies of works taught in those courses. Eighty-four schools (out of 199 surveyed in 1993) reported some type of law and literature course, although the content of those courses varied widely. *A Jury of Her Peers* was assigned or recommended for inclusion in a law and literature course by 15 respondents, whereas the most frequently cited work, *Billy Budd* by Herman Melville, was mentioned by 30 respondents. See *id.* at 686. In addition to *Billy Budd*, only six works were mentioned more frequently than Glaspell's short story, and those six works are all well-known classics: *Measure for Measure* and *The Merchant of Venice* by Shakespeare; *The Stranger* by Camus; *Antigone* by Sophocles; *The Trial* by Kafka; and *Oresteia* by Aeschylus. See *id.*; see also Comment, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 CATH. U. L. REV. 557, 581 (1990) (discussing *A Jury of Her*

I first read *A Jury of Her Peers* when I started teaching a seminar in law and literature several years ago. It is a popular story with students, one which generates a broad range of contemporary topics for discussion. From their law school classes, stories in the press, and sometimes their own experiences, students are aware of the prevalence of domestic violence. *A Jury of Her Peers* typically stimulates discussion about the issue of justifiable homicide by a battered woman—when a single violent act against an abuser might be provoked and possibly excused. Some students are also familiar with the work of feminist scholars such as Carol Gilligan,¹⁴ and they perceive the story as another illustration of the “different voice” in which women speak. In the seminar, we talk about the contrasts between the ways in which men and women, even today, analyze problems and assign responsibility. The story is provocative and powerful, and the questions it presents are complex.

My own understanding of the story has changed over the years I have taught it. As I read and reread it, I appreciate its richness—the sense that the issues it raises in connection with the law go beyond the obvious ones related to justifiable homicide and modes of understanding unique to men and women. More broadly, it seems to me that *A Jury of Her Peers* provokes questions about storytelling in the law, a topic which, in recent years, has generated a considerable amount of scholarship.¹⁵ To me, Glaspell’s story raises questions

Peers as an example of literature that can be used effectively in legal education); Carolyn Heilbrun & Judith Resnik, *Convergences: Law, Literature, and Feminism*, 99 YALE L.J. 1913, 1955 (1990) (including *A Jury of Her Peers* on the syllabus of a gender roles seminar taught at Yale Law School in the spring of 1989). See generally Gretchen H. Schoff, *Women, Justice, and Judgment*, 4 LAW AND INEQ. J. 137 (1986) (discussing the inclusion of the story in a program for lawyers and judges sponsored by the Wisconsin Supreme Court).

A Jury of Her Peers is also included in the anthology LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES 124 (Elizabeth Villiers Gemmette ed., 1992) and discussed in RICHARD POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 112-13 (1988) (considering the difference between male and female “conception[s] of justice”).

14. See, e.g., CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982).

15. Many scholars have addressed the relationship between storytelling and the law, and they have approached the subject from different perspectives and with a wide diversity of goals and methods. A book published several years ago reflects the various perspectives scholars have brought to the field and includes essays concerning the role of narrative and personal stories in legal education and doctrine; the use of storytelling in legal practice and the courtroom; the recognition of the stories “told in the law,” defined as those that underlie legal doctrine and appellate decisions; and the possibility that social change can be effected through alternative legal narratives, meaning stories told by outsiders to challenge what others—often the decisionmakers and those in positions of power—accept as reality. See NARRATIVE AND THE LEGAL DISCOURSE: A READER IN STORYTELLING AND THE LAW (David Ray Papke ed., 1991) [hereinafter NARRATIVE AND THE LEGAL DISCOURSE]; see also LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW (Peter Brooks & Paul Gewirtz eds., 1996); ROBIN WEST, NARRATIVE, AUTHORITY, AND THE LAW (1993).

Since 1989, at least three symposiums have focused on the topic of storytelling and the law. See generally *Lawyers as Storytellers & Storytellers as Lawyers: An Interdisciplinary Symposium Exploring the Use of Storytelling in the Practice of Law*, 18 VT. L. REV. 567 (1994); *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); *Pedagogy of Narrative*, 40 J. LEGAL EDUC. 1 (1990).

Articles that have discussed the relationship between storytelling and the law include Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991); Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994) [hereinafter Baron, *Resistance to Stories*]; Daniel A. Farber & Suzanna Sherry, *Telling Stories out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807 (1993); Jane C. Murphy, *Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Re-*

about the stories told and accepted in the courtroom, how they both reflect and reinforce prevailing societal assumptions and expectations. In *A Jury of Her Peers*, the legal perspective, represented by the men who are in charge of the investigation and who will stand in judgment, is portrayed as narrow and rigid, based on preconceived notions about gender roles that make it impossible for them to recognize or understand the experiences of the accused woman. Accordingly, the story that is relevant to the men, and therefore relevant to the law, ignores or rejects many of the complex elements of the real-life narrative, elements which the women recognize as an explanation for the crime. Readers are left with the overwhelming impression that the stories that would eventually be told in the courtroom would be determined by the underlying biases of the men, who would both tell the stories and interpret them, and that justice could not be done with such a limited and constrained perspective.

In discussing *A Jury of Her Peers* with my students, I explain that the story was inspired by the actual trial of Margaret Hossack, who was accused of murdering her husband in Iowa in 1900.¹⁶ At the time, Susan Glaspell, a native of Davenport, Iowa, was twenty-four years old and working as a reporter for a Des Moines newspaper.¹⁷ She had graduated from Drake University the previous year with a degree in philosophy.¹⁸ Glaspell was assigned to cover the

form, 21 HOFSTRA L. REV. 1243 (1993). See also Angel, *supra* note 10, at 232 n.11 (citing other articles concerning storytelling and the law).

For an overview of the scholarship on storytelling and the law, see, e.g., Jane B. Baron, *The Many Promises of Storytelling in the Law: An Essay Review of Narrative and the Legal Discourse: A Reader in Storytelling and the Law*, 23 RUTGERS L.J. 79 (1991) [hereinafter Baron, *Many Promises of Storytelling*].

16. Although Glaspell herself never named the Hossack case as the source of her inspiration, several scholars have identified that case as the one on which *Trifles* and *A Jury of Her Peers* are based. See Ben-Zvi, *supra* note 6, at 144; Diane D'Amico, Susan Glaspell's *Trifles* and the Hossack Murder Trial 2 (1992) (unpublished manuscript, on file with the *Stanford Law Review*); Linda K. Kerber, *The Case of the Broken Baseball Bat: Women and the Obligation of Jury Service* 12 (1990) (unpublished manuscript, on file with the *Stanford Law Review*).

In her autobiography, Susan Glaspell describes how she came to write *Trifles*, from which she later adapted *A Jury of Her Peers*. She and her husband, George Cram Cook, were living in Provincetown after having founded the dramatic group the Provincetown Players in 1915. When the group needed an additional play, her husband urged Glaspell (who had written novels and short stories but only one play, *Suppressed Desires*, written in 1915 in collaboration with her husband) to write one. After initially protesting, Glaspell agreed to try. In her autobiography, Glaspell wrote:

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.

SUSAN GLASPELL, *THE ROAD TO THE TEMPLE* 255-56 (1927).

17. See Ben-Zvi, *supra* note 6, at 143. For more complete biographical information on Glaspell, see generally VERONICA MAKOWSKY, *SUSAN GLASPELL'S CENTURY OF AMERICAN WOMEN: A CRITICAL INTERPRETATION OF HER WORK* (1993); MARCIA NOE, *SUSAN GLASPELL: VOICE FROM THE HEARTLAND* (1983); WATERMAN, *supra* note 4.

18. See NOE, *supra* note 17, at 16.

Hossack case soon after the murder of John Hossack was first reported.¹⁹ She would later become a major writer, the author of nine novels and numerous plays and short stories, and the winner of the Pulitzer Prize.²⁰ But up to this

19. See Ben-Zvi, *supra* note 6, at 143-44. Although none of the articles on the Hossack case contains a byline identifying Susan Glaspell as the author, numerous similarities exist (as the reader of this article will note) between the Hossack case and Glaspell's work. According to Professor Ben-Zvi, Glaspell reported the case for the *Des Moines Daily News*, a conclusion which Professor Ben-Zvi bases on Glaspell's history of working with that newspaper, as well as "striking similarities" between those reports on the Hossack case and the columns published with Glaspell's byline. See Letter from Linda Ben-Zvi, Professor of English and Theater, Colorado State University, to Patricia L. Bryan, Professor of Law, University of North Carolina (Mar. 5, 1996) (on file with the *Stanford Law Review*). A newspaper report published contemporaneously with the Hossack trial, however, identifies "Susie Keating Glaspell" as a reporter for the *Iowa Capital*, a rival Des Moines newspaper that also extensively covered the Hossack case. See *Testimony in the Hossack Trial*, INDIANOLA HERALD, Apr. 11, 1901.

20. Many of Glaspell's most important works were written in the first half of the twentieth century and depict the experiences and struggles of women in a male-dominated society. Glaspell is perhaps best known for her plays, almost all of which focus on women and their experiences, including their struggles for self-realization and self-expression. Glaspell won the Pulitzer Prize in 1931 for her play *Alison's House*, which she had written the previous year. In addition to *Trifles* and *Alison's House*, her plays include *The Outside* (1917); *Woman's Honor* (1918); *Bernice* (1919); *The Verge* (1921); and *Inheritors* (1921). All except *Alison's House* were written and produced during Glaspell's association (as an actress as well as writer and director) with the Provincetown Players. Eugene O'Neill was also associated with the group, which performed many of his plays for the first time. See NOE, *supra* note 17, at 29-46.

Susan Glaspell's early novels include *The Glory of the Conquered: The Story of a Great Love* (1909); *The Visioning* (1911); and *Fidelity* (1915). Thirteen years later, after the death of her husband, she returned to fiction and wrote six more novels: *Brook Evans* (1928); *Fugitive's Return* (1929); *Am brose Holt and Family* (1931); *The Morning Is Near Us* (1940); *Norma Ashe* (1942); and *Judd Rankin's Daughter* (1945). Glaspell also wrote numerous short stories, including over 30 written in or prior to 1917. Some of her stories were collected in SUSAN GLASPELL, *LIFTED MASKS* (Frederick A. Stokes Co. 1912) (1903). For summaries of and citations to her works, including plays, novels, and short stories, see PAPKE, *supra* note 2, at 99-135.

Glaspell was a productive and successful writer during her lifetime. As early as 1922, she was hailed as the "playwright of woman's selfhood," THE DICTIONARY OF LITERARY BIOGRAPHY 215 (1981), and over the next several years, she significantly contributed to the development of experimental theater. After her death in 1948, however, she fell into obscurity, and her works were allowed to go out of print. She was remembered primarily for her association with Eugene O'Neill, a dramatist whose reputation far exceeded that of Glaspell's. See generally Christine Dymkowski, *On the Edge: The Plays of Susan Glaspell*, 31 MOD. DRAMA 91 (1988).

In the past 20 years, Glaspell's life and work have come under increased scrutiny by feminist critics, who attribute her disappearance from the literary canon (similar to the disappearance of other female authors) to the fact that her work primarily focuses on the lives and experiences of women. As one major Glaspell scholar has written:

The career of Susan Glaspell (1876-1948), the American playwright and novelist, follows closely the trajectory of other "reclaimed" American women writers of the century such as Kate Chopin, Charlotte Perkins Gilman, and Zora Neale Hurston: well known in her time, effaced from canonical consideration after her death, and rediscovered years later through the surfacing of one work [*Trifles*], around which critical attention has focused.

Ben-Zvi, *supra* note 3, at 1. Christine Dymkowski tells a similar story:

Until recently, Susan Glaspell has been little more than "a footnote in the history of drama," remembered chiefly for her association with Eugene O'Neill and the Provincetown Players; her contemporary reputation as one of the two most accomplished playwrights of twentieth-century America may come as a legitimate surprise even to serious students of dramatic history.

Dymkowski, *supra*, at 91. See generally Linda Ben-Zvi, *Susan Glaspell and Eugene O'Neill: The Imagery of Gender*, EUGENE O'NEILL NEWSL., Spring 1986, at 22 (concluding that Glaspell may have been more of an influence on Eugene O'Neill than has previously been understood); Linda Ben-Zvi, *Susan Glaspell's Contributions to Contemporary Women Playwrights*, in FEMININE FOCUS: THE NEW WOMEN PLAYWRIGHTS 147 (Enoch Brater ed., 1989) [hereinafter Ben-Zvi, *Susan Glaspell's Contributions*] ("Few

point, her writing had consisted primarily of assignments in her newspaper job, where she focused on statehouse and legislative reports.²¹ She had had little exposure to the law or the courtroom. The investigation into the murder of Mr. Hossack, followed by the arrest, trial, and, finally, conviction of his wife, Margaret Hossack, was Susan Glaspell's introduction to the system of criminal justice.

As she observed the legal process at work, Susan Glaspell saw and reported on a system controlled by male figures of authority. The sheriff, the coroner, the trial judge, and the lawyers were all men. Women were not permitted to sit on juries at that time,²² so the coroner's jury, the grand jury that indicted Mrs. Hossack, and the trial court jury consisted entirely of men. Susan Glaspell was one of the few female reporters who followed the case,²³ describing for her readers the gruesome crime and the long ordeal of Mrs. Hossack and her family.

have been so successful in so many areas of theater, yet, ironically, few have so completely disappeared from the dramatic canon as Susan Glaspell.”).

In the past five years, three books have been published on Susan Glaspell, including much contemporary critical evaluation of her work. See generally GLASPELL: ESSAYS, *supra* note 3; MAKOWSKY, *supra* note 17; PAPKE, *supra* note 2. Numerous articles have been written in the last fifteen years discussing her works from a feminist perspective, as well as her unique and valuable contributions to American drama. For example, Professor Ben-Zvi has described Glaspell's plays as

important because they are among the first modern writings to focus exclusively on female personae, but they go even further. They offer a new structure, a new dramatic language appropriate to their angle of vision, and a new depiction of character which accommodates the experience of the central figure they delineate, a woman seeking her way in a hostile and often unfamiliar world.

Ben-Zvi, *Susan Glaspell's Contributions*, *supra*, at 148; see also Dymkowski, *supra*, at 91-92 (describing as “inherent in almost all of Glaspell's work . . . a consciousness that identifies women as outside the mainstream of life and thus capable of shaping it anew”); Sharon Friedman, *Feminism as Theme in Twentieth-Century American Women's Drama*, AM. STUD., Spring 1984, at 69, 74 (describing Glaspell's portrayal of “the various aspects of feminine consciousness and the specifically female experience out of which that consciousness evolves”).

Citations to all works of literary criticism through 1993 that discuss Susan Glaspell's work are collected and annotated in PAPKE, *supra* note 2. For other critical evaluations of her work discussed in the context of her life, see generally NOE, *supra* note 17; WATERMAN, *supra* note 4.

21. See NOE, *supra* note 17, at 16.

22. See Grossman, *supra* note 10, at 1131-60 (describing the history of the exclusion of women from juries and the fight by women's rights advocates to change the laws). In 1898, Utah became the first state to enact a statute permitting women to serve on juries; Washington followed in 1911; and then Kansas in 1913. See *id.* at 1135. It was not until 1968 that Congress passed legislation ensuring that women could serve on juries in all 50 states. See *id.* at 1138. Even then, women often served under different conditions than men, often being exempted unless they took affirmative action to register. See *id.*; see also Angel, *supra* note 10, at 324-36; Weisbrod, *supra* note 10, at 59. See generally Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139 (1993); Note, *Beyond Batson: Eliminating Gender-Based Peremptory Challenges*, 105 HARV. L. REV. 1920 (1992). In 1975, the U.S. Supreme Court declared that it was unconstitutional to systematically exclude women from jury service, basing its decision on the Sixth Amendment rights of criminal defendants. See *Taylor v. Louisiana*, 419 U.S. 522, 525 (1975). In 1979, again basing its decision on the rights of criminal defendants, the Court invalidated a state statute that automatically exempted women from jury service upon their request. See *Duren v. Missouri*, 439 U.S. 357 (1979).

23. See *Testimony in the Hossack Trial*, *supra* note 19 (identifying many of the reporters following the Hossack case and naming as the only woman “Susie Keating Glaspell,” described as a “close observer” and a “capable writer”).

I started my investigation into the story of Margaret Hossack because I was interested in learning more about what had led Susan Glaspell to write *A Jury of Her Peers* and understanding what aspects of the trial inspired Glaspell's doubts about the legal system and its ability to do justice. Although the trial took place more than ninety years ago, I discovered that a county clerk of court's office had the original transcripts from the coroner's inquest into Mr. Hossack's murder, as well as the actual warrant for Margaret Hossack's arrest.²⁴ That same office had original handwritten transcripts from the grand jury proceedings that had led to Margaret Hossack's indictment. The library of the Iowa Supreme Court had the briefs filed on appeal, which included extensive abstracts of trial testimony. One of the county courthouses had the probate records filed after John Hossack's death, in addition to copies of various court papers filed in the case.²⁵ Local historical societies and museums had newspapers from that time on microfilm, so I was able to read more than a hundred newspaper reports dealing with the crime, the arrest of Margaret Hossack, her trial, and its aftermath. Finally, I was able to contact two direct descendants of Margaret Hossack, a great-grandson and a great-granddaughter, who told me what they knew about the history of their family.

As my research unfolded, I became fascinated by the story of the woman whose life inspired *A Jury of Her Peers*. The story was dramatic and mysterious.²⁶ John Hossack, a prominent farmer and landowner nearly sixty years old, was killed by two powerful blows to his skull as he lay in bed late one night in December 1900. Almost immediately, suspicions focused on his wife of thirty-three years, Margaret Hossack, also in her late fifties and the mother of their nine children. Although she professed her innocence, her story was almost impossible to believe: She claimed that she was asleep next to her husband when the violent attack occurred, waking in time to hear the door close as the murderer escaped.

Strong evidence existed that Mrs. Hossack had a motive for the murder. Neighbors admitted that they had known for years of Mr. Hossack's cruelty toward his wife and children, and they reported that Mrs. Hossack, often in tears, had told them many times that she was afraid for the safety of her family. Apparently, she often said the family would have no peace as long as her husband was alive. Soon after the blood-stained family axe was found near the Hossack house, Margaret Hossack was arrested on charges of first-degree murder. When she was tried for the crime in April 1901, the prosecution asked for the death penalty.²⁷

The circumstantial evidence against Mrs. Hossack was strong, and many members of the community seemed convinced of her guilt from the begin-

24. These records were found in the Madison County Clerk of Court's Office in Winterset, Iowa.

25. Probate records and other court documents were found in the Warren County Courthouse in Indianola, Iowa.

26. The "official" description of the crime can be found in *State v. Hossack*, 89 N.W. 1077 (Iowa 1902). This brief reconstruction of the crime and its aftermath is drawn from the transcripts of the coroner's inquest, press accounts, trial testimony, and other materials, which are cited in the longer description at text accompanying notes 89-194 *infra*.

27. For a full account of the trial, see text accompanying notes 197-290 *infra*.

ning.²⁸ Nevertheless, her consistent claim that she was innocent, her calm and stoic demeanor as she listened to the evidence against her and testified on her own behalf, and the loyal and emotional support of her nine children added an aura of drama and tragedy to the proceedings. The trial of Margaret Hossack generated enormous publicity and intense excitement, drawing people from all over the state, crowding the courtroom and the surrounding roads.²⁹ It was said to be one of the most sensational trials ever in the history of Iowa,³⁰ one which would long be remembered for its gruesomeness, its mystery, and its "exceedingly great strangeness" that made it "so weird, so hard to understand."³¹

As I learned more about the case, Glaspell's inspiration for *A Jury of Her Peers* seemed clear. The competing narratives told in the courtroom where Mrs. Hossack was tried for her life seemed limited and incomplete; neither the prosecution nor the defense offered a satisfying description of the Hossack family or a complete explanation of the crime. Just as Susan Glaspell might have been, I was left with the disturbing sense that the stories told in the courtroom about Margaret Hossack were constructed by the lawyers based on assumptions and stereotypes, ignoring the complexity of the actual experiences of Margaret Hossack and the difficult moral questions her experiences presented. Professor James Boyd White has characterized some legal verdicts as "not a judgment about what really happened in the world, but about what happened in court."³² It seemed to me that the verdict in the Hossack case fit that description, with the verdict then inspiring Susan Glaspell to write her short story in which the women arrive at a different kind of judgment, considering facts and circumstances never fully taken into account in the courtroom.

As I worked on uncovering the full story of Margaret Hossack, a double irony emerged. Even as Glaspell's story suggested a contrast between the sim-

28. See *Wife Charged with Murder*, DES MOINES DAILY CAP., Dec. 5, 1900. According to the article:

With almost the first news of the crime, Mrs. Hossack was suspicioned by the neighbors of either being guilty of or implicated in the crime . . . With first report of the crime even the more conservative were not slow in shaking their heads and whispering that the coroner's jury would not have to go outside the house to find clues.

Id.; see also *She Prepares to Fight*, DES MOINES DAILY NEWS, Dec. 6, 1900 ("Members of the Hossack family are standing by her solidly, but public sentiment is overwhelmingly against her.").

29. See, e.g., *Mrs. Hossack Found Guilty of Murder*, DES MOINES DAILY CAP., Apr. 11, 1901. The article stated:

It has been long since any trial in the state of Iowa has attracted the statewide attention that has been given the trial of the Hossack murder case . . . It has been so strange and horrible that it has fascinated many who are not ordinarily interested in the proceedings in a criminal court. An old woman on trial for the murder of her husband is far from an every-day sight.

Id.; see also *Mrs. Hossack Looks Haggard and Worn*, DES MOINES DAILY CAP., Apr. 3, 1901.

30. See, e.g., *Hossack Case Up*, DES MOINES DAILY CAP., Jan. 8, 1901; *It Looks Black for Margaret Hossack*, DES MOINES DAILY CAP., Apr. 5, 1901 (calling the Hossack case "as dramatic a trial as was ever called in the state of Iowa"); *Mrs. Hossack Looks Haggard and Worn*, *supra* note 29 ("Never in the history of the county is there said to have been such interest in the trial of any case.").

31. *Defense Hopes Rest upon Hossack Dog*, DES MOINES DAILY CAP., Apr. 6, 1901.

32. JAMES BOYD WHITE, HERACLES' BOW 185 (1985). Professor White's discussion focuses on the acquittal in *Noon Wine*, a short story by Katherine Anne Porter. According to Professor White, the acquittal in that story, which was never accepted by the defendant or his neighbors, was a judgment only about what happened in the courtroom rather than in real life because "at trial no attempt [was] made to tell [the narrative of the crime] truly and fully." *Id.*

plistic narrative that would most likely be told in the courtroom and the more complex reality outside it, so it became apparent that reality is rarely so uncomplicated, or the real story so straightforward, as that portrayed by Glaspell. Historical narratives are seldom as satisfying as fiction, where the author has the power to tell us all of the relevant facts so that we can solve the mystery and believe we comprehend why the crime was committed.

By contrast, I quickly realized that it was impossible for an outsider to ever actually know the true story of what happened in the Hossack case. Clues to motivations, behavior, relationships, and family dynamics were sparse and often contradictory, and events were described differently by different people. Based on the facts I knew, I could construct alternative versions of the crime, as the lawyers did at Mrs. Hossack's trial nearly one hundred years before. But all of the stories I could tell, just as those told by the lawyers, were only suppositions, possibilities. And as in the trial of Lizzie Borden, who was accused of killing her father and stepmother almost ten years before the murder of John Hossack,³³ it is that sense of uncertainty, of "eternal doubt," that must account for both the frustration and the fascination of the Hossack case, both to me and to contemporaries of Margaret Hossack, who were enthralled with every detail of the gory crime and its aftermath.³⁴

Despite the continuing mystery surrounding the crime, however, I read enough to realize that the true story of Margaret Hossack's life and relationship with her husband was far more complicated than that reflected by the lawyers for either the defense or the prosecution. Both sides portrayed Margaret Hossack in ways that heavily relied on stereotypical views of women and marriage. Thus, for the prosecution, Margaret Hossack's guilt seemed not only to depend on proof that she had wielded the axe, but it also hinged on whether the jury could be convinced that she had otherwise transgressed the norms of feminine behavior shared by the community, a finding which would support the conclusion that she was the type of woman who could murder her husband.³⁵ For the defense, acquittal seemed to depend on depicting Mrs. Hossack as within the prevailing paradigm of feminine virtue, a model which certainly did not include the capability to commit a violent act against a male figure of authority.³⁶

33. For descriptions of the trial of Lizzie Borden, which took place in New Bedford, Massachusetts in 1893, see ANN JONES, *WOMEN WHO KILL* 222-52 (1991), and see generally ROBERT SULLIVAN, *GOODBYE LIZZIE BORDEN* (1974); Cara W. Robertson, *Representing "Miss Lizzie": Cultural Convictions in the Trial of Lizzie Borden*, 8 YALE J.L. & HUMAN. 351 (1996).

34. See TIM O'BRIEN, *IN THE LAKE OF THE WOODS* 269 n.120 (1994).

35. See text accompanying notes 228-258 *infra*.

36. See notes 278-281 *infra* and accompanying text. These tactics by the prosecution and the defense (with their diametrically opposed portrayals of Mrs. Hossack) are consistent with early theories of female criminology, which explained female crime in terms of "the failure of individual women to adapt themselves to their supposedly-natural biological and/or socio-sexual destinies." Pat Carlen, *Introduction to CRIMINAL WOMEN: AUTOBIOGRAPHICAL ACCOUNTS* 1, 1 (Pat Carlen ed., 1985); see also authorities cited therein. Thus, the acquittal of a female defendant often depended on proof not only that she was innocent, but also that she was an acceptable and properly socialized woman, with all that that role entailed in terms of passivity, obedience, and domesticity.

The two portrayals of Mrs. Hossack were, of course, also consistent with the dichotomous characterization of women as either whores or virgins, a characterization which continues to be a culturally dominant narrative. See Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Dis-*

The abuse that Margaret Hossack had suffered was of great significance, if only to the prosecution, because it provided a motive for the crime. The defense lawyers sought to characterize Mr. Hossack's cruelty toward his family as irrelevant, and they objected to the introduction of such testimony at every opportunity. In fact, Mrs. Hossack's acquittal seemed to depend on a denial of the reality of her marriage and the harsh treatment she had endured from her husband, with members of the family brought to the stand to testify to the happiness and stability of the Hossack union.

As she listened to the testimony and legal arguments in the Hossack case, Susan Glaspell must have been struck by the inadequacy of the courtroom stories in conveying the reality of Margaret Hossack's life and experiences. In *A Jury of Her Peers*, Glaspell presents a different perception of experiences similar to those of Mrs. Hossack, a perception which was absent from the courtroom and the newspaper reports of the Hossack trial. Glaspell suggests that one can understand the story in a way that arouses sympathy for the accused, that provides a justification for the crime, and that raises the possibility that others may in some way share in the responsibility for what happened. In the story, Glaspell suggests that such a perspective is possible for the women characters because they are able to empathize with Minnie Wright and imagine themselves in her situation. In contrast, the men lack a similar empathic understanding of the crime; they appear to base their judgments on erroneous preconceptions and assumptions, leading the reader to question whether they are capable of doing justice.

Susan Glaspell wrote her story in reaction to the first trial of Margaret Hossack. Apparently, however, she was not alone in her sense that the issue of Margaret Hossack's guilt had not been fully and fairly determined. After the first trial, many were to reconsider how Margaret Hossack should have been judged, and her story continued to be retold: by another court, other lawyers, another jury, and members of the community.³⁷ In a world where family violence was most often viewed as a private matter rather than as a public concern,³⁸ those who heard the story of Mrs. Hossack must have struggled with their emotions and their reactions. Without a language to discuss domestic abuse, they may have realized only that the conventional stories told about her in court—describing Margaret Hossack as either a good woman who loved her husband or an evil one who hated him—could not begin to capture the complexity of her life and her experiences. The events that followed the jury verdict in the case tell us that many eventually recognized what Susan Glaspell suggests in *A Jury of Her Peers*: that the patriarchal norms and expectations of those who stood in judgment, both as jury members and as members of the community, prevented the legal system from doing justice.

In his discussion of the relationship between legal narratives and the "ordinary narratives of real life," Professor White has made the point that the legal

course, *Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869, 929-31 (1996); see also authorities cited therein.

37. See text accompanying notes 307-394 *infra*.

38. See notes 162, 248, 256 & 422 *infra*.

verdict does not always end the narrative of the crime.³⁹ In a courtroom, the judge or the jury hears competing stories and then selects one to serve as the authoritative version. That story provides the basis for a collective judgment of guilt or innocence; responsibility and blame are assigned and the punishment is fixed according to that story. A legal judgment speaks in terms of authority, but as Professor White has discussed, the role of any legal judgment ultimately depends on community acceptance and validation. If the sense of injustice is strong enough—the sense that the story told and accepted in the courtroom was not morally or factually complete or fully accurate—the legal version of the story may ultimately be rejected.⁴⁰ As Professor White has explained:

[A legal] judgment is always incomplete, for it always depends upon what happens in the other world of ordinary narrative and private life in which it must work and which it cannot control. . . . It is not that the legal judgment has no authority, but that its authority is not absolute and should always be defensible in other terms, in the language of the community itself.⁴¹

In the case of Margaret Hossack, subsequent events suggest that, in the end, the legal verdict was not so defensible.

In this article, my primary goal is to tell what I have discovered about the story of Margaret Hossack, discussing how her first trial inspired Susan Glaspell to write her classic work *A Jury of Her Peers*. I hope that a factual account of the case will enrich the understanding of those who read Glaspell's story by providing a detailed consideration of the events that inspired the story.⁴² 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 courtroom may be distorted by the norms and expectations of those in authority. Other stories, those which reflect the experiences of those

39. WHITE, *supra* note 32, at 185-86.

40. Examples of cases in which the legal verdicts have been challenged and rejected, at least by some, include such politically charged and famous cases as those against Ethel and Julius Rosenberg, *see generally* MALCOLM P. SHARP, *WAS JUSTICE DONE? THE ROSENBERG-SOBELL CASE* (1956); Nicola Sacco and Bartolomeo Vanzetti, *see generally* JOHN DOS PASSOS, *FACING THE CHAIR: STORY OF THE AMERICANIZATION OF TWO FOREIGNBORN WORKMEN* (1927); and Leo Frank, *see generally* HARRY L. GOLDEN, *A LITTLE GIRL IS DEAD* (1965). Lizzie Borden's trial is a historical example where the legal verdict has continually been debated and questioned. *See* note 33 *supra*. Some would argue that the legal verdicts in these cases were not based solely on the evidence presented at trial, but that they were also attributable to stereotypes—whether of Jews, immigrants, or women—that prevailed in the minds of the jurors and that affected the stories they believed and the decisions they made. A contemporary example of a jury verdict that has been criticized and rejected by many is the acquittal of O.J. Simpson of the murder of his wife and her friend. *See, e.g., Behind the Verdict*, *ECONOMIST*, Oct. 7, 1995, at 27; Jeffrey Rosen, *The Bloods and the Crus*, *NEW REPUBLIC*, Dec. 9, 1996, at 27 (criticizing the use of race in the O.J. Simpson verdict); Betsy Streisand, *And Justice for All?*, *U.S. NEWS & WORLD REP.*, Oct. 9, 1995, at 49.

41. WHITE, *supra* note 32, at 191.

42. The only other published descriptions of the Hossack case are in Angel, *supra* note 10, and Ben-Zvi, *supra* note 6. In her account, Professor Ben-Zvi almost exclusively relies on 26 newspaper reports published in the *Des Moines Daily News* during the first trial of Margaret Hossack, as well as the published decision in the Hossack case by the Iowa Supreme Court. *See* Ben-Zvi, *supra* note 6, at 144-53. Professor Angel, in her description of the Hossack case, cites the decision by the Iowa Supreme Court and the article by Professor Ben-Zvi. *See* Angel, *supra* note 10, at 241-44.

not in power and which therefore conflict with the conventional accounts of the courtroom, are either believed to be false or never told.

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. Narratives such as *A Jury of Her Peers* and the story of Margaret Hossack offer that opportunity by extending an invitation to envision an unfamiliar context and imagine circumstances that we ourselves may never encounter.⁴³ Stories give us the potential to acquire an empathic understanding of other people, an understanding which helps us to recognize the stereotypical notions that may be embedded in the law even though they stand at odds with the reality and complexity of the lives of many people. Hearing and appreciating stories make us better able to work together as a community to define justice in a way that more broadly reflects the diversity of the human experience.

It is, therefore, to the stories that I will turn: first to the fictional one told by Susan Glaspell, and then to the factual narrative of Margaret Hossack.

I. A JURY OF HER PEERS

Susan Glaspell wrote *A Jury of Her Peers* in 1917, nearly sixteen years after she reported on the first trial of Margaret Hossack.⁴⁴ During those sixteen years, Glaspell completed numerous short stories, several plays, and three novels.⁴⁵ She had already begun to explore some of the feminist themes that are evident in *A Jury of Her Peers* and that would recur in many of her later

43. See, e.g., Robin West, *Economic Man and Literary Woman: One Contrast*, 39 MERCER L. REV. 867, 873-77 (1988); James Boyd White, *What Can a Lawyer Learn from Literature?*, 102 HARV. L. REV. 2014, 2018 (1989) (book review); see also note 15 *supra*.

44. Susan Glaspell first wrote the work in play form under the name *Trifles* in 1916. The next year she rewrote it as a short story published under the name *A Jury of Her Peers*. See Susan Glaspell *Chronology*, in GLASPELL: ESSAYS, *supra* note 3, at 331, 334. Although the two versions are similar, the story more strongly suggests the distance between the men and the women and shows the growing bond between the women as they empathize with Minnie Wright. For a detailed comparison of the play and the story, see generally Leonard Mustazza, *Generic Translation and Thematic Shift in Susan Glaspell's Trifles and A Jury of Her Peers*, 26 STUD. SHORT FICTION 489 (1989).

The titles of the two works themselves are quite significant: Whereas the play's title emphasizes the household items from which the two women deduce the full story of the crime, the story's title calls attention to women's legal place in American society at a time when they were unable to vote and considered, under the law, to be inferior to men. Cf. Alkalay-Gut, *Jury of Her Peers*, *supra* note 6, at 8 ("The title of the story almost certainly echoes Lucy Stone's plea for a fair trial for Lizzie Borden by a 'jury of her peers.'"); Hedges, *supra* note 3, at 106 (discussing some early responses of feminists to the legal system established and controlled by men). As Lucy Stone noted, "Slowly, perhaps, but surely, the idea is growing that a jury ought to be composed of men and women, and that a woman especially should have a jury of her peers, not her sovereigns, as in the case of Lizzie Borden." Lucy Stone, *A Flaw in the Jury System*, THE WOMEN'S J., June 17, 1893, at 188.

Susan B. Anthony also used the phrase "a jury of her peers" in 1873, arguing that she was denied her constitutional right to such a jury after she was arrested for having tried to vote and then judged guilty by an all-male jury. Like Stone, Anthony argued that, as long as women "were deprived of rights that men enjoyed, women were not men's peers but their subordinates." Hedges, *supra* note 3, at 106 (citation omitted); see also Weisbrod, *supra* note 10, at 74 n.55.

45. Glaspell's work during this period included over 30 short stories, the plays *Suppressed Desires* and *Trifles*, and the novels *The Glory of the Conquered*, *The Visioning*, and *Fidelity*. See notes 16 & 20 *supra*.

works, which often concern the struggles of women against inhibiting social conventions to gain self-awareness and a sense of self-worth.⁴⁶

A Jury of Her Peers is, however, unique among Glaspell's work because it also raises questions about the law, questions which were no doubt stimulated by her observations of the trial of Margaret Hossack. In the short story, Glaspell contrasts the approaches of the men and the women in their investigation and comprehension of a crime, revealing differences in how they discover and decode clues at the crime scene. Through that contrast, Glaspell exposes the difference between the story of the crime that would be relevant under the law, the one in which the men are interested, and the story uncovered and understood by the women. It is the women's story that reveals the actual motivation for the crime and that raises difficult moral issues of responsibility. The men, who will stand in judgment of the accused woman, can neither see nor understand the more complex story and fail to recognize the related moral issues. *A Jury of Her Peers* suggests a conclusion that Susan Glaspell must have reached while she reported on the first murder trial of Margaret Hossack: that justice was not done under the law.

A Jury of Her Peers takes place in the rural Midwest at the turn of the century.⁴⁷ The story opens with a group of five people traveling to the Wright farmhouse the day after a farm wife, Minnie Wright, is arrested and imprisoned on the charge of killing her husband of twenty years, strangling him as he lay in bed. Mrs. Wright claims innocence, saying she was asleep next to her husband, John, when the murder occurred.⁴⁸ Two of the men—the sheriff and the prosecuting attorney—are visiting the Wrights' house in their official capacity to search for clues. Mr. Hale, a neighboring farmer, is along to tell how he discovered the murder the day before. Mrs. Peters, the sheriff's wife, is with the three men so that she can gather a few clothes for the accused woman, and she has asked Mrs. Hale to accompany her.⁴⁹

The differences between the men and the women become apparent almost immediately. They divide into two separate groups as they enter the Wright farmhouse, but the distance is quickly shown to be more than simply physical; the psychological and emotional reactions of the men and the women differ as well. Throughout the story, the men and the women display different interests, concerns, and priorities. And it is the men who carry the weight of authority, who are charged with the investigation of the murder. The men will decide what is relevant under the law, just as other men, acting as judge and jurors, will be responsible in the courtroom for deciding the fate of Minnie Wright. In the minds of the men in the story, just as in the society as a whole, the women

46. During the period between the time she reported the Hossack case and wrote *Trifles* and *A Jury of Her Peers*, Glaspell also became much more educated and interested in the most radical political issues of the day, including socialism and feminism. See Ben-Zvi, *supra* note 6, at 160-61.

47. Although no specific locale is stated, the county attorney has just returned from Omaha, suggesting that the events take place in Nebraska or possibly Iowa. See Glaspell, *supra* note 1, at 64.

48. See *id.* at 66. "I sleep sound," claimed Mrs. Wright, continuing, "I was on the inside." *Id.* In contrast, in the Hossack case, Mrs. Hossack slept on the outside of the bed, so the murderer would have had to have reached over her to attack Mr. Hossack. See note 91 *infra*.

49. See Glaspell, *supra* note 1, at 62-64.

are marginalized, with their abilities perceived to be limited to those necessary for their domestic duties of cooking and housekeeping.⁵⁰

Inside the Wrights' farmhouse, the men take charge at once and begin their attempt to solve the crime. Mr. Hale tells of going to the Wright home on an errand and hearing Mrs. Wright's story that her husband was strangled with a rope while she was asleep in bed next to him. Mr. Hale expresses his disbelief that she could have slept through the murder, a suspicion which is apparently shared by the other men.⁵¹ At one point, Mr. Hale starts to suggest that he has known of some difficulties between Mr. and Mrs. Wright, but the county attorney cuts him off, stressing that he wants to focus solely on the events of the day before.⁵²

Although they are searching for a motive for the killing, "[s]omething to show anger—or sudden feeling,"⁵³ the men linger only a few minutes in the Wrights' kitchen, the place where Minnie Wright has spent most of her waking hours. They are convinced of its irrelevance to anything important, sure of the "insignificance of kitchen things."⁵⁴ The men laugh at their wives and Minnie Wright for their concern over domestic "trifles," although they are also quick to criticize Minnie for what they judge to be poor housekeeping skills.⁵⁵ As they proceed with their fixed plan of investigation, the men seem convinced that the women are incapable of understanding anything relevant to the story of the crime.⁵⁶

The irony of the men's arrogance becomes apparent once they leave the kitchen. The men search for clues upstairs, with their footsteps often audible, reminding the women below of the male presence and authority. Mrs. Hale and Mrs. Peters remain in the kitchen and gradually piece together the real story of Minnie Wright, her life and the killing of her husband. Evidence that appears disconnected and means nothing to the men reveals Minnie Wright's hardship and despair to the women. The women focus on Minnie Wright's shabby and much-mended clothes, the sagging rocking chair, and the broken stove in need of repair. They sense the lonely and desolate feel of the house, down in a

50. As noted by one scholar, "The separateness of the female and male worlds is . . . immediately established visually and then reinforced by the dialogue." Dymkowski, *supra* note 20, at 92. The distance between the men and women in the story is illustrative of the nineteenth-century doctrine of "separate spheres," with women's sphere restricted to the home and domestic life. See Hedges, *supra* note 3, at 98. See generally Nadine Taub & Elizabeth M. Schneider, *Perspectives on Women's Subordination and the Role of Law*, in *THE POLITICS OF LAW* 117 (David Kairys ed., 1982) (discussing the law's exclusion of women from the "public sphere" and its refusal to regulate the "domestic sphere" to which women have traditionally been confined).

51. See Glaspell, *supra* note 1, at 64-67.

52. See *id.* at 65.

53. *Id.* at 73.

54. *Id.* at 68.

55. See *id.* at 68-69. The county attorney remarks that Minnie Wright seemed to have lacked the "home-making instinct." *Id.*

56. At one point, Mr. Hale, rubbing his face "after the fashion of a show man getting ready for a pleasantry," asks, "But would the women know a clue if they did come upon it?" *Id.* at 70.

hollow out of sight of the road, where Minnie Wright has spent her days alone, without children and friends.⁵⁷

Mrs. Hale speaks of John Wright, Minnie's husband and one companion. In the eyes of the community, he was a "good man," possessing the most important virtues: He "didn't drink, and kept his word as well as most . . . and paid his debts."⁵⁸ And yet, as Mrs. Hale remembers him, "Just to pass the time of day with him [was] like a raw wind that gets to the bone."⁵⁹ He was apparently a cold and silent man, miserly and caring little for what his wife may have wanted. In the small details of Minnie's life, Mrs. Hale recognizes John Wright's cruelty to her, how her marriage to him changed and eventually imprisoned her, destroying her vitality and spirit. Before the women find any specific clues to the crime, they sense the physical and emotional desolation of Minnie's life that could have led to a desperate act of violence.⁶⁰

Then, most significantly, the women discover the very evidence for which the men are searching. They find a clue to what the men would identify as the motive for the crime, the specific event that must have triggered Minnie's violent reaction. From the unfinished tasks in the kitchen and the irregular sewing on one piece of a quilt,⁶¹ the women understand that an event out of the ordinary must have happened to cause Minnie's distress. They discover a broken bird cage that looks as if someone had been rough with it.⁶² And then, finally, the women find the dead body of a songbird in Minnie's sewing box, tenderly wrapped in a piece of silk in preparation for burial. The songbird's neck was wrung, the life "[c]hoked out of him."⁶³ Together, although with few words spoken between them, the women infer that John Wright strangled Minnie's bird, her one source of joy.⁶⁴ His final act of cruelty led to her violent crime of retribution.

57. See *id.* at 70-83. The childlessness of Minnie Wright is a significant change made by Glaspell from the factual account of Margaret Hossack. Mrs. Hossack had nine children, with five of them still living at home at the time of John Hossack's murder. See notes 91 & 97 *infra*. By making Minnie physically alone, Glaspell gives her readers a powerful sense of the psychological feeling of isolation that Glaspell must have attributed to Margaret Hossack despite the presence of her children.

As Elaine Hedges has described and supported with historical references, women in the rural Midwest at the turn of the century were often strongly affected by the loneliness and isolation of the landscape. See Hedges, *supra* note 3, at 93-94 (quoting one woman pioneer: "O the prairie! . . . Its vastness, dreariness, and loneliness is [sic] appalling.").

58. Glaspell, *supra* note 1, at 77.

59. *Id.*

60. According to one scholar, "Isolation induced madness in many [rural women]," so the "murderous behavior in Minnie Wright is therefore neither gratuitous nor melodramatic, as is sometimes charged against Glaspell's story." Hedges, *supra* note 3, at 100.

61. See Glaspell, *supra* note 1, at 74-75. Many scholars have discussed the importance of quilting in the lives of rural women and as a metaphor in Glaspell's story. See, e.g., Hedges, *supra* note 3, at 102-06; Stein, *supra* note 6, at 254-55.

62. See Glaspell, *supra* note 1, at 76.

63. *Id.* at 80.

64. See *id.* As others have recognized, the women's difficulty in articulating what they discovered in the Wright home conveys the message that the reality of domestic violence was ignored, leaving them without language to adequately express what they understand. See Angel, *supra* note 10, at 236; Ben-Zvi, *Susan Glaspell's Contributions*, *supra* note 20, at 157.

In the story's closing scene, Mrs. Hale and Mrs. Peters silently communicate to each other their mutual decision to conceal the body of the songbird.⁶⁵ Mrs. Peters is the first to move, but she is unable to fit the box holding the bird into her handbag. Mrs. Hale takes it from her, hiding it in her large coat pocket just as the men enter the room.⁶⁶ The last words of the story are Mrs. Hale's. In response to a question asked "facetiously" by the county attorney as to how Mrs. Wright planned to finish her quilt, Mrs. Hale replies, "We call it—knot it."⁶⁷ In that final statement, Susan Glaspell not only calls up the image of Minnie having tied the rope around her husband's neck, but she also reenforces the other two women bonding (or "knotting") together, silently refusing to recognize (saying "not" to) the authority of the men.⁶⁸

While the women never articulate a reason for what they do, they are convinced that the evidence of the strangled songbird will assure the conviction of Minnie Wright. As they have heard the county attorney explain:

[I]t's all perfectly clear, except the reason for doing it. But you know juries when it comes to women. If there was some definite thing—something to show. Something to make a story about. A thing that would connect up with this clumsy way of doing it.⁶⁹

The body of the songbird is, of course, exactly the evidence he seeks. It would explain the strange means of the murder—why the woman strangled her husband instead of using the gun that was in the house⁷⁰—and it would also provide the specific trigger for Mrs. Wright's violent rage.

Although the issue of justifiable homicide is often raised in connection with *A Jury of Her Peers*, it is not clear that the women decide that Minnie was justified in what she did or that her crime should be excused because of the life she had led. It seems more reasonable to explain their action on a different ground: their conclusion that the men, who control the process of the law, are incompetent to determine Minnie's guilt or innocence.⁷¹ Under this reading, the women conceal the crucial evidence in order to prevent a legal judgment they believe would be unjust, founded, as they are convinced it would be, on a limited and narrow comprehension of Minnie's life and circumstances.

65. See Glaspell, *supra* note 1, at 82-83.

66. See *id.* at 83.

67. *Id.*

68. See Alkalay-Gut, *Jury of Her Peers*, *supra* note 6, at 8; Hedges, *supra* note 3, at 107.

69. Glaspell, *supra* note 1, at 81.

70. See *id.* at 73. A loaded gun was also found in the Hossacks' house. See text accompanying note 112 *infra*.

71. Others have also interpreted the story this way. See, e.g., MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 220 (1990); Alkalay-Gut, *Murder and Marriage*, *supra* note 6, at 76-77 ("Women band together to protect one another from the evaluations of men because the men are simply not capable of understanding their situation, the same situation that led to the murder in the first place; and it is a political as well as a social condition."); Fetterley, *supra* note 6, at 147-48. Fetterley states:

[I]t is not simply that the men can not read the text that is placed before them. Rather, they literally can not recognize it as a text because they can not imagine that women have stories. . . . Minnie Foster Wright's kitchen is not a text to them, and so they can not read it.

Id.

The women's understanding of Minnie is based, to a large extent, on a shared context; her domestic world and realm of activities are completely familiar to them.⁷² And because they can identify details of their own lives in Minnie's, they are able to imagine not only her circumstances, but also her emotions; they are able to put themselves in her place and feel what she must have felt.

Mrs. Hale, who has known Minnie Wright since they were both young and who is protective of her from the beginning, takes the lead, thinking of what it would have meant in her own life to have worked with a broken stove, to have had only shabby clothes to wear, and to have lived and worked without children or other companionship.⁷³ Mrs. Peters is at first reluctant to identify with the accused woman, but then, remembering the death of her first child on a lonely homestead, she begins to imagine Minnie's loneliness and despair.⁷⁴ Mrs. Peters remembers seeing a boy murder her pet kitten with a hatchet, and she senses in herself the capacity for violence that Minnie displayed.⁷⁵ As Mrs. Peters faces her own powerlessness and inferiority in a world controlled and defined by male figures of authority,⁷⁶ she more fully comprehends Minnie's subjugation and isolation in a world controlled by John Wright.

As the women empathize with Minnie, imagining her emotional reactions, they are also confronted with constant evidence that those who will judge her under the law will not share their perspective. Minnie will be judged and condemned by men whose views, personified in John Wright, created the very situation that gave rise to Minnie's despair. The women know that the men who are investigating the crime, just as those who will later tell her story and judge her in the courtroom, are incapable of identifying with Minnie in any way, of putting themselves in her position. Not only is the realm of her life totally foreign to them, but as they have shown by their constant belittling comments, they view her concerns as trivial and insignificant.

The women understand how the story of Minnie's life will be retold in the courtroom. Minnie has already been found by the men to be at fault as a woman, condemned as a poor housekeeper who lacked the crucial "home-making instinct."⁷⁷ In the ways that matter to the men, John Wright was respected: He

72. Drawing on autobiographic writings of pioneer women in the nineteenth century, Elaine Hedges has sought to communicate the meaning of many of these domestic details to contemporary readers. See generally Hedges, *supra* note 3.

73. See Glaspell, *supra* note 1, at 73.

74. See *id.* at 80.

75. See *id.* at 79.

76. As an indication of her lack of identity, Mrs. Peters is never referred to by her first name, but only by her husband's surname. At the beginning of the story, even Mrs. Hale thinks of her only as "a sheriff's wife." *Id.* at 63. The sense that her individual identity has been erased is emphasized to Mrs. Peters when, late in the story, the county attorney refers to her as "married to the law." *Id.* at 82. Soon after that comment, Mrs. Peters makes her decision to act independently from the men and in concert with Mrs. Hale, concealing the crucial evidence. See *id.* at 83.

77. *Id.* at 69. As one scholar has noted:

The prevalent belief about women who murder at the time of this play seems to have been that only a depraved woman could murder. If a depraved person sins against society somehow, the fault lies in his or her mind, but, when a "normal" socialized person commits a

was sober, kept his word, and paid his debts.⁷⁸ He will no doubt prove to be a most sympathetic victim to the twelve men of the jury who will stand in judgment of his wife. In the courtroom, John Wright's cruelty to his wife will neither justify compassion for Minnie nor serve as a mitigating factor in explaining her crime.⁷⁹ Instead, under the law, her husband's cruelty will be used against Minnie, with the body of the strangled songbird providing the proof of a motive and guaranteeing her conviction.

Shared context is obviously of great importance in distinguishing the story understood by the women from the one they expect to be retold by the men in the courtroom. But Glaspell portrays the perspective of the men as too narrowly focused in yet another way. The story they are seeking to uncover is too specific and limited, involving only the particular events of the night of the murder. Their investigation proceeds according to a fixed and logical plan, with their questions seemingly predetermined, defined by the elements necessary to convict under the law. Their perspective necessarily limits the events that are relevant to the story as it will be retold in court, and in the eyes of the women, it ignores difficult moral issues of blame and responsibility.⁸⁰

While the men move in a logical manner to answer specific questions, the investigation pursued by the women proceeds in a more random and unplanned fashion. As other scholars have suggested, quilting is an appropriate metaphor:⁸¹ The women piece together the evidence out of unconnected bits of information, only gradually revealing the pattern of the whole. The story they uncover is more complicated and open-ended, starting many years before the murder, involving more people, and raising more questions than simply that of who killed John Wright.

Mrs. Hale knew Minnie Wright more than twenty years earlier, when she was the unmarried Minnie Foster. She remembers the Minnie Foster of that time, when Minnie was one of the town girls who sang in the choir, lively and

murder, there is an implied criticism of society. Therefore it is necessary for the county attorney to understand Minnie as deviant as a housewife.

Alkalay-Gut, *Murder and Marriage*, *supra* note 6, at 80 n.4.

78. See Glaspell, *supra* note 1, at 77.

79. See Angel, *supra* note 10, at 247 ("Abused women who kill their abusers, however, do not have a claim of emotional self-defense. In 1916 as well as today, only a physical assault on Minnie Foster Wright would have justified claims of self-defense or provocation.").

80. The narrow focus of the men, which ignores important facts that explain the crime from the women's perspective, is similar to the restrictive focus that some contemporary scholars have criticized as inherent in much of legal doctrine. The criticism is that the background assumptions and expectations of those in power too often determine the supposedly neutral substantive rules that govern what factual information is and is not relevant. See Baron, *Resistance to Stories*, *supra* note 15, at 261-66. As Kim Lane Scheppele has explained:

Drawing the boundaries of legal stories closely around the particular event at issue may exclude much of the evidence that outsiders may find necessary to explain their points of view. But standards of legal relevance, appearing to limit the gathering of evidence neutrally to just "what happened" at the time of "the trouble," may have the effect of excluding the key materials of outsiders' stories.

Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2097 (1989).

81. See, e.g., Alkalay-Gut, *Murder and Marriage*, *supra* note 6, at 73; Ben-Zvi, *supra* note 6, at 153.

wearing pretty clothes.⁸² To Mrs. Hale, the full story of Minnie Wright must begin with the girl that she once was. The story must include the changes that occurred after she married John Wright, when she stopped paying visits and singing. As Mrs. Hale describes Minnie Foster to Mrs. Peters, "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."⁸³

As Mrs. Hale considers the changes in Minnie that led to the crime, she is faced with difficult and unanticipated questions of responsibility. From the beginning, when Mrs. Hale hesitates to enter Minnie's house because she has not done so before, she feels herself partly to blame for the isolation and despair Minnie has suffered.⁸⁴ Her sense of her own implication increases as she learns more about Minnie's life and recalls her own aversion to visiting Minnie.⁸⁵ When she thinks of Minnie as a young girl, Mrs. Hale is overwhelmed by a sense of her own moral failure in not extending herself to her friend. As she expresses it to Mrs. Peters, she "lived neighbor to that girl for twenty years, and had let her die for lack of life."⁸⁶ Mrs. Hale continues, "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?"⁸⁷

Of course, Mrs. Hale understands that her failure to help Minnie will not render her culpable under the law. And from her perspective, hers is not the only crime that will go unpunished. In the story that Mrs. Hale would tell, Minnie, the young and pretty girl that she once knew, has died, disappearing under the brunt of her husband's cruelty. Mrs. Hale recognizes Mr. Wright's responsibility for what has happened to Minnie, for creating the circumstances that drove her to violence. As she says to Mrs. Peters after they discover the body of the bird, "No, Wright wouldn't like the bird . . . a thing that sang. She used to sing. He killed that too."⁸⁸

In *A Jury of Her Peers*, Susan Glaspell suggests that the women's perspective—their compassionate understanding of Minnie Wright and the questions they raise about the responsibility of others—would be missing from the courtroom where the accused woman would be judged. The stories these men would tell about her would be limited and incomplete, ignoring the complexity of her life and failing to recognize the potential moral culpability of other members of the community. Justice could not be done, Glaspell suggests, because of the lack of empathy for Mrs. Wright on the part of the men who defined the law and who controlled the legal process as they brought it to bear against her.

The legal process that Susan Glaspell described was not solely a product of her imagination. She was reacting to the trial of Margaret Hossack, a woman

82. See Glaspell, *supra* note 1, at 80.

83. *Id.* at 77.

84. See *id.* at 63.

85. See *id.* at 77.

86. *Id.* at 80.

87. *Id.* at 80-81.

88. *Id.* at 80.

who, like Minnie Wright, was accused of killing her husband. And it is Margaret Hossack's story that will now be told.

III. THE STORY OF MARGARET HOSSACK

On Monday, December 3, 1900, the local Iowa newspapers reported the "foul" and "revolting" murder of John Hossack, a fifty-nine-year-old farmer, which occurred around midnight on Saturday at the Hossack family home near Indianola, Iowa.⁸⁹ Hossack was a prosperous and well-respected member of the rural community where he lived for more than three decades.⁹⁰ He was attacked while he slept, lying next to the wall in the bed he shared with Margaret Hossack, his wife of thirty-three years and the mother of their nine children.⁹¹ The assault was particularly violent: John Hossack was struck twice in the head with powerful blows. His skull was first cut deeply with a sharp instrument and then crushed with a blunt instrument.⁹² Medical examiners

89. See, e.g., *A Brutal Murder: John Hossack of Squaw Township, Killed with an Axe While in Bed Asleep*, INDIANOLA ADVOC. TRIB., Dec. 8, 1900; *Cold Blooded Murder: The Most Fiendish Crime in the History of Warren County Committed in Squaw Township*, INDIANOLA HERALD, Dec. 6, 1900; *Foul Murder near Indianola: Farmer Hossack Killed with an Ax*, DES MOINES DAILY CAP., Dec. 3, 1900 [hereinafter *Foul Murder near Indianola*] (describing the murder as "most revolting"); *John Hossack Murdered*, INDIANOLA REC., Dec. 6, 1900; *Prominent Farmer Robbed and Killed*, DES MOINES DAILY NEWS, Dec. 3, 1900 (describing the murder as "foul").

90. One newspaper described him as "an early settler, a prominent farmer, highly respected." *Prominent Farmer Robbed and Killed*, *supra* note 89. Another report identified him as "[o]ne of Warren County's [m]ost [i]nfluential [c]itizens." *John Hossack Murdered*, *supra* note 89. John Hossack was born in Scotland in the early 1840s, spent his early years in Canada, and then worked on the farm owned by the father of his future wife, Margaret Hossack, in Illinois. John and Margaret Hossack moved to Warren County, Iowa, in the spring of 1868 to live on the farm where he was later murdered. See Argument of Appellant at 1, *State v. Hossack*, 89 N.W. 1077 (Iowa 1902). According to one press report, Mr. Hossack owned more than 200 acres of land, "worth at a conservative estimate \$40 per acre." *Mrs. Hossack to Have a Hearing*, DES MOINES DAILY CAP., Dec. 10, 1900. After Mr. Hossack's death, his farm was sold at public auction for \$7000. See *In re Estate of John Hossack, Decedent*, No. 1827 (Warren County Dist. Ct. 1901) (Report of Sale of Lands) (on file with the *Stanford Law Review*).

91. The crime is described in many places, including the initial newspaper articles cited in note 89 *supra* and, in more detail, in later newspaper reports. See, e.g., *Wife Charged with Murder*, *supra* note 28.

The fact that Mr. Hossack was sleeping next to the wall was crucial to the prosecution's case, since if Mrs. Hossack was sleeping next to him as she claimed, the murderer would have had to have reached over her to attack her husband. See Appellee's Brief and Argument at 77-81, *State v. Hossack*, 89 N.W. 1077 (Iowa 1902). Mrs. Hossack testified at the coroner's inquest that her husband had slept "behind" in the bed ever since the children had been small because she often had to get up in the night with them. See Coroner's Inquest Testimony of Margaret Hossack at 3 (transcript of Coroner's Inquest, Dec. 3-5, 1900, on file with the *Stanford Law Review*).

At the coroner's inquest, Mrs. Hossack stated her age to be 57. See *id.* at 21. She had been married to John Hossack since the fall of 1867. See Argument of Appellant, *supra* note 90, at 1. The Hossacks raised nine children during their 33 years of marriage. See *id.* The last child, Ivan (born when Margaret Hossack was 44), was 13 at the time of his father's death. See Coroner's Inquest Testimony of Ivan Hossack at 1.

92. See *State v. Hossack*, 89 N.W. 1077, 1078 (Iowa 1902). The two wounds suffered by John Hossack were both on the right side of his head, indicating that he was lying on his left side, facing the wall, when the attack occurred. The incised wound, thought to be the first received, was above the ear, approximately five inches in length, and slightly more than four inches deep. The wound produced by the blunt instrument, the second received, was three and one-fourth inches long, slightly below the first wound, and broke the bones in Mr. Hossack's head into fragments, driving some of them into the brain. See Coroner's Inquest Testimony of Dr. Surber at 1-2. According to Dr. Surber, the incised blow must

speculated that the attack might have been done with the two sides of an implement such as a hatchet or an axe.⁹³

According to various statements of Margaret Hossack to her neighbors and the sheriff, and later under oath, she was asleep next to her husband when the attack occurred and awakened by a noise she was consistently to describe as the sound of two boards being hit together.⁹⁴ She rose quickly from her bed and then heard a door close and saw a flash of light.⁹⁵ She also heard her husband, still in bed, making a moaning or choking noise.⁹⁶ She left the bedroom and called to her children, five of whom, ranging in age from thirteen to twenty-six, lived at home.⁹⁷ The two youngest shared a bedroom adjoining that of their parents.⁹⁸

have been done with a "good deal of force." *Id.* at 3; *see also* Coroner's Inquest Testimony of Dr. Porterfield at 1 (describing the wounds suffered by John Hossack).

93. At the coroner's inquest, Dr. Surber confirmed that the wounds could have been made by an "ordinary chopping ax," with the contused wound made with the pole of the axe and the incised wound made with the blade. Coroner's Inquest Testimony of Dr. Surber at 3. He went on to state that the wounds also could have been made by a hatchet. *See id.*

94. Margaret Hossack's first sworn statements describing the attack were made at the coroner's inquest, which began the day after John Hossack died, and her description of the attack is taken from that testimony. *See* Coroner's Inquest Testimony of Margaret Hossack at 3. Her testimony at the subsequent trial, after she was accused of the murder, was consistent with her earlier statements at the inquest. *See* Appellant's Abstract of Record at 120-21, *State v. Hossack*, 89 N.W. 1077 (Iowa 1902) (testimony of Margaret Hossack).

At the inquest, Mrs. Hossack stated that she was first awakened by a noise that, at the time, she did not think came from the bedroom. As she described, "Well, as near as I can tell you anything about, I was startled so. I have heard children take a couple of boards and hit them together. It just sounded more like that than anything I can tell you, the noise I heard." Coroner's Inquest Testimony of Margaret Hossack at 3-4.

Doctor Dean and the neighbors who were at the Hossack home after the attack testified that Mrs. Hossack had made similar statements to them in describing the attack. *See, e.g.,* Coroner's Inquest Testimony of Dr. Dean at 1; Coroner's Inquest Testimony of Frank Kellar at 13; Appellant's Abstract of Record, *supra*, at 72, 74 (testimony of Neal Morrison and W.C. Conrad). Testimony by the Hossack children as to Mrs. Hossack's statements to them were also consistent with what she said under oath. *See, e.g.,* Coroner's Inquest Testimony of Anna (Annie) Henry at 2; Coroner's Inquest Testimony of Ivan Hossack at 2; Coroner's Inquest Testimony of James (Jimmie) Hossack at 2; Coroner's Inquest Testimony of Louie Kemp at 1; Appellant's Abstract of Record, *supra*, at 5-6, 38 (testimony of D.W. Hossack and Annie Hossack).

95. Mrs. Hossack testified at the coroner's inquest that she had heard the door close when she was about halfway between her bed and the door, moving quickly toward the door. As to the light, she stated, "Just as I came out I saw a light on the wall. It was just like it was shining through the south door, through the glass in the door." Coroner's Inquest Testimony of Margaret Hossack at 6.

96. Mrs. Hossack stated that, when she was first awakened, she heard her husband give "a kind of a moan, but [I] just thought that he had got disturbed in his sleep." *Id.* at 5. Then, as she left the bedroom, she heard considerable noise from her husband, loud enough that she could have heard it in the kitchen: "sounds of kind of moaning or making a noise as though he was choking [sic], a rattling in his throat." *Id.* As she went to call the children, "I knowed he was hurt by this time by the noise he was making." *Id.* at 7.

97. Five Hossack children, ages 13 to 26, were home at the time of the murder: Cassia (26), May (20), William (18), James (15), and Ivan (13). *See Wife Charged with Murder, supra* note 28.

98. James and Ivan slept in the bedroom in the northwest corner of the house, with a wall separating their room from the southern bedroom shared by their parents, also along the west wall of the house. Both of the bedrooms had doors opening into the sitting room, which had a door on the east wall leading to the outside of the house. The kitchen, the only other room in the downstairs of the house, ran along the south wall of the house. *See id.* (providing a description and drawing of the layout of the house).

At the coroner's inquest two days later, Mrs. Hossack described these moments:

I went and ran up in the kitchen, opened the stair door, called them, told them that some body had been in the house, and that Pa is hurt, and they said, oh, no, Ma, you are just scared. You go back, there wasn't anybody in. I says, yes there is, didn't you hear them? I came back, I called him [John Hossack] several times and he would not answer, and I went and got the light then and had it by the time Willie got down here; the light was on the stan[d], which was right out where he [John Hossack] pulled it so as to be close to the stove where he was reading. Willie says, Ma, you can't carry that lamp, you are going to let it fall. He took the lamp.⁹⁹

With her son holding the lamp, Margaret Hossack and her children entered the bedroom and found Mr. Hossack lying in bed, bleeding profusely and fatally injured.¹⁰⁰

Several of the Hossack children ran to adjoining farms to ask for help.¹⁰¹ Many of the neighbors gathered at the Hossack farm during the night,¹⁰² along with one of the Hossack sons who lived away from home,¹⁰³ two of the married Hossack children and their spouses,¹⁰⁴ and a doctor who tended the dying

99. Coroner's Inquest Testimony of Margaret Hossack at 7.

100. Several of the children testified at both the inquest and the trial that John Hossack spoke soon after they entered the bedroom. In the abstract of the trial testimony, the summary of May's testimony about entering the room after the attack states: "After we went in there, Pa wanted to know what we were doing. Will answered that he was looking at him, that he was hurt. Father said, no, that he was sick." Appellant's Abstract of Record, *supra* note 94, at 34-35 (testimony of May Hossack). The length of time between the attack and Mr. Hossack's utterances was an important issue at the trial, since according to the prosecution, the fact that he could speak when the children entered the room showed that they were not called immediately after the attack, as Mrs. Hossack claimed. See Appellee's Brief and Argument, *supra* note 91, at 99-100.

101. Will ran to get George McIntosh. See Coroner's Inquest Testimony of William (Will) Hossack (on recall) at 1. McIntosh then went to get John Jr., the second-oldest Hossack son, who lived away from home. See Coroner's Inquest Testimony of George McIntosh at 2. Cassie Hossack ran to the Nicholsons' farm. See Coroner's Inquest Testimony of Cassia (Cassie) Hossack at 2. Jimmie and May Hossack went to the Haines' house, about half a mile away. See Appellant's Abstract of Record, *supra* note 94, at 35 (testimony of May Hossack). Mr. Haines refused to go to the Hossacks' farm, a fact stressed by the defense at the trial when the lawyers suggested that Haines rather than Mrs. Hossack might be the murderer. See *Hossack to Go to Jury Tomorrow*, DES MOINES DAILY CAP., Apr. 9, 1901.

102. Based on the testimony of various neighbors and members of the Hossack family during the coroner's inquest, it seems that more than 30 people gathered at the Hossack home before Mr. Hossack died on Sunday morning.

103. John Hossack, Jr. was 22 years old at the time of the murder and lived with the Truitts, approximately four miles away. He was a possible subject of suspicion because he had reportedly quarreled with his father in the past. See *Wife Charged with Murder*, *supra* note 28. His alibi, however, was confirmed by several people who lived at the Truitts' house. See, e.g., Grand Jury Testimony of Mamie Kemp at 1; Grand Jury Testimony of Mary Spence at 1; Grand Jury Testimony of Mrs. N.N. Truitt at 1 (transcript of Grand Jury Hearing, Jan. 1901, on file with the *Stanford Law Review*).

George McIntosh was sent to the Truitts' house to get John Jr. McIntosh described going to the house and having difficulty waking anyone up. Finally, John Jr. came to the door and, on hearing the news, rode back with McIntosh to the Hossack home. According to McIntosh, John Jr. said he had no idea who assaulted Mr. Hossack and "would not have drempt of such a thing as that, and told me he could not believe it." Coroner's Inquest Testimony of George McIntosh at 4.

104. Louie Kemp and her husband, Joe Kemp, arrived about 8 A.M. on the morning after the attack. See Coroner's Inquest Testimony of Louie Kemp at 1. Annie Henry and her husband, E.E. Henry, had arrived a few hours earlier. See Coroner's Inquest Testimony of Anna Henry at 1. The other

man.¹⁰⁵ John Hossack, partly conscious and in excruciating pain, lived through the night, with his wife sitting by his bed, responding to his calls for her, bathing his wounds, giving him sips of water, and holding his hand.¹⁰⁶ He died early Sunday morning, with his wife and eight of their nine children at his side. Although Mr. Hossack spoke to several of his friends and family members before he died, he made no statements indicating that he knew the identity of his attacker.¹⁰⁷ Shortly before his death, the Hossack family axe, with fresh blood spots on its handle and several gray hairs sticking to the blade,¹⁰⁸ was discovered under a shed close to the house¹⁰⁹ and identified as the likely murder weapon.¹¹⁰

As Susan Glaspell and other reporters described the details of the violent attack, they also began to speculate on possible motives. Burglary was almost immediately discounted, since no evidence of an intruder was found and Mr.

married son, Alex, lived farther away and did not arrive until after his father had already died. *See* Appellant's Abstract of Record, *supra* note 94, at 111 (testimony of Alex Hossack).

105. Dr. Dean arrived around 5 A.M. on the morning after the attack. *See* Coroner's Inquest Testimony of Dr. Dean at 1.

106. Dr. Dean, who tended John Hossack in the early morning hours until his death, testified as follows:

[Mrs. Hossack] was in the room when I came here. She seemed very anxious, and when after I had moved the pillows away from the head, so that I could see the extent of the wound and examine his pulse and condition, she asked me: is there any hopes for him? And I shook my head and said, no. And she turned around and sat down on a chair; the chair was in the room in the corner, and cried a little while.

Q[uestioner]: Did she cry out loud, Dr.?

A [Dr. Dean]: She sobbed audibly, though I could not see her face; it was turned from me. And presently she got up from that and came out into this room and sat down by the stove on a chair. Sat there a little while and got up and came back. She was in there most of the time until he died. And had hold of his hand considerable of the time. He kept one hand out like, and she had hold of his hand, and was by him most of the time.

Q[uestioner]: Was there any signs of excessive grief?

A [Dr. Dean]: No sir, there didn't seem to be. She seemed very anxious, though I didn't notice any excessive anxiousness.

Id. at 2. Neil Morrison testified that Mrs. Hossack did give water to her husband. *See* Coroner's Inquest Testimony of Neil Morrison at 5.

107. According to Neil Morrison, John Hossack asked if he had his glasses on and called "Ma," apparently asking for his wife. *See* Coroner's Inquest Testimony of Neil Morrison at 5-6.

108. It was never conclusively proved at Mrs. Hossack's trial that any of the blood on the axe was human blood rather than just the blood of a turkey, as the defense claimed, or that the hair was from Mr. Hossack's head. *See* Argument of Appellant, *supra* note 90, at 10-16 (discussing witnesses' doubts over the source of the blood and noting the lack of conclusive proof about the hairs); *id.* at 22, 55 (arguing that there was insufficient proof that the blood came from a human).

109. *See, e.g.,* Coroner's Inquest Testimony of Lewis Braucht at 1 (testifying that he found the axe, with blood and gray hairs on it, under the granary, that John Jr. pulled it out, and that Braucht later put it back and watched over it until the sheriff arrived).

110. *See Chemists Will Examine the Axe*, DES MOINES DAILY CAP., Dec. 7, 1900 ("The axe was found the next morning by one of the neighbors, and as there were blood stains on the handle it was immediately seized upon as the instrument with which the deed had been committed.").

Hossack's leather pocketbook containing \$40 in cash was left undisturbed by the bed.¹¹¹ A loaded gun was also found in the bedroom, untouched.¹¹²

According to family and neighbors, Mr. Hossack had no known enemies in the town. He was a member of two local lodges and dabbled in local politics, having recently lost the nomination for county treasurer by a handful of votes.¹¹³ And yet, even as the neighbors were calling the case a mystery and describing Mr. Hossack as a well-respected and leading citizen of their town, "God-fearing [and] church-going,"¹¹⁴ they were also admitting that they knew a different story about John Hossack. This was a story that many of them had known for years, but that most apparently felt was a secret, something to be "hushed up" because of the "good standing of the family" and not to be discussed publicly while John Hossack was alive.¹¹⁵

The "secret" became public knowledge when, on Tuesday, December 4, the *Des Moines Daily Capital* reported that "the gossip of the neighborhood is that the [Hossack] family did not live in peace, and that the home was the frequent scene of quarrels between the various members."¹¹⁶ Neighbors had been more specific in telling what they knew about John Hossack at the coroner's inquest, begun on Monday, the day after Mr. Hossack's death, and conducted in the Hossack family sitting room, adjacent to the bloody bedroom where the dead body still lay.¹¹⁷ The neighbors' testimony revealed that almost all of them knew that Mr. Hossack had been a violent and abusive man, one who had

111. *See Wife Charged with Murder*, *supra* note 28. The article stated:

Robbery was not the cause of John Hossack's death or else the murderer received an untimely fright. In the pocket of Hossack's trousers which were lying across a chair near the bed were found a purse containing \$3.77, and a leather pocketbook with \$40 in it. Neither were disturbed, nor is there any evidence that any of his belongings in the house were taken.

Id.

112. *See Appellee's Brief and Argument*, *supra* note 91, at 76 ("In the southeast corner of this bedroom stood a loaded winchester repeating rifle.").

113. *See Foul Murder near Indianola*, *supra* note 89; *Holding an Inquest*, *DES MOINES DAILY CAP.*, Dec. 4, 1900.

114. *Wife Charged with Murder*, *supra* note 28.

115. Coroner's Inquest Testimony of Fred Johnston at 3 ("Some of these troubles spoken of heretofore I known something about, they have been hushed up."). Another article stated:

Trouble had been brewing in the family for more than a year, and while it was not a matter of current gossip it was known to many people, who had refrained from discussing the matter because of the good standing of the family and because of the belief, in many instances, that it was a secret not generally known.

Wife Charged with Murder, *supra* note 28.

116. *Holding an Inquest*, *supra* note 113. One of the early reports identified the trouble between the Hossacks as originating over John Jr., who "fell in with a drinking, roistering crowd, and went to dances, and seemed to try to do everything which he had not done before. He was sowing his wild oats, and the father objected. Mrs. Hossack, however, took the part of her boy, and hot words followed." *Wife Charged with Murder*, *supra* note 28.

117. *See Appellant's Abstract of Record*, *supra* note 94, at 64-66 (testimony of Fred Johnston, who described being called away from questioning witnesses, in his role as a member of the coroner's jury, to examine a bloody shirt, an examination which he performed while standing at the head of the bed where Mr. Hossack's body lay); *see also id.* at 45 (testimony of Dr. H.M. Dale, who described the inquest as being held in the downstairs sitting room of the Hossack home while members of the Hossack family were upstairs, kept under guard by a constable, and put in another room after each finished testifying).

frequently threatened his entire family and who had made his wife and children fear for their lives on numerous occasions.¹¹⁸

Neighbors, both men and women, described many instances, going back as far as fifteen years, when Mrs. Hossack had spoken to them of her husband's cruel treatment of her and the children, his threats with loaded guns and knives, and his fierce rages directed toward various members of his family.¹¹⁹ Few specific acts of violence had been reported by Mrs. Hossack, although several neighbors reported that they had heard of Mr. Hossack slapping and whipping his children, hitting his wife with his fists, and throwing a stove lid at her.¹²⁰ In fact, almost all who testified said they had known that the threat of violence from her husband had been a constant source of fear in Mrs. Hossack's life.¹²¹

Neighbors told of Margaret Hossack coming to their farms or running out to them in the road in a desperate state, crying and saying that her husband was "wild"¹²² and that he was acting like a "crazy man."¹²³ Many times she told them that she was afraid for the lives of herself and her children, afraid that John Hossack would kill them as he had threatened to do.¹²⁴ Although she asked for their help, pleading with them to come up to "quiet" her husband or convince him to leave the house, she was also terrified that her husband would

118. See, e.g., notes 119-129 *infra* and accompanying text.

119. See Coroner's Inquest Testimony of Mr. Conrad at 4 (testifying that he heard that John Hossack had threatened John Jr. with a knife); Coroner's Inquest Testimony of Mrs. George Grant at 2 (testifying that Mrs. Hossack told her that her husband had threatened to kill the children and that he would have shot one of the children if another child had not intervened); Coroner's Inquest Testimony of Mrs. Haines at 1 (testifying that Mrs. Hossack came to her and her husband crying and saying that she was afraid her husband would kill the family); Coroner's Inquest Testimony of Van Judkins at 1 (testifying that Mrs. Hossack told him that her husband was threatening the family with a loaded gun and that she was afraid he "will hurt some of the family"); Coroner's Inquest Testimony of Frank Kellar at 2 (testifying that Mrs. Hossack told him that her husband had abused her, that he had threatened to kill the family, and that she and the children were afraid of him); Coroner's Inquest Testimony of Neil Morrison at 9 (testifying that Mrs. Hossack told him that "she was afraid [John Hossack] would hurt some of the children"); *id.* at 12 (testifying that Mrs. Hossack told him that her husband had "abused" her and that she was "afraid he would kill her . . . afraid he would do something to her or the children"); *id.* at 13 (testifying that he heard reports from other neighbors that Mr. Hossack had threatened his family with a gun).

120. Mrs. Haines testified that Mrs. Hossack had told her that Mr. Hossack had hit her on the side of the head, that the Hossacks had hit each other with their fists, and that they had "thrown stove lids at each other." Coroner's Inquest Testimony of Mrs. Haines at 4. Apparently, a lid thrown by Mr. Hossack had hit Mrs. Hossack on the toe. See *id.*; see also Grand Jury Testimony of Mrs. Grant at 1 (testifying that Mrs. Hossack said her husband would "break the chairs and whip the children").

121. See Coroner's Inquest Testimony of Frank Kellar at 2 (testifying that Mrs. Hossack told him of her husband's abuse of her and her family, his threats against their lives, and her and the children's fear of him). As Mr. Kellar testified, "One, two, three, four, five times, I might go ahead and say oftener than that that I have heard this thing, I cannot do it, but I will say that I have heard it over and over repeatedly." *Id.*; see also notes 122-129 *infra* and accompanying text.

122. Coroner's Inquest Testimony of Frank Kellar at 3 ("She came to me crying, and said Mr. Hossack was wild; he had threatened to kill her and the children, and she would like for me to come out and do something.").

123. Coroner's Inquest Testimony of Neil Morrison at 14; see also Coroner's Inquest Testimony of Mrs. Haines at 1 (describing Mrs. Hossack as crying, fearing that her husband would kill the family, saying that "Mr. Hossack was on his tantrum," and pleading with Mr. and Mrs. Haines to come to her home). The Haines refused to help her, with Mr. Haines saying that "that is not the right way to do . . . there is a law for such as that, it is no use for me to go down." *Id.*

124. See note 119 *supra*.

find out that she was talking to others.¹²⁵ She implored her neighbors not to tell him what she had disclosed of her desperate family situation.¹²⁶ Mrs. Hossack said that she was often unable to go to sleep at night for fear of her husband and that there would be weeks at a time when she would not remove her clothes.¹²⁷ Often in tears, she told several of them that the family would have no peace as long as Mr. Hossack was alive and that it would be a blessing if he were dead.¹²⁸ According to one neighbor, who related several incidents of Mrs. Hossack or one of the children coming to his house and asking for help, "It seems as though things were always in a pitiable state of affairs . . . and she did not know what she would do nor how it would end, and she always seemed afraid that he would kill some of them."¹²⁹

Testimony of the neighbors at the coroner's inquest made it obvious how widespread and longstanding was their knowledge of Mr. Hossack's violent threats against his family and Mrs. Hossack's constant fear for the family's safety. And yet the neighbors also felt that the Hossack family should have

125. See, e.g., Coroner's Inquest Testimony of Frank Kellar at 3 (testifying that Mrs. Hossack told him that everything she said must be kept secret because if her husband knew she had been talking to others, "he would kill the whole family").

126. See, e.g., *id.*; Appellant's Abstract of Record, *supra* note 94, at 102 (testimony of Frank Kellar, who testified that, although Mrs. Hossack would ask neighbors to visit with her husband because it would "get him out of these spells," she "didn't want him to know that she had asked us to come").

127. See Coroner's Inquest Testimony of Mr. Conrad at 14.

128. See, e.g., Coroner's Inquest Testimony of Mr. Conrad at 14 (relating Mrs. Hossack's words that "it would be a blessing if he were out of the way"); Coroner's Inquest Testimony of Mrs. George Grant at 2 (testifying that Mrs. Hossack said the family would be better off without him); Coroner's Inquest Testimony of Mrs. Haines at 1 (stating that she heard Mrs. Hossack say many times that it would be better for them if her husband were dead and that "it would be God's blessing if he were taken"). Neil Morrison admitted that Mrs. Hossack had told him that her life was a "misery," and he testified that he had heard from neighbors that she had said she would be better off without him. See Coroner's Inquest Testimony of Neil Morrison at 16-17.

Mr. Frank Kellar testified that Mrs. Hossack had come to him crying and saying that Mr. Hossack had threatened to kill her and the whole family. According to Mr. Kellar, Mrs. Hossack said "there was no peace in this family and never would be as long as he lived. She bursted out with a kind of screaming and she says, why is it that the Lord don't remove him out of the way?" Coroner's Inquest Testimony of Frank Kellar at 3; see also Coroner's Inquest Testimony of Mr. Conrad at 8 (stating that Mrs. Hossack implied on one occasion that she wished her husband were dead); Coroner's Inquest Testimony of Frank Kellar at 14 ("[Mrs. Hossack] said she wished to God [her husband were] dead, that there never would be any peace in the family until he was dead.").

One neighbor, Mr. Haines, stated at the coroner's inquest that Mrs. Hossack had asked him to "come in and attend to [her husband]," and, thinking she was desperate at the time and "in a passion," he had believed that she had wanted the neighbors "to come in and give [John Hossack] a good beating." Coroner's Inquest Testimony of Will Haines at 7. After Mrs. Haines testified that Mrs. Hossack had told Mr. Haines that he should "finish" John Hossack once he started, Mr. Haines, recalled for questioning, testified that he had understood that Mrs. Hossack had been asking him "to give [her husband] a terrible threshing, and one he would remember and make him afraid to do these things any more." Coroner's Inquest Testimony of Will Haines (on recall) at 1.

Mrs. W.C. Conrad also testified that Mrs. Hossack had told her that her husband had abused the family and had called her a "bitch and a slut." Grand Jury Testimony of Mrs. W.C. Conrad. According to Mrs. Conrad, Mrs. Hossack made various statements about her husband, noting that "it would never be better while he lived, and that his death would be the only relief from it," openly hoping that "the vigilance [sic] would only come in and do away with him," and once saying, "I don't see why the good Lord does not take him away." *Id.*

129. Coroner's Inquest Testimony of Mr. Conrad at 8.

kept their troubles to themselves, that family matters should be kept private and not discussed with others.¹³⁰

Occasionally, in response to Mrs. Hossack's pleas for help, one of the neighbors would accompany her home and try to distract Mr. Hossack with the visit or attempt to get him to leave his house to go to town.¹³¹ More often, the help the neighbors extended to Mrs. Hossack consisted of telling her not to worry, assuring her that Mr. Hossack would not hurt his family.¹³² Privately, they were not so sure that Mr. Hossack was harmless in regard to his wife and children.¹³³ Several of the neighbors admitted that they knew that John Hossack had been subject to violent rages, "tantrums" as they called them,¹³⁴ and that they could tell by the wild look in his eyes when he was in a "spell," when he was "unstrung and excited,"¹³⁵ and "how he had left those at home."¹³⁶

130. See, e.g., *id.* at 7 (replying, when asked whether he had had frequent talks with Mrs. Hossack about her family troubles, "Well I can[']t say they were very frequent, though more frequent than we wanted them."); Coroner's Inquest Testimony of Mr. Haines at 2 ("I never know anything more about anybody's [sic] business . . . than I can help."); *id.* at 4 ("I have heard [Mrs. Hossack] speak of [family troubles] more than once, and have told her I did not want to hear anything of it."); Coroner's Inquest Testimony of Neil Morrison at 9 ("I do not tax my memory with family quarrels.").

131. Frank Kellar described going to the Hossack house after one of the children ran to his home, asking him to "come over to our house quick, Pa has threatened to kill the family again." Coroner's Inquest Testimony of Frank Kellar at 3. Kellar, without disclosing to Mr. Hossack why he was there, apparently persuaded Hossack to go out with him. Mr. Conrad went to the Hossack home on another occasion, after one of the children came to his home, telling him that Mr. Hossack was threatening to kill them. See *id.*; see also Coroner's Inquest Testimony of Van Judkins at 1 (testifying that he went to the Hossack home after Mrs. Hossack told him that her husband was threatening the family with a loaded gun; as often happened with other neighbors, Mr. Hossack was "just as natural as ever," agreeing to go to town with Van Judkins).

Neil Morrison also testified that he had agreed to go to the Hossack home after Mrs. Hossack pleaded for his help, saying that her husband was acting like a "crazy man" and that "she was afraid he would do something." Coroner's Inquest Testimony of Neil Morrison at 14-15. Despite the desperation in Mrs. Hossack's pleas, Mr. Morrison waited until the following day to visit the Hossack home, and as he testified to the coroner's inquest, "there was no trouble when I got there." *Id.* at 14.

132. See Coroner's Inquest Testimony of Neil Morrison at 12-13 (testifying that, when Mrs. Hossack told him that she was afraid her husband would hurt her or some of the children, he told her "there was no danger of that; that I knew him to [sic] well for that, and that he would never do such a thing"); see also Coroner's Testimony of Mr. Conrad at 9 ("I tried to pay very little attention to these talks and just tried to quiet her and told her I would not worry about it."); *id.* at 8 (testifying that, when Mrs. Hossack talked to him of her fears of her husband, he would "always try to smoothe [sic] it over to satisfy her"); Coroner's Inquest Testimony of Mrs. Haines at 1 (testifying that her husband only told Mrs. Hossack that "there was a law for such as that" when Mrs. Hossack came out to meet Mr. and Mrs. Haines on the road, crying and pleading with them to come to her home because her husband was threatening to kill the family).

133. See, e.g., Coroner's Inquest Testimony of Mr. Conrad at 16 (admitting that he thought that, as a result of the family troubles, "somebody [in the Hossack family] might get hurt . . . I rather expected that in some kind of a family row that some one would strike a harder blow than was intended.").

134. See Coroner's Inquest Testimony of Mrs. Haines at 1.

135. Coroner's Inquest Testimony of Fred Johnston at 3. Mr. Johnston testified: I have seen Mr. Hossack when he would be worked up over something so that he didn't seem to know what he was doing.

[Q: He had a very strong temper?]

Yes, something a little more than temper, something about his nerves, or something that he would seem to be all unstrung and excited.

Id.

136. Coroner's Inquest Testimony of Mr. Conrad at 9-10. Mr. Conrad testified:

Although all were reluctant to intervene, the frequency of Mrs. Hossack's desperate pleas for help eventually led some of them to discuss among themselves whether Mr. Hossack should be arrested in order to protect his family or whether he should be committed to the insane asylum.¹³⁷ Nothing was done in either regard.

The neighbors seemed reluctant to speculate about the source of Mr. Hossack's rage,¹³⁸ although it was thought that the marriage was never a happy one and that Mr. Hossack's temper was often triggered by his disagreement with how his wife was raising the children.¹³⁹ Indeed, some serious consideration was given to the possibility of a marital separation. According to reports from neighbors and her children, Mrs. Hossack talked many times about her wish to live separately from her husband.¹⁴⁰ Two neighbors were to testify at her trial that Mrs. Hossack said she would have separated from her husband years ago except for the "disgrace" she knew it would cause for the family.¹⁴¹ Mrs. Hossack was, of course, economically dependent on her husband: The property was in his name.¹⁴² And although he was a prosperous farmer, Mr. Hossack was not generous with his money, often leaving Mrs. Hossack without suffi-

I can say this, that the minute he would step into the house I could tell how he had left those at home, or I thought I could . . . There would [b]e a wild look to his eye, I would call it a wild look. They were restless and br[i]ghter than usually they looked . . . I know that my wife and me would form an opinion after he came here that they were having trouble again.

Id. Mrs. Haines also testified:

[W]e have been here when I thought he was just through wit [sic] a racket of some kind, could tell it in his countenance . . . We have come here many times, and Mr. Hossack, would not be here an hour, he would not talk, and you could see he was awful [sic] mad, and we just judged from his looks they had been in trouble . . .

Coroner's Inquest Testimony of Mrs. Haines at 2.

137. See Coroner's Inquest Testimony of Mr. Conrad at 18 (describing John Hossack's son-in-law as saying that John Hossack "ought to be arrested"). Mr. Conrad himself admitted that he had also thought that Mr. Hossack should have been arrested and that "at the time that was the only way out of it." *Id.*; see also Coroner's Inquest Testimony of Fred Johnston at 1 (describing a conversation among several of the neighbors concerning whether the Hossack family should "divide up in some way or whether it would be best to have Mr. Hossack arrested and tried for insanity . . . [since] it had gone so far they thought there could be nothing else done").

138. But see Coroner's Inquest Testimony of Mrs. Haines at 2-3 (speculating that the trouble between the Hossacks started even before their marriage, when Mr. Hossack wanted to marry Mrs. Hossack's sister). As Mrs. Haines explained, "Mr. Hossack was aggravated [sic] an awful [sic] sight, and when a man dont [sic] like a woman there is lots of things comes up that makes them contrary to each other." *Id.* at 3.

139. See Appellant's Abstract of Record, *supra* note 94, at 59-63 (testimony of Fred Johnston); *id.* at 100-01 (testimony of Frank Kellar). But see Grand Jury Testimony of D.W. Hossack (testifying that the fight between his parents a year before the murder was "something about a girl. There was some talk about separating.").

140. See, e.g., Coroner's Inquest Testimony of Mrs. Grant at 2; Coroner's Inquest Testimony of Mr. Johnston at 2; Coroner's Inquest Testimony of Frank Kellar at 3; Grand Jury Testimony of D.W. Hossack.

141. See Appellant's Abstract of Record, *supra* note 94, at 59 (testimony of Mr. Johnston); *id.* at 79 (testimony of Nora Cart); see also Grand Jury Testimony of E.E. Henry (testifying that Mr. Johnston reported to him that he (Mr. Johnston) had told Mrs. Hossack that she ought not to separate from her husband, since it would bring "disgrace" on the family, and that Mrs. Hossack had responded that she had thought of that, else she would have had the property divided long ago).

142. See *In re Estate of John Hossack, Decedent*, *supra* note 90 (Petition for Admeasurement of Dower).

cient funds for household expenses.¹⁴³ Nevertheless, Mr. and Mrs. Hossack discussed dividing the farm, with Mrs. Hossack and the children to take all except the west eighty acres, which Mr. Hossack would keep as his own. Mrs. Hossack said she wanted the division, but Mr. Hossack never proceeded with the necessary legal steps.¹⁴⁴

Talk of a separation became more serious the year before Mr. Hossack's death, when, according to testimony from neighbors and the Hossack children, Mrs. Hossack ran away from home after her husband had tried to force her to stay upstairs, telling her that he wanted her out of his sight.¹⁴⁵ There was some suggestion that she escaped through an upstairs window.¹⁴⁶ Mrs. Hossack fled to a neighbor's house in the rain; when she arrived, she asked for transportation to the home of her married daughter, saying that she "could not stand it any longer."¹⁴⁷

Aware of the seriousness of the situation, the neighbor gathered several men from the surrounding farms and induced Mrs. Hossack to return home, where two of the men remained to try to work out a reconciliation among the family members.¹⁴⁸ In their testimony, the men admitted that their goal had been to convince the Hossacks not to separate. The men believed that they had been successful in persuading Mr. and Mrs. Hossack to remain together.¹⁴⁹ One of the two neighbors, Mr. Johnston, concluded his discussion with the family by obtaining a promise that they would "let the matter drop and never mention it among themselves, or to me or to Mr. Kellar, and I told them I never

143. See Coroner's Inquest Testimony of Mrs. Haines at 4 ("Mr. Hossack always sold lots and had plenty of money, but that woman never got a cent of his money for anything."); Coroner's Inquest Testimony of Mr. Haines at 3 (relating that Mrs. Hossack needed money and, not wanting to ask her husband for it, asked Mr. Haines to take some of the family's corn, sell it, and give her the cash).

144. See Coroner's Inquest Testimony of Mr. Conrad at 11 (testifying that the Hossacks discussed a division of the property, "but it seems that about the time they were all agreed there would be a calm, and they did not do anything"); Coroner's Inquest Testimony of Frank Kellar at 3-4 (explaining Mrs. Hossack's frustration that her husband would never deed part of the land to her). Fred Johnston testified that, when he went to the Hossacks' home, Mrs. Hossack said she was satisfied with the proposed division of property, whereas Johnston replied, "I [am] not here for that purpose and will not have anything to do in regard to dividing that I can help." Coroner's Inquest Testimony of Fred Johnston at 2.

145. See Coroner's Inquest Testimony of Joe Kemp at 1 (Hossack's son-in-law relating a conversation with E.E. Henry in which Henry said Mrs. Hossack had left the family after Mr. Hossack got mad and told her that she had to stay upstairs, where she had remained all day before leaving that evening); Grand Jury Testimony of Mrs. W.C. Conrad at 1 (stating that Mrs. Hossack said her husband had ordered her away and did not want to see her again).

146. The questioner, examining James Hossack about the night his mother left the family a year before the murder, asked James whether he remembered which door his mother had gone out or whether she had left through a window. See Coroner's Inquest Testimony of James Hossack at 5. When Mrs. Hossack testified as to which door she had gone out, one of her questioners asked, "[D]idn't you go out of that window in there?" Mrs. Hossack denied having left through the window. Coroner's Inquest Testimony of Margaret Hossack at 19.

147. Coroner's Inquest Testimony of Mr. Conrad at 10-11.

148. This meeting at the Hossack home is described in the Coroner's Inquest Testimony of Frank Kellar at 5-7 and the Coroner's Inquest Testimony of Fred Johnston at 1-4.

149. See Coroner's Inquest Testimony of Frank Kellar at 6 ("My understanding is that we got the children to agree to try and behave themselves, and Mrs. Hossack was to do the same and Mr. Hossack was to do the same and that they could try to live peaceably together.").

wanted to hear anything more about it, nor talk to outsiders.”¹⁵⁰ Although Mr. Johnston testified that he believed that all of the conflict had been resolved, he admitted that Mrs. Hossack came to him as he was leaving the house: “[She] begged me to stay all night; she was afraid after we got away it would break out again”¹⁵¹ Mr. Johnston refused: “I would not do it; told her I didn’t think it would be the best thing to do under the circumstances; that they had all promised not to mention it again and I didn’t think it was advisable for me to do it.”¹⁵²

During the year following this intervention by the neighbors and before Mr. Hossack’s death, outsiders heard less from Mrs. Hossack and her children about family difficulties.¹⁵³ The situation may have improved. It seems equally likely, however, that, given her neighbors’ response to the abuse, Mrs. Hossack realized the hopelessness of seeking outside help and was simply less vocal in her fears.¹⁵⁴ It also seems likely that Mrs. Hossack’s premonition that the reconciliation was only temporary proved to be accurate. Although they were to change their testimony at trial, several of the Hossack children spoke at the coroner’s inquest and the grand jury hearing about continued quarreling between their parents during the final year.¹⁵⁵ Several neighbors also spoke of conversations with Mrs. Hossack during that last year in which she continued to express her fears and discuss her troubles at home. One neighbor testified at the subsequent trial that Mrs. Hossack had said that things were just as bad as they had ever been and that her situation at home would never improve as long as her husband was alive.¹⁵⁶

While the neighbors were telling the coroner’s jury a story of fear and abuse within the Hossack family, members of the Hossack family were more closemouthed about their past difficulties. The two youngest sons, ages thirteen and sixteen, testified at the coroner’s inquest that they knew of no trouble in the family.¹⁵⁷ Later, however, sixteen-year-old Jimmie told the grand jury

150. Coroner’s Inquest Testimony of Fred Johnston at 3.

151. *Id.* at 4.

152. *Id.* Mr. Johnston testified that Mrs. Hossack had also told him, “I want you to know one thing, that all he has told you is not true.” Mr. Johnston said, “I did not make her any answer.” *Id.*

153. See Coroner’s Inquest Testimony of Neil Morrison at 7 (stating that he had not heard anything from Mrs. Hossack about her family troubles in over a year); see also *State v. Hossack*, 89 N.W. 1077, 1078 (Iowa 1902) (“It is true . . . no more of their family difficulties were made public, and the children all testify that dissensions ceased after this time.”).

154. As the Iowa Supreme Court later described the period after the reconciliation arranged by Mr. Conrad and Mr. Kellar, “No doubt, the interference of neighbors induced these people thereafter to be more careful in making their troubles known.” *Hossack*, 89 N.W. at 1079.

155. See Coroner’s Inquest Testimony of May Hossack at 8 (testifying that the family had had no trouble for about six weeks); *id.* at 9 (testifying, in response to a direct question from Mr. Johnston as to whether the family had had any troubles since the attempted reconciliation a year before the murder, that “we have had some trouble since that, nothing like we had then though”); Grand Jury Testimony of James Hossack at 2 (testifying that his parents quarreled the night before the murder).

For a vivid description of the scene in the courtroom when James Hossack recanted his Grand Jury testimony, see *It Looks Black for Margaret Hossack*, *supra* note 30.

156. See Appellant’s Abstract of Record, *supra* note 94, at 80 (testimony of Mrs. Frank Kellar).

157. See Coroner’s Inquest Testimony of Ivan Hossack at 5 (Ivan, age 13, stated, “I never heard of any [troubles in the family.]”); Coroner’s Inquest Testimony of James Hossack at 4-6 (James, age 16, stated that his father had “treated us all right” and that he knew nothing about any troubles between his

that he had often heard his parents quarrel, including the night his father was killed.¹⁵⁸ The other children were only slightly more forthcoming. Will, who was eighteen years old, admitted in response to a direct question that he remembered his father threatening his older brother with a knife several years earlier.¹⁵⁹ Three of the daughters, ages twenty, twenty-three, and thirty, acknowledged that the family had quarreled, although they volunteered no specifics.¹⁶⁰ Annie, the oldest daughter, reluctantly confirmed that it had "been a pretty bitter time" in their family, but that they had tried to bear their troubles alone.¹⁶¹ The questioner commended her for being so secretive in the past, stating, "We have found that you as a family done the right thing in trying to keep your quarrels to yourselves," although explaining that the family history was now a focus of the investigation.¹⁶² Annie's husband, E.E. Henry, was even more clear about the family's determination to keep their troubles to themselves. Hesitant to answer questions about family problems, he finally explained that his evasiveness came from his knowledge that the Hossack family had wanted to keep "all these troubles" secret and that, before he married into the Hossack family, he "thought there was not a family in the community got along as squarely, and that it went like clockwork."¹⁶³ After his marriage, he apparently learned otherwise.¹⁶⁴

parents). He continued to deny any knowledge of his parents' troubles, even though the questioner urged him to talk and told him, "[I]t seems that you ought to know just a little bit more than you do." *Id.* at 5.

158. See Grand Jury Testimony of James Hossack at 2. James testified:

After I went to bed on Saturday night Pa and Ma had some trouble. I could not hear the conversation. Our bedroom door was open; it was usually left open. I think I lay awake about an hour and listened to them quarrel. I had heard them quarrel so often before that I did not pay much attention to them.

Id. When he was recalled for additional testimony in front of the grand jury, James again described the quarrel:

On Saturday evening she told him that he nearly drove her crazy sometimes. He said I guess not. After a while they went to bed and Pa blew out the light . . . When they got through quarreling she said Now drop this and he said he would. When they were quarreling he said you don't any of [you] treat me right; that he was tired and sick. And that she did not care anything for him. She said she did too.

Grand Jury Testimony of James Hossack (on recall) at 1.

At his mother's later trial, James testified that he had been intimidated by the prosecutors before his grand jury testimony and that he had lied in his statements that he had heard quarreling between his parents the night before the murder. See Appellant's Abstract of Record, *supra* note 94, at 68-69 (testimony of James Hossack); see also note 277 *infra* (describing trial testimony of Jimmie Hossack).

159. See Coroner's Inquest Testimony of William Hossack at 12. Will also testified that his parents had "had some trouble" and "some very bitter quarrels," which, according to Will, had stopped about a year before. *Id.*

160. See Coroner's Inquest Testimony of May Hossack at 8 (admitting that it "was quite bitter between [her parents]"); *id.* at 9 (testifying that her father threatened John Jr. with a knife and a gun); see also Coroner's Inquest Testimony of Anna Henry at 3-5; Coroner's Inquest Testimony of Louie Kemp at 2. The fourth daughter, Cassie, age 26, was asked no questions about troubles in the family. See generally Coroner's Inquest Testimony of Cassia Hossack.

161. Coroner's Inquest Testimony of Anna Henry at 5.

162. *Id.* at 4.

163. Coroner's Inquest Testimony of E.E. Henry at 4-5.

164. See *id.* at 3-5 (admitting, eventually, that he came to learn of troubles in the family). Like the Hossack children, Mr. Henry was extremely reluctant to testify about Hossack family troubles and had to be urged many times by the questioners to talk frankly about what he knew.

In asking for help from the neighbors, Mrs. Hossack did much more than anyone else to make her family situation publicly known, although she pleaded with her neighbors not to tell her husband of her disclosures. After his death, she must have expected that her neighbors would testify about her family situation to the coroner's jury. One of the questioners, in fact, was Mr. Fred Johnston, who had gone to the Hossacks' house the previous year in an attempt to work out a reconciliation.¹⁶⁵ Nevertheless, when it was her turn to speak under oath, Mrs. Hossack refused to admit that she had suffered at the hands of her husband.¹⁶⁶ She denied that they ever had any serious trouble, that he ever hit or abused her or the children in any way, that he ever threatened any of them, or that she ever thought he might do them harm.¹⁶⁷ In response to specific questions, she denied ever having the conversations reported by the neighbors, ever discussing the division of property with her husband, or ever running away from her home.¹⁶⁸ According to Mrs. Hossack, "[T]here was not a man who thought more of his family than he did or would do more for them."¹⁶⁹ The worst she would say of her husband was that he "was a hard man to care for when he was sick" and that he could be "a hard man to please," one who sometimes "got out of humor."¹⁷⁰

Her questioners appeared incredulous as they listened to her testimony. One asked her, "[W]hy in the name of God don't you tell us everything you know about it?" while warning her, "[T]he spirit of John Hossack . . . now listens to every question asked you."¹⁷¹ Nevertheless, Mrs. Hossack was consistent in the story of her life that she chose to tell. She ended her testimony by saying, "Well, gentlemen, I hope you don't think I killed him. I wouldn't do such a thing, I loved him too much."¹⁷²

165. See Appellant's Abstract of Record, *supra* note 94, at 64 (testimony of Fred Johnston).

166. See Coroner's Inquest Testimony of Margaret Hossack at 15.

167. See *id.* at 15-20, 23-27.

168. See *id.* Mrs. Hossack admitted having left her home the night she went to Mr. Conrad's, a year before the murder, when her husband was "out of humor." She claimed, however, that she had not been "running away," but had wanted to go over to her daughter's house all day. See *id.* at 17. She also admitted that, when Mr. Hossack was out of humor or feeling sick, she had sometimes asked neighbors to visit him. See *id.* at 23-24.

169. *Id.* at 23.

170. *Id.*; see also *id.* at 19 ("Some times he was kind of hard to get along with, but it would not take long to get over it.").

171. *Id.* at 20.

172. *Id.* at 27. Mrs. Hossack's refusal to talk openly to her questioners, as well as the responses of the neighbors to whom she went for help, suggest the strength of the norm of family privacy. The norm required that matters between husband and wife were private and not to be discussed publicly or be a matter for official intervention. This rule of family privacy, which presents itself so powerfully in the Hossack case, is the focus of much contemporary scholarship, particularly in the field of domestic violence. See, e.g., TERRY DAVIDSON, CONJUGAL CRIME: UNDERSTANDING AND CHANGING THE WIFEBEATING PATTERN 52-53 (1978) (discussing how the doctrine of family privacy makes it more difficult for victims of domestic abuse to seek help); MILDRED DALEY PAGEDOW, FAMILY VIOLENCE 13-19 (1984) (describing how the doctrine of family privacy derived from the patriarchal family structure under which wives were considered the property of the husband, thereby providing immunity to husbands who beat their wives); Elizabeth M. Schneider, *The Violence of Privacy*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE 36, 43 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994) ("The concept of privacy encourages, reinforces, and supports violence against women. Privacy says that violence against women is immune from sanction, that it is permitted, acceptable and part of the basic fabric of

At eight o'clock on Tuesday evening, after hearing more than twenty witnesses, the coroner's jury retired for deliberation.¹⁷³ At eleven o'clock, they summoned the county attorney and told him that they could not agree to implicate Mrs. Hossack in the murder of her husband.¹⁷⁴ Instead, they issued a simple verdict that Mr. Hossack had been killed by two blows to the head.¹⁷⁵ After the jury's dismissal by the coroner, the county attorney immediately returned to Indianola, where a warrant for the arrest of Margaret Hossack was sworn before a justice of the peace and placed in the hands of the local sheriff for service.¹⁷⁶ This move by the county attorney came as no surprise to members of the community.¹⁷⁷ Not only was Mrs. Hossack's story of sleeping through the attack difficult to believe, but medical testimony also indicated that Mrs. Hossack did not call her children immediately after the attack, as she claimed.¹⁷⁸ Based on the condition of Mr. Hossack's wounds as described by the children when they first saw their father, the doctors found it likely that

American family life. . . . Privacy operates as a mask for inequality, protecting male violence against women."); Reva B. Seigel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117, 2120 (1996) (discussing how the late nineteenth-century feminist movement led to a repudiation of the concept that a husband had the right to beat his wife, only to have it replaced by the judicial view that "the legal system should not interfere in cases of wife beating, in order to protect the privacy of the marriage relationship and to promote domestic harmony").

173. See *Wife Charged with Murder*, *supra* note 28.

174. See *id.*

175. See *Sheriff After Mrs. Hossack*, *DES MOINES DAILY NEWS*, Dec. 5, 1900 (quoting the verdict by the coroner's jury: "We do find said deceased came to his death by two blows upon the head, one with a sharp instrument and one with a blunt instrument.").

176. See *Wife Charged with Murder*, *supra* note 28.

177. See *id.* The article stated:

With almost the first news of the crime Mrs. Hossack was suspicioned by the neighbors of either being guilty of or implicated in the crime. . . .

. . . .

. . . [A]s the inquest progressed and people came and went from the house and observed the actions of the family the sentiment became even stronger that Mrs. Hossack knew more than she had told concerning the crime.

Id.

178. According to Margaret Hossack's testimony at the coroner's inquest, she called the children immediately after she saw the light on the wall and heard the sounds of two boards being struck together and the door closing. See *Coroner's Inquest Testimony of Margaret Hossack* at 3-7. She also testified that the children had come downstairs a "very few minutes" after she called them, not having taken the time to fasten their clothes. *Id.* at 8. According to several of the Hossack children, their father spoke soon after they entered the room, saying that he was not hurt, only sick. See *Coroner's Inquest Testimony of May Hossack* at 4; *Appellant's Abstract of Record*, *supra* note 94, at 9 (testimony of D.W. Hossack).

The testimony that gave rise to some doubt about whether Mrs. Hossack had called the children as soon as she claimed included the opinion of one doctor that it would have been difficult for a man who had received the type of wounds suffered by Mr. Hossack to have spoken immediately after the attack. See *Coroner's Inquest Testimony of Dr. Dean* at 4. According to Dr. Dean, it probably would have been at least half an hour before Mr. Hossack could have recovered from the shock sufficiently to speak. See *id.*; see also *Appellee's Brief and Argument*, *supra* note 91, at 100 (citing other doctors who testified at the trial that Mr. Hossack could not have spoken immediately after the attack). But see *Coroner's Inquest Testimony of Dr. Surber* at 2 (Dr. Surber, who participated in the autopsy of John Hossack, stated that, immediately after the attack, "It is possible that he might [have been] able to articulate in some way.").

The issue as to how soon (or whether) John Hossack could have spoken after he was attacked was a subject of much speculation among the doctors at Mrs. Hossack's trial. See *Appellant's Abstract of Record*, *supra* note 94, at 21-22 (testimony of Dr. Dean); *id.* at 107-08 (testimony of Dr. Parr).

Mrs. Hossack had delayed waking the children, a delay which would have given her enough time to wash and put away the axe.¹⁷⁹ And certainly, the Hossacks' neighbors understood that Mrs. Hossack had strong reasons to want her husband dead.

On Wednesday, less than twenty-four hours after the coroner's jury was dismissed, Mrs. Hossack was arrested as she left the gravesite where her husband had just been buried. The arrest was made in a dramatic fashion, performed so that most residents of the town were alerted and could watch it occur, causing a "tremendous sensation."¹⁸⁰ The sheriff, his deputy, and the sheriff's wife arrived in town during Mr. Hossack's funeral. The deputy sheriff mingled with the crowd after the funeral services, and then the three of them followed the funeral procession in their own carriage from the church to the cemetery. They stood apart from the mourners, watching the burial from the bottom of a hill. At the end of the graveside service, Mrs. Hossack walked on the arm of her brother back to her carriage, where, surrounded by her nine children and two sons-in-law, she was arrested by the sheriff. According to newspaper reports, Mrs. Hossack put both hands to her face and burst out in "convulsive sobbing," her first public show of grief since her husband's death.¹⁸¹ Mrs. Hossack was then helped into the back seat of the sheriff's carriage, where she sat with the sheriff's wife during the drive to the county jail, where she was imprisoned.¹⁸²

The Hossack family retained two well-known criminal lawyers—an ex-senator and a former judge—to defend Mrs. Hossack.¹⁸³ It was clear from the beginning that the case, surrounding a murder labeled "one of the most cold-blooded affairs recorded in the annals of crime,"¹⁸⁴ would be hard fought and would attract tremendous attention.¹⁸⁵ According to the newspapers, public sentiment from the beginning was strongly against Mrs. Hossack, who, along

179. Several of the Hossack children said they had seen a blood clot on John Hossack's head about the size of "2/3 of a tea cup." Coroner's Inquest Testimony of May Hossack at 5. However, according to Mrs. Hossack's testimony, the children had arrived in the room only minutes after the attack. See Coroner's Inquest Testimony of Margaret Hossack at 3-7. Yet Dr. Dean testified that the formation of such a clot would have taken close to an hour. See Coroner's Inquest Testimony of Dr. Dean at 4.

180. *Hossack Trial to Begin at Once*, DES MOINES DAILY CAP., Dec. 6, 1900 (providing the most detailed description of the arrest); see also *Wife Charged with Murder*, *supra* note 28.

181. See *Hossack Trial to Begin at Once*, *supra* note 180.

182. See *id.*

183. See *Chemists Will Examine the Axe*, *supra* note 110 (reporting that Mrs. Hossack had retained Henderson & Berry as counsel).

184. *Wife Charged with Murder*, *supra* note 28.

185. See *Hossack Case Up*, *supra* note 30 ("The case will be hard fought on account of the prominence of the parties; the fact that they own considerable property; that \$2,000 of life insurance is involved in the case, and because the best of counsel has been retained by the defense."); *Hossack Trial to Begin at Once*, *supra* note 180 ("There is every indication that the Hossack case will be hard fought in the courts. . . . The family is well-to-do and will have plenty of money at its command to fight the case."); *Surprise Is Expected*, DES MOINES DAILY NEWS, Mar. 23, 1901 (describing the Hossack case as "one of the most sensational trials that has ever occupied the attention of a Warren county criminal court"). Finally, the case would attract attention because Margaret Hossack was the beneficiary of her husband's \$2000 life insurance policy. See *Gum on the Ax in Hossack Case*, DES MOINES DAILY CAP., Feb. 13, 1903.



MRS. MARGARET HOSSACK
Accused of the Murder of Her Husband, John Hossack

From the *Des Moines Daily Capital*, Apr. 4, 1901.

with the rest of her family, had been seen to shed few tears over the death of John Hossack.¹⁸⁶ Ten days after the murder, “hundreds of spectators throng[ed] the streets” of Indianola, hoping to catch a glimpse of Margaret Hossack and her children as they made their way to the preliminary hearing.¹⁸⁷ The large crowd, eagerly awaiting any news, was “visibly disappointed” when the announcement was made that Margaret Hossack and her attorneys had chosen to waive the preliminary hearing. Instead, Mrs. Hossack’s case would go directly to the grand jury.¹⁸⁸ In January 1901, as newspapers rehashed all the known facts of the brutal crime,¹⁸⁹ Margaret Hossack, who had been released from prison to spend Christmas with her children at the family home,¹⁹⁰ was indicted by the grand jury on charges of first-degree murder.¹⁹¹ She entered a plea of not guilty and was committed to the county jail.¹⁹² An application by her attorneys for an order allowing bail¹⁹³ was denied by the judge on the basis that the evidence of her guilt “was strong and the presumption great.”¹⁹⁴

As Susan Glaspell reported on the events preceding Margaret Hossack’s trial, Glaspell must have speculated about the different stories that would be told about Mrs. Hossack at the trial. It was difficult not to believe the story told by so many neighbors: that Mrs. Hossack had been unhappy and afraid in her marriage, living with a violent and unpredictable husband who made her fear for the lives of herself and her children.¹⁹⁵ And yet, just as it appeared to the Hossack family,¹⁹⁶ it would have been clear to Susan Glaspell that, to the extent that story was told, it incriminated Mrs. Hossack. Testimony about the violence in the Hossack home made it all the more clear that she, more than anyone else, had a reason to want her husband dead: to free herself from the

186. See *Wife Charged with Murder*, *supra* note 28 (“The family, according to the testimony of those present, have evidenced little emotion over the crime; few tears have been shed . . .”); see also *She Prepares to Fight*, *supra* note 28 (describing Mrs. Hossack as manifesting “no emotion” since her arrest and stating that “[m]embers of the Hossack family are standing by her solidly, but public sentiment is overwhelmingly against her”); *Wife Charged with Murder*, *supra* note 28 (suggesting that, during the inquest and as the sentiment grew stronger that Mrs. Hossack knew more than she was telling, there were “hints of a vigilance [sic] committee in case the coroner’s jury failed to do what the people regarded as its duty”).

187. *Now Before Grand Jury*, DES MOINES DAILY NEWS, Dec. 11, 1900.

188. *See No Trial Is Held*, DES MOINES DAILY CAP., Dec. 11, 1900.

189. See, e.g., *Hossack Case Up*, *supra* note 30; *Indicted Her for Murder*, DES MOINES DAILY NEWS, Jan. 17, 1901; *Mrs. Hossack May Come Here*, DES MOINES DAILY NEWS, Jan. 14, 1901.

190. *See Mrs. Hossack at Liberty*, DES MOINES DAILY CAP., Dec. 27, 1900.

191. *See Indicted Her for Murder*, *supra* note 189.

192. *See Hossack Trial Monday*, DES MOINES DAILY CAP., Mar. 29, 1901.

193. *See Application to Admit Defendant to Bail*, State v. Hossack (Warren County Dist. Ct. 1901) (on file with the *Stanford Law Review*).

194. *Hossack Trial Monday*, *supra* note 192.

195. See text accompanying notes 119-137 *supra*.

196. Several reports in the press speculated that, in an effort to protect their mother, the Hossack children were not disclosing the entire truth about the family difficulties. See, e.g., *Hossack Case Hangs Upon a Single Point*, DES MOINES DAILY CAP., Apr. 4, 1901 (“[The Hossack daughters] answered many of the questions with reluctance, although not with absolute evasion. . . . [T]hey found it hard, looking down into the face of the woman who sat before them, to testify as to family troubles when they knew to what use that testimony would be put.”); *It Looks Black for Margaret Hossack*, *supra* note 30 (speculating that James Hossack, at the trial, recanted his grand jury testimony regarding quarrels between his parents on the night of the murder in an effort to protect his mother).

marriage she had been unable to escape by other means. The story of the years of abuse and torment would only be used against her.

And so it was. The trial of Margaret Hossack took place during the first week of April 1901, four months after John Hossack was killed. Jury selection took several days; it lasted longer than usual because many potential jurors were excused due to their definite opinions about the guilt of the accused.¹⁹⁷ Every day the courtroom was packed to capacity while crowds of people outside sought unsuccessfully to gain admittance.¹⁹⁸ Among the many observers, Susan Glaspell listened as the prosecution built its case, calling numerous witnesses to testify that Mrs. Hossack had spoken of her husband's cruel treatment of her and her children and his violent threats against the family.¹⁹⁹ Neighbors repeated what they had said to the coroner's jury and the grand jury: They knew Mrs. Hossack was often desperately afraid of her husband, and they had heard her say the family would have no peace as long as he was alive.²⁰⁰

Some of the women neighbors made the strongest witnesses against Margaret Hossack, repeating, sometimes in a tone of animosity, her words to them about her husband and his violent threats.²⁰¹ According to one newspaper report, the women seemed either unaware of the impact of their testimony on the defendant or not averse to making a strong case against her.²⁰² Some of the women witnesses even spoke of their high regard for Mr. Hossack, eliciting reprimands from the judge for expressing opinions on the witness stand.²⁰³ The sheriff's wife, Mrs. Hodson, was one of the few women who seemed to show public sympathy and support for Margaret Hossack. Having accompanied her husband when he arrested Mrs. Hossack and having traveled with

197. See Petition and Affidavit for Change of Place of Trial, *State v. Hossack* (Warren County Dist. Ct. 1901) (stating that, in the first trial, additional jurors were called, with many excused because they had "formed and expressed an opinion in the case"); see also *No Trial Is Held*, *supra* note 188 (stating that three-fourths of those who expressed an opinion believed, at that point, that Mrs. Hossack was either guilty of the murder or implicated in the crime).

198. See, e.g., *Hossack Begged Wife to Aid Him*, *DES MOINES DAILY NEWS*, Apr. 3, 1901 ("During the afternoon session, which began sharply at 1:30 o'clock, the seating capacity of the court room proved inadequate to the demand and scores of people crowded into the aisles and stood packed in about the railing separating the attorneys, witnesses and defendant from the promiscuous multitude."). Another article noted:

As early as 2 o'clock yesterday afternoon, it was impossible to find standing room in the Warren county court room. People, not only from Indianola, but from all the towns of the county, were crowding in at all the doors, and it was with difficulty that a genuine crush could be prevented.

Mrs. Hossack Looks Haggard and Worn, *supra* note 29.

199. The testimony of these witnesses is summarized in the Appellant's Abstract of Record, *supra* note 94, at 14-16 (testimony of Rinda Haynes); *id.* at 59-64 (testimony of Fred Johnston); *id.* at 73 (testimony of Neil Morrison); *id.* at 75-77 (testimony of W.C. Conrad); *id.* at 77-79 (testimony of Nora Cart); *id.* at 79 (testimony of Mrs. George Grant); *id.* at 79-80 (testimony of Mrs. Frank Keller); *id.* at 97-103 (testimony of Frank Kellar).

200. See, e.g., *id.* at 13-16 (testimony of Rinda Haines).

201. See, e.g., *id.* at 14 (testimony of Rinda Haines); *id.* at 78-79 (testimony of Nora Cart); *id.* at 79-80 (testimony of Mrs. Frank Keller).

202. See *It Looks Black for Margaret Hossack*, *supra* note 30.

203. See *id.*

them to the county jail,²⁰⁴ Mrs. Hodson also visited Margaret Hossack in her prison cell. And throughout the week-long trial, Mrs. Hodson sat in the courtroom by the side of Margaret Hossack.²⁰⁵

The case against Mrs. Hossack was based on strong circumstantial evidence, which was especially persuasive in the state's attempt to prove that Mrs. Hossack was not asleep in bed at the time of the attack, as she claimed.²⁰⁶ The prosecutors argued that the location of the blood droplets on the bed covers and Mrs. Hossack's nightclothes was consistent with her having risen before the attack occurred.²⁰⁷ The Hossack bed, only four feet wide, was placed into evidence to show that it would have been impossible for Mrs. Hossack to have lain in bed next to her husband without being struck by the handle of an axe wielded by an unknown attacker.²⁰⁸ The prosecution further argued that Mrs. Hossack's claim that she did not awaken until after the murderer fled was contrary to common sense: Since she claimed that she had slept with her back to her husband, she would have had to have slept through two blows rendered forcibly by a person standing only inches from her face.²⁰⁹

Nothing in the case clearly proved that Mrs. Hossack was the attacker. But in their closing arguments, prosecutors focused on evidence that seemed to prove that she was lying in certain critical aspects of her story, including her claims that she was in bed when the attack occurred and that she called her children immediately thereafter.²¹⁰ According to the state, its evidence could only be explained by finding Mrs. Hossack guilty of the crime.²¹¹

In addition, the prosecutors relied on testimony of neighbors that, on the morning after the murder, Mrs. Hossack knew the location of the axe, which was the likely murder weapon. As she correctly predicted, it was found underneath the granary instead of in its usual place inside.²¹² The chemise Mrs.

204. See *Hossack Trial to Begin at Once*, *supra* note 180 (describing Mrs. Hossack and Mrs. Hodson, the sheriff's wife, as sitting together in the back seat of the covered carriage, with the sheriff and his deputy in front, for the 22-mile ride from the funeral to Indianola).

205. See *Hossack Begged Wife to Aid Him*, *supra* note 198 (describing Mrs. Hossack as sitting next to the "sympathetic wife of Sheriff Hodson, who frequently applied her handkerchief to her eyes"); *Mrs. Hossack Looks Haggard and Worn*, *supra* note 29 (describing the wife of Sheriff Hodson as having "been with Mrs. Hossack more than any one else since her confinement in the county jail, and who now sits at her side during the trial").

206. See Appellee's Brief and Argument, *supra* note 91, at 82-84.

207. See Appellee's Amendment to Appellant's Abstract of Record at 12-13, *State v. Hossack*, 89 N.W. 1077 (Iowa 1902) (summarizing the opening argument of the county attorney); see also Appellee's Brief and Argument, *supra* note 91, at 89-93; *Hossack to Go to Jury Tomorrow*, *supra* note 101.

208. See *Hossack to Go to Jury Tomorrow*, *supra* note 101.

209. See Appellee's Brief and Argument, *supra* note 91, at 82-84.

210. See Appellant's Abstract of Record, *supra* note 94, at 125-29 (summarizing the closing argument of Mr. Clammer, attorney for the state); *id.* at 130-33 (summarizing the closing argument of Mr. McNeil, attorney for the state); see also *Hossack to Go to Jury Tomorrow*, *supra* note 101.

211. See Appellant's Abstract of Record, *supra* note 94, at 127-29 (summarizing the closing argument of Mr. Clammer); *id.* at 130-33 (summarizing the closing argument of Mr. McNeil).

212. See *id.* at 98 (testimony of Frank Kellar, who testified that Mrs. Hossack had told him, after the axe was found under the granary, that that was where the axe could be found). For the prosecution's reliance on her knowledge of the correct location of the axe as proof of her guilt, see Appellee's Brief and Argument, *supra* note 91, at 96; *Mrs. Hossack's Fate in Hands of the Jury*, *DES MOINES DAILY CAP.*, Apr. 10, 1901. Both at the inquest and later at the trial, Mrs. Hossack denied having said anything about the axe to Mr. Kellar. See Coroner's Inquest Testimony of Margaret Hossack at 14; Appellant's

Hossack was wearing the night of the attack was later found soaking in a pail of bloody water, destroying its value as evidence.²¹³ Nevertheless, the state produced witnesses who testified that they had seen blood drops on the back of the garment,²¹⁴ which, according to the prosecution, might have been caused by Mrs. Hossack holding a dripping axe above her shoulder.²¹⁵ And according to one neighbor who testified for the prosecution, Mrs. Hossack was handy with an axe; he had seen her chop wood on numerous occasions.²¹⁶ Despite medical testimony at the coroner's inquest that the attacker was most likely a left-handed person,²¹⁷ prosecutors argued at trial that a right-handed person, such as Mrs. Hossack, must have struck the fatal blows.²¹⁸

Of course, the fact that Margaret Hossack had a motive to kill her husband was crucial to the prosecutors. She had expressed to others on many occasions her clear desire to be rid of the husband she feared.²¹⁹ The prosecution stressed the lack of a motive on anyone else's part,²²⁰ despite clear evidence, recognized by members of the community, that other members of the Hossack family may have had an equally strong desire to see John Hossack dead.

Despite evidence that Mrs. Hossack had the means, the opportunity, and the motive to kill her husband, the prosecution still had a significant obstacle to surmount in obtaining her conviction: the fact that Mrs. Hossack was a woman, a member of the sex which the all-male jury was bound to respect and protect.

In her book *Women Who Kill*, Ann Jones discusses the cases of numerous women accused of murder. Jones concludes that juries during the time of Mrs. Hossack's trial were particularly lenient with female defendants, especially

Abstract of Record, *supra* note 94, at 124 (testimony of Margaret Hossack). According to the trial testimony of Dr. H.M. Dale, Mrs. Hossack told him that she knew her son Ivan had been asked to put the axe in the granary the night before the murder, but because he had returned so quickly, she suspected that he had not put it inside. See Appellant's Abstract of Record, *supra* note 94, at 41 (testimony of Dr. H.M. Dale).

213. See Argument of Appellant, *supra* note 90, at 62-64.

214. See Appellant's Abstract of Record, *supra* note 94, at 19 (testimony of Dr. Dean); *id.* at 42 (testimony of Dr. Dale); *id.* at 60-61 (testimony of Fred Johnston); *id.* at 91-92 (testimony of Sue Himstreet).

215. See Appellee's Brief and Argument, *supra* note 91, at 90 ("These blood stains demonstrate and prove this fact to an equally absolute certainty, that she stood by the side of that bed at that time, and wielded that ax over her right shoulder, inflicting the mortal wounds found upon the head of her husband.").

216. See Appellant's Abstract of Record, *supra* note 94, at 47 (noting that C.P. McGriff testified, "I have seen her chopping wood quite frequently, that is, years ago."). According to Mrs. Hossack, however, she rarely chopped wood. Her sons did most of the chopping. "When we would run out I would chop a few sticks. . . . I would pick out something small I could break or cut off easy." Coroner's Inquest Testimony of Margaret Hossack at 22-23.

217. See Coroner's Inquest Testimony of Dr. Surber at 2 (stating that it appeared to him that the wounds were inflicted by a left-handed person and that he did not think it possible for a right-handed person to have inflicted those wounds); Coroner's Inquest Testimony of Dr. Porterfield at 2 (stating that he thought they were left-handed blows, although, in response to questions, he admitted that a right-handed person might have struck the blows, depending on where the assailant was standing and the number of pillows under Mr. Hossack's head). But see Coroner's Inquest Testimony of Dr. Dean at 5-6 (stating his opinion that the blows were struck by a right-handed person).

218. See Appellee's Brief and Argument, *supra* note 91, at 85-86.

219. See note 128 *supra*.

220. See Argument of Appellant, *supra* note 90, at 70.

those who were extremely feminine in manner and appearance and who behaved as women were expected to behave.²²¹ Lawyers defending women charged with murder blatantly relied on the sense of chivalry and paternalism imbued in the all-male juries, arguing that the jurors, as men, had a duty to protect the female defendant,²²² typically portrayed by her lawyers as helpless, weak, and fragile.²²³ A real woman, the defense lawyers often argued, was not capable of such a violent crime. And how could the jury doubt that the weeping, attractive, well-dressed, and well-mannered defendant they saw before them was a real woman?²²⁴

As Ann Jones convincingly argues, many guilty women went free during this period, with their freedom being “the price society paid to maintain the illusion that women had no reason to hate their husbands or marriage itself.”²²⁵ Jurors, all male and most married, were understandably reluctant to believe that a woman was capable of murdering her husband. To believe so was too threatening to their presumption that “women, by nature, loved men” and were dependent on them.²²⁶ Acquittal of a woman accused of murder allowed the men on the jury to ignore the threatening possibility that women might be oppressed in marriage and might act independently, in their own interests, even when that meant striking out against their oppressors.²²⁷

Without doubt, both Susan Glaspell and the lawyers prosecuting Mrs. Hosack were aware of the difficulty of convicting a woman. “You know juries

221. See JONES, *supra* note 33, at 98, 104. For a description of the arguments made by lawyers at specific trials, see *id.* at 87 (describing how the lawyers for Lucretia Chapman, charged with the murder of her husband, successfully argued that she could not be guilty of murder because she was “simply giddy, foolish, stupid, vain, and weak—in short, a normal woman”); *id.* at 106-08 (describing the acquittal of Ann Simpson, who was described as “almost a child, fair and beautiful, in the very bloom of womanhood”); *id.* at 235-47 (describing Lizzy Borden’s acquittal following an emphasis, both by the defendant in court and by her lawyers in their arguments, on her feminine appearance and behavior).

222. See, e.g., *id.* at 87 (describing the argument by Lucretia Chapman’s lawyers that Chapman should be shielded by the law’s “chivalry”); *id.* at 108 (describing the successful defense strategy in the murder trial of Ann Simpson, where her lawyer “told the jury flatly that it was their duty to protect not society but the defendant because she was a lady”); see also Robertson, *supra* note 33, at 404-05 (describing the defense attorney’s emphasis in the trial of Lizzie Borden on the jury’s paternal function toward the defendant).

223. See, e.g., JONES, *supra* note 33, at 93 (describing the successful defense of Lucretia Chapman, who was described as “a woman—hapless, helpless, friendless, and forlorn”); Robertson, *supra* note 33, at 405 (describing the defense’s portrayal of Lizzie Borden as “the model of feminine submission”).

224. The most well-known example of this type of argument was made by the defense in the case of Lizzie Borden. See SULLIVAN, *supra* note 33, at 168 (describing how the defense attorney for Lizzie Borden closed his argument to the jury by shouting, “To find her guilty, you must believe her to be a fiend! Does she look it?”); Robertson, *supra* note 33, at 410 (describing the defense attorneys as “play[ing] upon the incongruity between the image of a raving maniac who perpetrated the murders and the prim embodiment of femininity accused of the crime”); see also JONES, *supra* note 33, at 93 (describing the trial of Lucretia Chapman, who was found not guilty, with the verdict based largely on her lawyer’s portrayal of her as “a female, with whose character we are ever accustomed to associate all that is lovely in tenderness, affection, and fidelity”); *id.* at 108 (describing the trial of Ann Simpson); Alkalay-Gut, *Jury of Her Peers*, *supra* note 6, at 8 n.7 (“The women [charged with murder in the nineteenth century] were let off however, when they were let off, not because they were believed innocent, but because of an inability to believe in the depravity of the gentle sex.”) (emphasis omitted).

225. JONES, *supra* note 33, at 104.

226. *Id.*

227. See *id.*; see also Robertson, *supra* note 33, at 415.

when it comes to women,” laments the county attorney in *A Jury of Her Peers*, explaining his need for a specific motive for the killing.²²⁸ In Mrs. Hossack’s case, where the prosecution was unable to show a specific motive for the attack that particular night, one of the lawyers for the state addressed the bias directly, telling the jury in his closing arguments that it had “no right to acquit her because she is a woman or even because she is an old woman.”²²⁹ But the prosecution also addressed the jury’s likely prejudice toward women in a more subtle fashion, using a technique tried by prosecutors in other cases.²³⁰ At the least, Mrs. Hossack would be shown not to qualify as the type of woman to whom the jury owed its respect and regard, one who had accepted and acted properly within the role assigned to her by society. At worst, she would be portrayed as a depraved monster—an “inhuman wife and mother”²³¹—who had violently attacked a man who would be portrayed as one of the most respected members of the community.²³²

In their portrayal of Mrs. Hossack as unwomanly, the prosecutors were helped somewhat by her appearance and her mannerisms, which displayed strength rather than weakness. Although she hardly looked monstrous or threatening, she was also not the prototype of a “feminine” woman. Margaret Hossack was described as “tall and erect . . . well built and muscular,”²³³ “masculine in appearance,”²³⁴ and someone who looked like she had done her share of outside work.²³⁵ She was rarely emotional, never hysterical, and man-

228. Glaspell, *supra* note 1, at 81.

229. *Mrs. Hossack Found Guilty of Murder*, *supra* note 29. The prosecutor also stated to the jury, “I have no more sympathy for this defendant because she is a woman than I would have for a man who murdered his wife.” *Id.*

230. See JONES, *supra* note 33, at 92, 113.

231. Appellee’s Brief and Argument, *supra* note 91, at 98.

232. See *Mrs. Hossack Found Guilty of Murder*, *supra* note 29. The strategy of the prosecution, portraying Mrs. Hossack not only as unwomanly, but as almost inhuman, was consistent with the prevailing theory that a female criminal was not only inherently evil, but that, because she was able to commit the crime, she had also broken from her biologically determined role as a woman and was essentially masculine. See Carlen, *supra* note 36; Marie Fox, *Crime and Punishment: Representations of Female Killers in Law and Literature*, in *TALL STORIES? READING LAW AND LITERATURE* 145, 146-47 (John Morrison & Christine Bell eds., 1996); see also Deborah W. Denno, *Gender, Crime, and the Criminal Law Defenses*, 85 J. CRIM. L. & CRIMINOLOGY 80, 92 n.79 (1994) (describing the depiction of the female violent offender in criminology as “a monster. Her normal sister is kept in the paths of virtue by many causes, such as maternity, piety, weakness [W]hen these counter influences fail, and a woman commits a crime, we may conclude that her wickedness must have been enormous before it could triumph over so many obstacles.” (quoting CESARE LOMBROSO & WILLIAM FERRERO, *THE FEMALE OFFENDER* 152 (1895))). Because marriage was one of the most fundamental institutions of society, a woman who killed her husband was likely to be portrayed as particularly monstrous and depraved. See Elizabeth M. Schneider, *Resistance to Equality*, 57 U. PITT. L. REV. 477, 484 n.21 (1996).

233. *Wife Charged with Murder*, *supra* note 28 (further describing Mrs. Hossack as having “a look common to the Hossack family that bodes no good to the enemy”).

234. Appellee’s Brief and Argument, *supra* note 91, at 83.

235. See, e.g., *Hossack Jury Secured*, DES MOINES DAILY CAP., Apr. 2, 1901 (describing Mrs. Hossack as “a stout, hard-working woman and accustomed to all the hardships of farm life and was [sic] seen a great deal of outdoor work”); *She Prepares to Fight*, *supra* note 28 (“[S]he is tall and powerful and looks like she would be dangerous if aroused to a point of hatred.”); *Surprise Is Expected*, *supra* note 185 (describing her as a “square jawed determined looking woman”).

ifested few public signs of grief, a matter of frequent note in the newspapers.²³⁶ Regardless of whether she had killed her husband, she at least appeared guilty of not openly mourning his death. Even when she did shed tears, which she did several times while on the witness stand, it was not done in a properly feminine manner. As one reporter stated, “[W]hen the woman does cry, it is like seeing a strong man break down.”²³⁷ Another newspaper reporter stated an unfavorable view of Mrs. Hossack that was, in all likelihood, shared by the men on the jury: “There are few women in Iowa who could have endured what she has endured and not be today in a state of utter collapse. It is seldom that a man on trial for his life displays as little emotion as has been shown by Mrs. Hossack in the past week.”²³⁸

Just as Mrs. Hossack’s appearance may have worked to her disadvantage, her behavior as a woman, both on the night of the murder and during her marriage, was also called into question. The prosecutors found it incredible that a mother with children could sleep as soundly on the night of the murder as she claimed she had, implying that she was either lying about the night of the murder or not a proper caretaker of her family.²³⁹ Similarly, the prosecutors raised questions about her story that she left the bedroom when she heard the outside door close. According to the prosecutors, the “natural” response of a woman in such a case would have been immediately to turn to her adjacent husband for help and protection, again calling into question Margaret Hossack’s honesty or, if she were telling the truth, her behavior as a woman.²⁴⁰

As to prior behavior, the prosecution stated in its closing argument that her first son had been conceived out of wedlock and that her marriage to Mr. Hos-

236. See, e.g., *Hossack Jury Secured*, *supra* note 235 (“She is a woman with but little natural expression upon her countenance and one can scarcely detect that she is worried or mentally disturbed.”); *It Looks Black for Margaret Hossack*, *supra* note 30 (describing Mrs. Hossack as “stern [and] unfeeling”); *Mrs. Hossack Looks Haggard and Worn*, *supra* note 29 (“While in jail she has shown little emotion and her break down today [in the courtroom, while her lawyer made his opening statement] was a complete surprise to those who have been most constantly with her.”); *Mrs. Hossack May Plead Insanity*, *DES MOINES DAILY CAP.*, Dec. 8, 1900 (describing Mrs. Hossack, who “wept very little” after her initial outburst at her arrest, as a “model prisoner at the county jail. She manifests little grief; is very quiet, and is disposed to take things in as cheerful a light as possible.”); *Wife Charged with Murder*, *supra* note 28 (describing Mrs. Hossack at the inquest as shedding “very few tears and answer[ing] the questions put to her by the county attorney in an emotionless way”).

Hysteria was assumed to be a natural reaction of women to stress of any kind, so Margaret Hossack’s lack of histrionics made her all the more suspicious to members of the community and the jury.

237. *Defense Hopes Rest upon Hossack Dog*, *supra* note 31.

238. *Mrs. Hossack Found Guilty of Murder*, *supra* note 29.

239. See Appellee’s Brief and Argument, *supra* note 91, at 81.

240. See *id.* at 97-98. As the prosecutors argued in their brief on appeal:

All this seems strangely unnatural and improbable in a wife and mother. Human experience teaches us that a wife and mother would inevitably have called and tried to awaken the husband the moment she was aroused by the strange noises in the house Not so with this inhuman wife and mother

Id. at 98; see also *Mrs. Hossack’s Fearful Ordeal*, *DES MOINES DAILY NEWS*, Apr. 10, 1901 (reporting that the county attorney, in his closing argument, questioned whether Mrs. Hossack’s behavior on the night of the murder seemed to be that of “a woman who loved the man”). Recalling that she testified that she had taken hold of her husband’s hand after he died, the county attorney asked “if in the opinion of the jury a woman under those circumstances would not have manifested greater concern.” *Mrs. Hossack’s Fearful Ordeal*, *supra*.

sack had been a forced one.²⁴¹ In its immediate objection, the defense argued that no such evidence had been presented.²⁴² In fact, the prosecution's claim was based on one witness's recollection as to the date of the Hossacks' marriage,²⁴³ testimony which was contradicted by all other evidence on that point.²⁴⁴ Nevertheless, even the suggestion of such questionable behavior on the part of Mrs. Hossack may have affected her image as a fully respectable woman in the minds of the jury members, making everything she said less credible.²⁴⁵ If she was guilty of premarital sex, perhaps she was also the type of woman who could have committed an unthinkable crime. In addition, by tracing Margaret Hossack's hatred of her husband to one particular cause,²⁴⁶ the prosecution offered an explanation to the jury as to why she had attacked her husband, thereby avoiding any suggestion that her experiences in an oppressive marriage could be generalized to other women.²⁴⁷

Probably more important in raising questions about her character was the fact that Margaret Hossack had spoken to others about her husband's treatment of the family, telling of his frequent threats of violence and his wild temper.²⁴⁸

241. See Appellant's Abstract of Record, *supra* note 94, at 125-26 (quoting Mr. Clammer's closing argument for the state: "[T]here can be no question but that the motive underlying this hatred, this malice on the part of the defendant was that she was compelled to marry this man; the man always had a loathing of her afterwards."); *Alleges Haines Was the Murderer*, DES MOINES DAILY NEWS, Apr. 9, 1901 (reporting that "the marriage had not been a love marriage, but forced upon them").

242. See Appellant's Abstract of Record, *supra* note 94, at 126 (summarizing the closing argument of Mr. Clammer); *Hossack to Go to Jury Tomorrow*, *supra* note 101.

243. See Appellee's Amendment to Appellant's Abstract of Record, *supra* note 207, at 10 (testimony of Donald Mercheson, Margaret Hossack's brother). When asked when the defendant had been married, Mr. Mercheson replied, "I am not quite positive; I think it was in the fall of 1868." *Id.*

244. See Argument of Appellant, *supra* note 90, at 69-70 (making the point that all other evidence supported the fact that the Hossacks had been married in the fall of 1867). According to the Directory of Warren County published in 1879 (on file with author), the Hossacks were married in November 1867. Their first child was born in August 1868, see Appellant's Abstract of Record, *supra* note 94, at 112 (testimony of Alex Hossack), which would have been about 10 months after the marriage. At the coroner's inquest, Mrs. Hossack was specifically asked about the length of time between her marriage and the birth of her first child. Her reply was "about ten months." Coroner's Inquest Testimony of Margaret Hossack at 21.

245. See Motion to Set Aside Judgment and for a New Trial at 10, *State v. Hossack* (Warren County Dist. Ct. 1901) (arguing that the prosecution's false statement that the defendant bore her first child prior to or about the time of the marriage "reflected upon the character of the defendant . . . and tended to inflame and prejudice the jury against the defendant").

246. See Appellant's Abstract of Record, *supra* note 94, at 125-26 (summarizing the closing argument of Mr. Clammer). According to that summary, the prosecutor stated:

Now gentlemen, I have looked over this evidence, I have wondered what is the underlying cause of this trouble, hatred and malice by this defendant: What could cause a man and woman who had agreed to love and cherish each other, who lived in a community all those years, who raised up a family of children, what cause could make them hate each other so terrible, as is shown in this cause? [sic] . . . [T]here can be no question but that the motive underlying this hatred, this malice on the part of the defendant was that she was compelled to marry this man; the man always had a loathing of her afterwards.

Id.

247. This emphasis on finding an immediate motive for the crime, such as "menstrual tension, hysterical (i.e., womb-centered) disease, insanity, or a male accomplice," was common in trials of women defendants charged with murder during this period. JONES, *supra* note 33, at 99. Soon after she was arrested, the press reported rumors that Mrs. Hossack might plead insanity. See *Mrs. Hossack May Plead Insanity*, *supra* note 236.

248. See notes 119-29 *supra* and accompanying text.

The prosecution portrayed her as constantly seeking to humiliate and disgrace her husband behind his back.²⁴⁹ The reaction of the jury, composed mostly of married men who were members of the community, was no doubt similar to that displayed by the neighbors to whom she had spoken. Although disturbed by her reports, the neighbors were always reluctant to listen to her stories of what they viewed as private family matters.²⁵⁰ Clearly, they wanted to ignore the situation as much as possible. To them, even after they heard her stories, Mr. Hossack was a most respected man in the community, one who never contracted a debt without being sure he could meet it,²⁵¹ a man devoted “to his friends, his church, his political party and other organizations.”²⁵²

The men on the jury were likely to have felt, as had the neighbors, that John Hossack’s treatment of his family should not have been a matter of public concern. To them, Margaret Hossack, who had forced an awareness of her family situation on her neighbors, had behaved in a way that was uncharacteristic of a good wife and mother. Like many other members of society, the men on the jury would have shared a deep-rooted conviction that marriage was the most natural and beneficial state for women.²⁵³ The experiences of Margaret Hossack, who had lived in an oppressive and dependent relationship from which she could not have escaped, must have been threatening to hear. No doubt, the jury members agreed with some of the neighbors, both male and female, who blamed Margaret Hossack for what her marriage had become, faulting her, as the prosecution did, for “never [having] been a loving wife.”²⁵⁴ Most likely, the jurors felt antipathy for her, condemning her as being outside the category

249. See *Hossack to Go to Jury Tomorrow*, *supra* note 101 (describing the prosecutor as telling the jury that “for years [Mrs. Hossack] had been telling the neighbors stories about him, had shown that she had no love for him and wished him humiliated in the community”).

250. See note 130 *supra* and accompanying text.

251. See *Wife Charged with Murder*, *supra* note 28.

252. *Mrs. Hossack Takes the Stand in Her Defense*, DES MOINES DAILY CAP., Apr. 8, 1901.

253. See, e.g., JONES, *supra* note 33, at 77 (quoting a Philadelphia newspaper: “A woman is nobody. A wife is everything.”); *id.* at 122 (quoting an antisuffrage writer: “[W]oman was created to be a wife and a mother.”); ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 9 (1987). Pleck writes:

Conservatives in the nineteenth century argued that women were dependent on the family for their happiness. They were tethered to it because of their children and in order to make the home a place of affection. Thus—for the sake of their children, or the redemption of their husbands—wives have traditionally been urged to renounce their personal liberty.

Id.

254. *Hossack to Go to Jury Tomorrow*, *supra* note 101. As evidence of Mrs. Hossack’s hatred for her husband, prosecutors focused on the many times she sought help from her neighbors, implying that she was to blame for the treatment she had suffered. See Appellee’s Brief and Argument, *supra* note 91, at 71. The prosecution argued:

The many bitter quarrels testified to by members of the family and her neighbors as having occurred over a period of time from about seven years prior and down to the time of the homicide show conclusively that appellant harbored a feeling of intense ill-will and persistent hatred toward her husband.

Id.

of proper women in their society.²⁵⁵ That kind of emotional response would have made a judgment against her all the more easily reached.²⁵⁶

The few times that the prosecution did refer to the womanly characteristics of Mrs. Hossack, it did so only in an attempt to shore up the weakest link in the chain of evidence against her: to prove that she had not only been out of bed at the time of the attack, but that she also must have wielded the axe. In closing argument, one of the lawyers for the state emphasized that the first blow had been made with the sharp end of the instrument. He asked, "[W]ho but a woman would have done that?"²⁵⁷ And he stressed the lack of blood drops on the sitting room carpet as proof that it was Mrs. Hossack who had carried the dripping axe from the bedroom to the porch; she had unwittingly displayed her "housewife's instinct" by holding it to avoid staining her rug.²⁵⁸

Although she failed to display womanly traits in a way that strengthened her case, Mrs. Hossack did not present the appearance of someone who could have committed such a violent crime against the man with whom she had lived for thirty-three years. In their closing arguments, however, the prosecutors argued that her hatred for her husband had finally overtaken her on the night she killed him and that she had lain in bed next to him, thinking only about how much she despised him, knowing that her life would never be any better.²⁵⁹ That particular night, "a demon in possession of her soul" and "crazed with her evil purpose,"²⁶⁰ she committed a crime "of more hideous nature" than any "since the crucifixion of Christ."²⁶¹

According to the prosecution, John Hossack was not only an innocent victim, but also a great man who deserved the jury's sympathy because no tears had been shed by his family at his death.²⁶² The same prosecutors had, in their attempt to establish a motive for Margaret Hossack's crime, heavily relied on

255. See STEVEN MINTZ & SUSAN KELLOGG, *DOMESTIC REVOLUTIONS: A SOCIAL HISTORY OF AMERICAN FAMILY LIFE* 55 (1988) (describing the "cult of true womanhood," which extolled the ideal wife and mother, as personifying four primary virtues: piety, submissiveness, purity, and domesticity). Margaret Hossack was no doubt faulted on several of these grounds, including not only speaking about matters that should have been kept private, but speaking out at all. Female silence as the mark of a good woman (unless her voice is used to soothe or entertain) continues to be a cultural theme and has been discussed in contemporary literature concerning rape. See Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives in the Courtroom*, 5 S. CAL. REV. L. & WOMEN'S STUD. 389, 440-41 (1996).

256. See, e.g., JONES, *supra* note 33, at 122 (describing the conservative view of women who did not stay within the domestic sphere: "woman as monster who threatened the institution of marriage—and not the other way around").

257. *Hossack to Go to Jury Tomorrow*, *supra* note 101. From the beginning, the county attorney stated that the way the blows were struck suggested a woman attacker. See *Chemists Will Examine the Axe*, *supra* note 110 (relating the prosecution's argument that the choice of an axe as the weapon suggested a woman as the attacker: "If a man come in there it would be done with a gun or a knife or some other means."); see also Appellant's Abstract of Record, *supra* note 94, at 126.

258. *Hossack to Go to Jury Tomorrow*, *supra* note 101; see also Appellee's Brief and Argument, *supra* note 91, at 93-94 (asking rhetorically why no drops of blood were found on the rug and answering, "The characteristic of a good housewife seems to afford the only answer and explanation to this inquiry, and that is, that to protect her carpet from stain, she carries under the ax some cloth or other protection, to catch the dripping blood and shield the carpet therefrom.").

259. See *Hossack to Go to Jury Tomorrow*, *supra* note 101.

260. *Id.*

261. *Mrs. Hossack Found Guilty of Murder*, *supra* note 29.

262. See *id.* According to the article, the prosecutor stated in his closing argument:

evidence that Hossack had cruelly mistreated his wife and children.²⁶³ Nevertheless, they were able to speak of John Hossack in the most glowing terms. As one prosecutor stated, "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."²⁶⁴ In his closing argument, in an attempt to portray Mr. Hossack as the most blameless of victims, the prosecutor asked the rhetorical question, "Who in this county knows of any wrong John Hossack ever did?"²⁶⁵

To the prosecution, the abuse suffered by Mrs. Hossack and her pleas to her neighbors for help were strong evidence in the case against her to show that she had reason to want her husband dead. In arguing that such a motive did not exist, the lawyers for Mrs. Hossack had to deny the existence or at least the significance of those facts. Although she had testified to the coroner's jury that the conversations described by her neighbors had not occurred and that she and her husband had had no serious difficulties,²⁶⁶ her lawyers did not elicit such statements from her at trial. Instead, they took the tack of arguing that the neighbors' testimony concerning the relationship between the Hossacks was not relevant to the offense as charged.²⁶⁷

Many times, when a prosecution witness was asked to describe what he or she had heard from Mrs. Hossack (or knew from personal observation) about the state of her marriage, the defense strenuously objected, arguing that the events described were too remote in time and unconnected with the charged offense.²⁶⁸ The court always overruled the defense's objections, holding that evidence of past troubles between the parties was admissible and that it would be up to the jury to decide how strongly it should be weighed.²⁶⁹ Time and time again, however, Susan Glaspell and other observers at the trial heard Mrs. Hossack's lawyers argue that reports that Mrs. Hossack had suffered at the hands of her husband and that she had gone to her neighbors for aid and protection were irrelevant and should not be considered by the jury.²⁷⁰

While the defense did not deny that Mr. and Mrs. Hossack had had troubles in the past, the lawyers for Mrs. Hossack sought to tell a different story about the relationship. Past difficulties should not be considered, they argued, because the couple had reached a total reconciliation more than a year earlier, one

I have shed tears for [Mr. Hossack] myself because there has been none shed for him by his family. They have cried a little because they were afraid their mother was going to be hung, but they have not cried for their murdered father. If John Hossack's spirit is here today what must it think of this scene? What must it think of the hard, dogged face of the defendant?

Id.

263. See text accompanying notes 199-201 *supra*.

264. *Mrs. Hossack Found Guilty of Murder*, *supra* note 29.

265. *Id.*

266. See text accompanying notes 166-170 *supra*.

267. See Argument of Appellant, *supra* note 90, at 16-21.

268. See Appellant's Abstract of Record, *supra* note 94, at 7 (testimony of D.W. Hossack); *id.* at 14-16 (testimony of Rinda Haines); *id.* at 73 (testimony of Neal Morrison); *id.* at 75-76 (testimony of W.C. Conrad); *id.* at 78 (testimony of Nora Cart); *id.* at 79 (testimony of Mrs. George Grant).

269. See *id.* at 7 (testimony of D.W. Hossack).

270. See note 268 *supra*.

which was ongoing when Mr. Hossack was killed.²⁷¹ The marriage had changed course and had become happy and stable, so Mrs. Hossack no longer had any reason to wish for the death of her husband.²⁷² Of course, the lawyers also attempted to cast doubt on the circumstantial evidence against her, arguing that the family axe was never proved to be the murder weapon²⁷³ and debating the prosecution's conclusions based on the location of blood in the room and on Mrs. Hossack's clothes.²⁷⁴ But a constant emphasis of the defense was its denial that the years of abuse were relevant. Despite conflicting evidence at earlier hearings²⁷⁵ and from one neighbor at trial,²⁷⁶ the defense stressed the courtroom testimony of the Hossack children that the conflicted and violent atmosphere of the past had been replaced with one of calm and equilibrium.²⁷⁷

271. See, e.g., *Hossack Case Hangs Upon a Single Point*, *supra* note 196. According to the article:

Upon the cross examination of each of the [Hossack daughters] Senator Berry [the defense attorney] kept rubbing in the fact that a reconciliation had taken place between Mr. and Mrs. Hossack on Thanksgiving day, 1900, and that this reconciliation was complete. In fact Senator Berry is playing upon the Thanksgiving reconciliation to such an extent that the attorneys for the state say they can smell the turkey. Every time there is a Hossack on the stand Senator Berry turns to the Thanksgiving stories and in the questioning regarding it he displays marked descriptive powers. In fact when Senator Berry gets on the turkey story there is little left for the witnesses to do. Some times they give an occasional "yes" but even this is sparingly employed. . . . Thanksgiving day is the time of all times in the Hossack trial. The county attorney talks unfailingly of the stormy time of Thanksgiving, 1899, and Senator Berry then follows with tempting morsels of the anniversary of 1900.

Id.

272. See Argument of Appellant, *supra* note 90, at 65-66; *Mrs. Hossack Found Guilty of Murder*, *supra* note 29. One scholar has noted that the necessity for the defense to argue for the stability and happiness of the marriage was a curious and ironic twist; Margaret Hossack's acquittal depended on portraying the legitimacy of the very institution—marriage—that was responsible for her years of suffering. See West, *supra* note 7, at 234.

273. See Argument of Appellant, *supra* note 90, at 54-55 (arguing that the family axe could not have been used as the murder weapon because the wounds would have displayed the nick in the axe's blade and that the blood on the axe was never conclusively proved to have been human blood rather than turkey blood, as family members claimed).

274. See Argument of Appellant, *supra* note 90, at 56-65; *Mrs. Hossack's Fate in Hands of Jury*, *supra* note 212. The defense also relied on the testimony of some neighbors and family members that the dog acted strangely the morning after the murder; the defense argued that an outside attacker had drugged the dog so that it would not bark and thereby alert the family. See Argument of Appellant, *supra* note 90, at 49-51.

275. See note 155 *supra*.

276. See Appellant's Abstract of Record, *supra* note 94, at 79-80 (testimony of Mrs. Frank Kellar).

277. See *id.* at 68-71 (testimony of James Hossack). James Hossack testified at the grand jury hearing that his parents had quarreled the night of the murder, but he recanted that testimony at the trial, claiming that the county attorney had intimidated him into lying under oath. See *id.* at 68-69. For a dramatic description of Jimmie's testimony at trial, see *It Looks Black for Margaret Hossack*, *supra* note 30. The article introduced the description as follows:

Jimmie Hossack is a long, lank boy of sixteen. He made a figure that might have been humorous if it were not so pathetic when he took the stand yesterday afternoon. He was gulping down sobs as he sat down and he shuffled his big feet about in an embarrassed, frightened and excited fashion as he settled himself on the stand. The tragedy of the case had never seemed as impressive, as heart sickening, as at that moment. Mrs. Hossack was looking up at her son with what seemed to be a wishful, almost a pleading expression. He looked at her and saw. He must have understood, for after a minute he braced himself in the chair and his attitude seemed to indicate that no matter how it might make him appear he would stand by his mother. The defense was a boyish, perhaps an unwise one, but it showed after all that though

In their day-long closing arguments, the defense lawyers made an impassioned plea to the jury that Margaret Hossack be found not guilty.²⁷⁸ They appealed to the jury's sense of human nature, asking how such a hideous and violent crime could have been committed by the aged and motherly defendant the jury saw before it, a woman who had raised a large family and who, even now, was surrounded by her nine children and several grandchildren.²⁷⁹ The defense claimed that a woman who had committed "a crime that only a few men could have done" would naturally be "crazed" and "broken" and that only the consciousness of her innocence could have sustained Mrs. Hossack in the calm fashion that she had maintained throughout the ordeal.²⁸⁰ In an emotional and personal appeal to the jury, one of the defense lawyers stated, "After four months of association with Mrs. Hossack and her family I can stand before this jury and before my God and say I believe her absolutely innocent of this crime."²⁸¹

Since the defense claimed that Mrs. Hossack was innocent of murder, her lawyers could not explicitly ask that her years of suffering be taken into account either as an excuse or in mitigation. But the lawyers did plead with the jury to be compassionate in its judgment and "consider the life of Margaret Hossack, its trials and burdens and those difficulties of wifehood and motherhood."²⁸² They asked the jury to be merciful, to reach a verdict they would not regret, to remember "as ye would have others do unto you do ye also unto them."²⁸³ As the defense made its final argument to spare Mrs. Hossack, family members broke down in audible sobs; her oldest son, John Jr., sat "with his

she may be a stern, unfeeling woman, Margaret Hossack is loved by her children. Some one besides the children she bore will have to say the words that will convict her of murder.

Id.

278. *See Mrs. Hossack's Fate in Hands of Jury, supra* note 212.

279. Emphasizing that a woman's love for her children as proof of her "womanhood" (and therefore her innocence) was a technique that had been used successfully by at least one defense lawyer representing a woman charged with murder. *See JONES, supra* note 33, at 93 (describing how Lucretia Chapman's lawyers argued that "an unnatural fiend who had killed her husband would certainly be incapable—by a 'rule of human action'—of loving children"). One newspaper report also drew the distinction between motherhood and a capacity for violence, describing Margaret Hossack as holding her grandchild and looking "more womanly than she has at any time during her trial. . . . [S]he held the child like a mother, not like a woman who could have murder in her heart" *Defense Hopes Rest upon Hossack Dog, supra* note 31.

280. *Mrs. Hossack's Fate in Hands of Jury, supra* note 212.

281. *Id.* As the newspaper report described the defense lawyer's argument:

It is not often that a man throws into the pleading of a case as much of his own soul as did Senator Berry when he was pleading for the life of Margaret Hossack yesterday afternoon. At 5:30 he stood before the jury and in a voice broken with emotion made the last eloquent appeal for the defendant. He had been talking since before ten in the morning. He had gone with a zeal that had known no bounds into an analysis of the case. At times he had risen to splendid heights of eloquence and through all of the long argument his effort displayed untiring work on the case and a profundity of feeling which did not emanate alone from his ambition as an attorney. As a father himself he was pleading for the children of Margaret Hossack. The clock in the court room moved on and on until the shadows of evening were beginning to fall, but still the speaker continued with a rapidity and force which only an intense emotion could have made possible"

Id.

282. *Id.*

283. *Id.*

head bowed while his gigantic frame shook with great sobs and he choked with emotion."²⁸⁴ Jury members and courtroom observers were moved to tears,²⁸⁵ and even one of the prosecutors was seen to lower his head in silent weeping.²⁸⁶

The jury did not deliberate long. The morning after the closing arguments, the jury returned with its verdict, finding Margaret Hossack guilty as charged of murder in the first degree.²⁸⁷ Showing some of the mercy requested by the defense, the jury did not agree with the prosecutors that Margaret Hossack should be put to death, but instead recommended that she be sentenced to life at hard labor in the state penitentiary.²⁸⁸ According to one newspaper report, the scene among the family upon hearing the verdict was "terrible," with the children weeping hysterically and Margaret Hossack giving way to emotion "with utter abandonment."²⁸⁹ Describing the reaction of the convicted woman, a reporter noted, "Mrs. Hossack has proven at least that she is a woman."²⁹⁰

As Susan Glaspell heard the verdict, she probably felt the same sense of disquiet that I feel in reading about the trial of Margaret Hossack. Unquestionably, there was strong evidence that Margaret Hossack was not telling the whole truth in her account, especially in her claims that she was lying in bed asleep when the attack occurred and that she called her children immediately after she was awakened. Given the lack of evidence supporting the presence or motive of an outsider, it is entirely possible that Margaret Hossack planned the crime and wielded the axe herself, taking the time to wash and put away the weapon before she summoned the children.

It also seems possible, however, that one of her children committed the act. They all apparently had reason to hate their father. Mrs. Hossack, regardless of whether she was involved in one of her children's plans, may well have fabricated her story to protect a murderer whom she knew and loved.

Certainly, the lack of candor on the part of those most intimately involved with the case, including Mrs. Hossack and her children, leads to a strong sense of doubt about the circumstances surrounding the crime. All of the family members seemed to be trying to hide the truth of their relationship with John Hossack, and we can only imagine the tensions within that household, both on the night of the attack and during the years that preceded it. Assuming, as seems overwhelmingly likely, that a member of the family did commit the crime, we will never know whether John Hossack did something specific that night to drive his wife or one of his children into a murderous rage. Or was it

284. *Alleges Haines Was the Murderer*, *supra* note 241.

285. *See id.* ("Strong men who had not shed a tear in years sat in their seats mopping their eyes and compressing their lips in a vain effort to suppress the emotion caused by the [defense counsel's] eloquent plea.").

286. *See id.* ("Even the attorneys for the prosecution were seen to turn away their heads fearful lest the anguish of the family would unman them At one time [the county attorney] was so affected by the spectacle presented by the family group that he bowed his head and silently wept.").

287. *See Mrs. Hossack Found Guilty of Murder*, *supra* note 29.

288. *See id.*

289. *Id.*

290. *Id.*

simply that Margaret Hossack, acting either alone or with the help of her children, had borne the abuse and violent threats against her family for thirty-three years and could finally endure no more?

Although Susan Glaspell may well have felt uncertain about whether and why Mrs. Hossack killed her husband, those doubts were not the only or perhaps even the major source of her uneasiness over the legal system's version of justice in the Hossack case. When she wrote *A Jury of Her Peers* sixteen years later, Glaspell left little question that Minnie Wright murdered her husband. Also, in the husband's strangling of Minnie's canary, Glaspell provided her with a trigger for the rage that drove her to kill her husband.²⁹¹ The question Glaspell sought to raise through her story was therefore not whether or why Minnie killed her husband, but how, considering the life she had lived, she should be judged for that act.

By having the two women discover the story of Minnie's life and the crime she committed, Susan Glaspell raised questions that the lawyers who defended Mrs. Hossack did not and could not raise. These questions—the broader and more complex issues of blame and responsibility—have a focus that Glaspell must have felt was missing from the Hossack case.

In *A Jury of Her Peers*, the women are able to empathize, due to their own experiences, with the long years of isolation and suffering that Minnie endured.²⁹² The surrounding circumstances of Margaret Hossack's case suggest, however, that the attitudes of the women in her community were more ambivalent; those who testified seemed to share the dominant societal view that domestic abuse was a private matter.²⁹³ Like the men, they seemed unwilling to admit the possibility that the suffering endured by Margaret Hossack in her marriage might be a mitigating factor rather than evidence used to convict her of the murder of her husband.

And of course, in Margaret Hossack's case, neither the defendant nor her lawyers tried to tell her story in all its complexity. After the murder, Margaret Hossack never spoke of harsh treatment by her husband, denying, when questioned at the coroner's inquest, that she was ever abused in any way.²⁹⁴ At the trial, she was not asked about her marriage.²⁹⁵ Instead, her lawyers argued that that part of her past was irrelevant to the crime as charged,²⁹⁶ knowing, of course, that evidence showing that Mrs. Hossack had lived in constant fear of her husband was crucial to the state in proving the existence of a motive.

Nevertheless, Susan Glaspell must have wondered how the jury should have considered the years of mistreatment endured by Mrs. Hossack in determining her guilt. Might it have been possible that Margaret Hossack was justified in what she did, whether acting as the murderer or an accomplice? Might

291. See Glaspell, *supra* note 1, at 78-80.

292. See text accompanying notes 73-76 *supra*.

293. See text accompanying notes 201-202 *supra*; see also PLECK, *supra* note 253, at 9.

294. See Coroner's Inquest Testimony of Margaret Hossack at 15.

295. See Appellant's Abstract of Record, *supra* note 94, at 119-24 (testimony of Margaret Hossack).

296. See text accompanying notes 267-270 *supra*.

she or one of her children have finally been driven to respond in kind to the violence her husband had so often threatened against them? If those were the facts, it was not surprising for Mrs. Hossack to deny them, knowing, as she must have, that such a scenario could never have been the basis of a successful defense.

Still other questions were not addressed in the courtroom. How should Mr. Hossack's victimization of his wife and children, which created the conditions that had most likely led to his murder, have been considered in judging Mrs. Hossack's crime? Was the jury's sympathy for him as a great and innocent man, a sympathy that may well have helped them reach a verdict against his wife, warranted in light of the evidence of his cruelty toward his family?

And how should the neighbors have been judged, those to whom Mrs. Hossack went for help on so many occasions? They tried, for the most part, to turn their backs on the situation. When they intervened, it was to convince Mrs. Hossack to remain in a household they knew to be dangerous.²⁹⁷ Even after recognizing the potential for violence within the Hossack family, they did all they could to ignore it. Should they have borne any responsibility for what finally occurred?

It seems likely that Susan Glaspell concluded that the jury could not have judged Margaret Hossack fairly because neither of the competing stories told in the courtroom fully represented the complexities of her life or raised the appropriate questions. Certainly, the story the prosecution told seems narrow and false in crucial aspects, including its portrayal of John Hossack himself. Glaspell was also likely aware that, in its depiction of Mrs. Hossack, the prosecution appealed to certain prejudices of the all-male jury.²⁹⁸ And yet the competing story the defense told the jury was also incomplete, insisting on the irrelevance of Mrs. Hossack's experiences with her husband and relying on a reconciliation only partially supported by the evidence and also not entirely credible. Glaspell saw that Mrs. Hossack's lawyers were unable to talk about domestic abuse without hurting their client's case, that they could not address the questions Glaspell perceived. The idea of justifiable homicide by a wife was unthinkable,²⁹⁹ and denouncing either Mr. Hossack as a wife abuser or the community as having failed Mrs. Hossack would only have turned the all-male jury more strongly against her. And yet Susan Glaspell's fiction suggests that, without considering those questions in determining responsibility and blame and without a fuller and more empathic understanding of the life of Margaret Hossack, justice was not done.

Susan Glaspell was no doubt in the courtroom on the morning of April 16, 1901, five days after the jury returned its guilty verdict. That morning, the judge overruled the defense's motion for a new trial.³⁰⁰ Glaspell must have watched as Margaret Hossack, surrounded by her nine children and physically

297. See notes 131-132 & 148-152 *supra* and accompanying texts.

298. See notes 230-256 *supra* and accompanying text.

299. See JONES, *supra* note 33, at 106 ("There could be no motive [for a wife to kill her husband] because the crime itself was unthinkable.").

300. See *Margaret Hossack Gets Her Sentence*, DES MOINES DAILY CAP., Apr. 16, 1901.

supported by her attorney, stood in front of the judge, held up her right hand, and, in a low and trembling voice, stated, "Before my God, I am not guilty."³⁰¹ Glaspell must have noticed the judge's slight hesitation before he delivered the sentence that would send Margaret Hossack to the state penitentiary for life.³⁰² Margaret Hossack was then taken to prison by the sheriff and his wife,³⁰³ the woman who had sat by her side throughout the trial.³⁰⁴ According to her companions, Margaret Hossack protested her innocence to the end, with her "grief and despair . . . pitiable to see."³⁰⁵

For Susan Glaspell, the legal verdict against Margaret Hossack was the end of the story. Soon after the trial ended, Glaspell left her job as a newspaper reporter and, by the summer of 1901, had moved home to Davenport to write fiction.³⁰⁶ Yet the story of Margaret Hossack and the murder of her husband continued to unfold. Despite its authoritative tone of finality, the legal verdict was only one step in a story that continued to evolve, even from the moment that appeared to mark its end.

Certainly, the verdict against Margaret Hossack came as no surprise to her neighbors. From the beginning, they had predicted her guilt to reporters and each other; many of them had, of course, served as convincing witnesses on behalf of the prosecution. And yet, at some point, it appears that public sentiment, so strongly against her during most of the trial, began a subtle shift. According to the newspaper reports, her neighbors, "so constantly in attendance" during the trial, "gathered around her in large numbers [when her sentence was pronounced] . . . attempting to offer some words of consolation."³⁰⁷ Even the newspaper accounts at the time of the sentencing were more sympathetic than might have been expected in describing the community's reaction to the finding of Mrs. Hossack's guilt.³⁰⁸ One report, suggesting some disagreement with the guilty verdict, stated, "It is universally believed at Indianola that if Mrs. Hossack did not murder her husband she knows who did."³⁰⁹

An editorial in a Des Moines newspaper reported criticism of the verdict. It highlighted Mrs. Hossack's lawyer's rebuke of the county attorney for telling the jury that its duty was to find the guilty party rather than to focus on any reasonable doubts that might have existed as to the guilt of Margaret Hossack.³¹⁰ The editorial continued, "[P]erhaps, the jurors unconsciously determined that, as a crime had been committed, it was their duty to fasten the

301. *Id.*

302. See *id.* (noting the judge's hesitation before he pronounced the sentence); see also *Mrs. Hossack Guilty*, INDIANOLA HERALD, Apr. 18, 1901, at 1 (describing the judge as pronouncing Mrs. Hossack's sentence in a voice that "betrayed emotion that required effort to control").

303. See *Mrs. Hossack Breaks Down*, DES MOINES DAILY CAP., Apr. 19, 1901.

304. See text accompanying notes 204-205 *supra*.

305. *Mrs. Hossack Breaks Down*, *supra* note 303.

306. See Ben-Zvi, *supra* note 6, at 151.

307. *Margaret Hossack Gets Her Sentence*, *supra* note 300.

308. See *Mrs. Hossack Breaks Down*, *supra* note 303 (describing her condition on the way to the penitentiary as "pitiable"); *Mrs. Hossack's Parting Plea*, DES MOINES DAILY NEWS, Apr. 19, 1901 (describing some public uncertainty as to whether she actually wielded the axe herself).

309. *Mrs. Hossack's Parting Plea*, *supra* note 308.

310. See *The Hossack Murder Verdict*, DES MOINES DAILY LEADER, Apr. 12, 1901.

commission of the same upon some one, and selected the only person it seemed possible to suspect.”³¹¹ Others in the surrounding community may have shared these feelings of doubt after the trial, especially as they considered the circumstantial nature of the evidence identifying Mrs. Hossack as the murderer.

It is impossible to know the precise cause of the changing public sentiment in favor of Margaret Hossack. Certainly, some people, such as the sheriff’s wife, had sympathized with her all along. But many apparently had second thoughts about the result once the constant attention surrounding the trial diminished and the jury declared Mrs. Hossack guilty under the law. Some, perhaps, were affected by the unwavering support of Margaret Hossack’s children, who continued to proclaim their mother’s innocence even after the trial was over.³¹² Others, even those who had spoken strongly against Mrs. Hossack from the beginning, may have begun to reflect upon the circumstances that they believed had led to the crime—the domestic abuse that had played such a major role in convicting her. Neighbors of the Hossacks may even have begun to acknowledge their own role in what had happened, admitting that they had ignored the dangerous situation that they had known existed within the Hossack household.

In any case, it is clear that the jury’s verdict proclaiming Margaret Hossack’s guilt did not lay the case to rest in the minds of many members of the community. By the summer of 1901, only two months after the guilty verdict, public feeling had risen to such an extent that a newspaper headline declared “Friends of New Virginia Murderess Ask Parole.”³¹³ The story continued:

[The ex-county attorney] said the bitter feeling entertained toward the alleged murderess had abated to a certain extent and that the aged woman was looked upon more in the light of pity. It is understood that at New Virginia, the scene of the crime, and where the Hossacks have resided for so many years, agitation has begun looking toward a parole for Mrs. Hossack. Some of the prominent residents have signified their willingness to sign such a paper, and it is not unlikely that a move of that character will be made. It is realized that the woman has but a few years to live, and in view of that fact that the guilt was not fully fastened upon her it is believed that a parole is due.³¹⁴

Margaret Hossack was not paroled. But almost one year to the day after she was sentenced to life imprisonment, the Iowa Supreme Court reversed the jury’s verdict against her, granting her a second trial.³¹⁵ In their appeal to the court, the lawyers for Mrs. Hossack raised many issues, including prosecutorial

311. *Id.*

312. *See, e.g., id.* (“The children seem genuinely to believe in the innocence of their mother, and this, while without much value as legal evidence, sways the private judgment.”).

313. *Mrs. John Hossack May Receive Pardon*, DES MOINES DAILY CAP., June 22, 1901.

314. *Id.*

315. *See State v. Hossack*, 89 N.W. 1077, 1081 (Iowa 1902).

misconduct,³¹⁶ but the court rejected most of their contentions.³¹⁷ However, despite the lack of strong precedent and without citing many cases in support, the Iowa Supreme Court decided that two technical errors had been made by the trial judge, one concerning expert testimony and the other a jury instruction. After noting that Margaret Hossack had been found guilty solely on the basis of circumstantial evidence, the Iowa Supreme Court decided that she had been unfairly prejudiced by these two seemingly minor errors.³¹⁸

The first basis for the Iowa Supreme Court's decision was its finding that the trial court had erred in admitting certain expert testimony that tended to show that the family axe was the murder weapon. At the trial, the prosecution was unable to establish a "chain of custody" for the hairs that it claimed were taken from the Hossack family axe, so the hairs themselves were deemed inadmissible as evidence.³¹⁹ The trial court, however, allowed an expert to testify that at least one of those hairs appeared to be human and was similar to the hairs taken from Mr. Hossack's head.³²⁰ According to the Iowa Supreme Court, that expert testimony should have been found inadmissible, just as the hairs themselves had been.³²¹ Given that the testimony had helped to show that the family axe was the murder weapon and that this fact had been an important element in the case against Margaret Hossack, the court found the error a sufficient basis on which to reverse the guilty verdict.³²²

A second ground for the reversal related to the evidence of domestic abuse that had been relied on so heavily by the prosecution in obtaining the first conviction. Although Mrs. Hossack's lawyers argued that such evidence was inadmissible, being too remote and unconnected to the crime as charged,³²³ the Iowa Supreme Court disagreed and found that the jury was entitled to hear

316. See Argument of Appellant, *supra* note 90, at 67-73 (describing the misconduct of counsel at various points throughout the trial, including the prosecution's statements, unsupported by facts, that the Hossacks engaged in premarital relations and that their first child was born out of wedlock); see also *id.* at 4-10 (raising the inadmissibility at trial of photographs of Mr. Hossack taken after his death); *id.* at 10-16 (raising the inadmissibility of expert testimony concerning hairs taken from the axe); *id.* at 16-21 (raising the inadmissibility of evidence of quarrels and family difficulties); *id.* at 22-24 (raising the inadmissibility of the axe); *id.* at 24-30 (describing the refusal of the court to give the jury instruction that a finding of reconciliation would preclude the jury from considering prior family quarrels as showing malice); *id.* at 30-37 (describing the refusal of the court to give the jury the desired instructions on circumstantial evidence); *id.* at 37-39 (describing the refusal of the court to give the jury the desired instruction on the effect on their deliberations of quarrels and ill will between the parties); *id.* at 39-41 (describing the refusal of the court to give the jury the desired instructions on the defendant as a witness in the case); *id.* at 41-42 (arguing that various other errors, when considered with the previously described errors, were sufficient to conclude that defendant was not granted a full and fair trial); *id.* at 42-67 (arguing that the verdict was not supported by the evidence).

317. See *Hossack*, 89 N.W. at 1079-81.

318. See *id.* at 1079 ("It is sufficient now to say the case against the defendant was wholly circumstantial, and she could not but be prejudiced when proof of any material circumstance was strengthened or aided by other than competent legal evidence.").

319. See *id.* at 1080.

320. See Appellant's Abstract of Record, *supra* note 94, at 47-49 (testimony of Professor J.L. Tilton).

321. See *Hossack*, 89 N.W. at 1080.

322. See *id.* at 1081.

323. See Argument of Appellant, *supra* note 90, at 37-41.

testimony relating to the family's difficulties.³²⁴ But the court agreed with the defense that the jury had been incorrectly instructed as to the effect of the reconciliation, which the defense had relied on to show that Mrs. Hossack had no reason to kill her husband.³²⁵

At the trial, the judge instructed the jury that if it found as a matter of fact that a good faith reconciliation had occurred between the Hossacks and had been fully observed thereafter by both parties, then prior difficulties between the parties would be insufficient, by themselves, to prove malice on the part of Mrs. Hossack.³²⁶ The defense objected to this instruction, arguing that it implied to the jury that if no reconciliation were found, prior difficulties should be considered sufficient proof of malice.³²⁷ The defense further argued that a jury finding of a reconciliation should have an even greater impact on its deliberations, that such a finding should require the jury to ignore prior family quarrels altogether in establishing the existence of a motive on the part of Mrs. Hossack.³²⁸

The Iowa Supreme Court agreed with the defense. The jury should have been instructed that if it found, as a matter of fact, that a complete reconciliation between the Hossacks had occurred, which had thereafter been observed in good faith by the parties so that ordinary "peace and harmony" had prevailed in the home, then prior troubles, difficulties, or quarrels could not be considered as showing malice on the part of Mrs. Hossack.³²⁹ As the court stated, "If in November, 1899, all previous differences had in fact been forgiven and forgotten, and this state of affairs continued down to Hossack's death, it is difficult to see why the law should resurrect troubles the parties had buried, and allow them any weight whatever."³³⁰

It is unlikely that the members of the Iowa Supreme Court expected that this change of instructions would affect the outcome of a subsequent trial. While recognizing that all of the Hossack children had testified at trial about the success of their parents' reconciliation,³³¹ the court referred to other evidence that clearly supported a finding of fact that animosity had continued between the Hossacks.³³² As the court stated, "No doubt the interference of

324. See *Hossack*, 89 N.W. at 1081.

325. See *id.* at 1080.

326. See *id.*

327. See Argument of Appellant, *supra* note 90, at 25-26.

328. See *id.* at 28-30. Mrs. Hossack's defense counsel argued:

The wife of thirty-five years, the mother of nine children, the good woman of the church and the neighborhood, was denied the benefit of a reconciliation she so much desired, assented to and with such fidelity lived up to, and observed every condition and requirement, and when on trial for her life, the jury is told by the Court, that the honorable praiseworthy action, and the pure motives prompting a reconciliation and a faithful observance, does not remove any evidence of malice, but only reduces the degree of its effect.

Id. at 30.

329. See *Hossack*, 89 N.W. at 1078.

330. *Id.* at 1080.

331. See *id.* at 1078.

332. See *id.* at 1079. According to the opinion of the Iowa Supreme Court:

[W]e have the testimony of one witness to defendant's statement that dissensions existed after [the alleged reconciliation]. We need not analyze defendant's story. It is enough to say the

neighbors induced [the Hossack family] thereafter to be more careful in making their troubles known, but the jury may have thought it hardly possible the ill feeling of years was so easily removed.”³³³ Nevertheless, in approving the proposed defense instruction, the Iowa Supreme Court made the jury’s finding as to the reconciliation all the more important. Thus, if new jurors could be persuaded that the Hossacks had reconciled, then the new defense instruction would require them to ignore all of the evidence of prior family difficulties and domestic abuse as establishing a motive for Mrs. Hossack to kill her husband.

Several days after the decision ordering a new trial, Margaret Hossack was moved from the state prison to the Warren County jailhouse.³³⁴ Two months later, she was released on bail³³⁵ after a doctor testified that she was in a serious condition, “suffering from nervous prostration, disease of the spine and base of the brain.”³³⁶ The doctor stated that her condition was made more dangerous by her confinement and that “her chances of recovery would be greatly enhanced if she were free to enjoy out door [sic] exercise and change of surroundings and especially such as riding and going to the homes of her children.”³³⁷ The court required that a \$15,000 bond be posted,³³⁸ and a number of people came forward to sign as sureties for that amount.³³⁹ Mrs. Hossack went to live with her daughter and son-in-law, who lived a short distance from the farm where she had lived with her husband.³⁴⁰

The story of Margaret Hossack’s second trial can be told more briefly than that of the first. At the urging of family members, her defense lawyers moved for a change of venue.³⁴¹ They claimed that John Hossack’s good reputation in Warren County, the circumstances of his death, the publicity that had surrounded the first trial, and the conviction of Margaret Hossack made it impossible for her to be judged fairly by the members of the community in which she lived.³⁴² Although it seems unlikely that sentiment against her continued to be as strong as alleged, the court approved the change of venue, requiring that the second trial be conducted in nearby Madison County.³⁴³

In reading about Margaret Hossack’s second trial, I cannot help but wonder how Susan Glaspell would have reacted had she been there. Just as at the first

jury may well have believed her guilty, if the story was untrue, and the evidence before them was sufficient to justify disbelief in it.

Id.

333. *Id.*

334. *See The Hossack Case Again*, DES MOINES DAILY NEWS, Feb. 10, 1903.

335. *See id.*

336. Deposition of L.H. Surber (June 14, 1902) (on file with the *Stanford Law Review*).

337. *Id.* Dr. Surber stated that he believed there was “danger that Mrs. Hossack will break down in health.” *Id.*

338. *See The Hossack Case Again*, *supra* note 334.

339. A listing of those who signed bonds as sureties for Mrs. Hossack is on file with the *Stanford Law Review*, having been obtained from the Madison County Courthouse. The amount of the bond was not insignificant. In 1901, Mr. Hossack’s farm was purchased at public auction for a total sum of \$7000. *See In re Estate of John Hossack, Decedent*, *supra* note 90 (Report of Sale of Lands).

340. *See The Hossack Case Again*, *supra* note 334.

341. *See* Petition and Affidavit for Change of Place of Trial, *supra* note 197.

342. *See id.*

343. *See Change for Mrs. Hossack*, DES MOINES DAILY NEWS, Nov. 12, 1902.

trial, she would have seen a courtroom controlled by men, with male lawyers, a male judge, and an all-male jury.³⁴⁴ She would have heard testimony much the same as that given at the first trial, with the prosecution using the domestic abuse as evidence of Mrs. Hossack's motive³⁴⁵ and the defense seeking to convince the jury of the evidence's irrelevance.³⁴⁶ And yet, without doubt, a different attitude toward Mrs. Hossack seemed to prevail, both within and outside of the courtroom.

From the beginning of the second trial, the newspaper reporters adopted a different tone; the articles were much less sensational, with much less emphasis on the gory details of the crime. Mrs. Hossack was most often described in sympathetic or pitiable terms, as, for example, being "worn and fatigued, pale and sickly from the strain of the past two years."³⁴⁷ Mr. Hossack, whose respectability and good reputation had been so greatly emphasized by reporters during the first trial, was rarely described except as the victim of the crime. It was reported early on that the state was expected to have more trouble establishing its case, and throughout the second trial, the defense was said to be confident in its ability to win an acquittal.³⁴⁸

Certainly, the public's interest in the case was strong; the courtroom was reported to be packed to its utmost every day, with spectators standing in the aisles.³⁴⁹ Women seemed to make up at least half of the courtroom audience.³⁵⁰ Even the early articles reported that public sentiment, especially that

344. The twelve men on the jury are named in *Jury Chosen in Hossack Case*, DES MOINES DAILY NEWS, Feb. 12, 1903. One report described them as a "jury of farmers" and commented that "[i]t is conceded to be a jury of more than average intelligence." *Hossack Jury Chosen*, INDIANOLA HERALD, Feb. 19, 1903.

345. See *Critical Point in Hossack Case Reached*, DES MOINES DAILY CAP., Feb. 19, 1903 (describing the testimony about abuse and Margaret Hossack's statements about wishing her husband dead).

346. See *Statements to Jury Took Up Forenoon*, DES MOINES DAILY CAP., Feb. 12, 1903 (reporting the defense's argument that, at the time of the murder, the Hossacks were on "the best of terms").

347. *Hossack Case Goes On*, WINTERSET MADISONIAN, Feb. 19, 1903; see also *Hossack Jury Being Chosen*, DES MOINES DAILY NEWS, Feb. 11, 1903 ("The old lady walked firm and erect, looking exceptionally well for one of her age, and considering her trials of the past two years."); *Hossack Jury Chosen*, *supra* note 344 ("[Mrs. Hossack] seems aged and worn since her last trial.").

348. See *Her Children Against Her*, DES MOINES DAILY NEWS, Feb. 13, 1903 ("Mrs. Hossack is apparently standing the strain very well, and appears to have great hope for acquittal."); *Jury Chosen in Hossack Case*, *supra* note 344 ("It appears that a harder fight will ensue between the attorneys than on the first hearing, and that defense will be able to keep out certain testimony which the state had threatened to offer, and thus materially strengthen Mrs. Hossack's chances for acquittal."); *May Finish the Testimony Tomorrow*, DES MOINES DAILY CAP., Feb. 20, 1903 ("The defense in the Hossack case is very confident that it will secure an acquittal . . .").

349. See *Statements to Jury Took Up Forenoon*, *supra* note 346; see also *Her Children Against Her*, *supra* note 348 (describing the courtroom as "filled"); *May Finish the Testimony Tomorrow*, *supra* note 348 ("The interest in the case does not diminish and the court room is packed from morning until night."). But see *Hossack Case Is Very Weak*, DES MOINES DAILY NEWS, Feb. 19, 1903 ("Small audiences have been the usual thing at the court house daily.").

350. See, e.g., *Hossack Case Moves Slowly*, DES MOINES DAILY NEWS, Feb. 14, 1903 ("The ladies are taking an unusual interest in the case and from early morn until court adjourns, they crowd the gallery and a greater portion of the main court room."); *May Finish the Testimony Tomorrow*, *supra* note 348 (describing "many women" in attendance); *Only Ten Witnesses Have Been Examined*, DES MOINES DAILY CAP., Feb. 16, 1903 ("About half the audience are women and some of them may be found in the same seats each day.").

of the women, was strongly in favor of Mrs. Hossack.³⁵¹ No doubt those observing the second trial were aware of the outcome of the first trial, and in all likelihood, they knew the evidence of Mrs. Hossack's motive and the circumstantial evidence that had justified her prior conviction. And yet the same evidence that had been used so successfully by the prosecution to prove her guilt now seemed to arouse sympathy for Margaret Hossack.

The prosecution might have expected that its case would be stronger in the second trial. Despite the ruling of the Iowa Supreme Court, the state was still able to present some evidence that tended to show that the family axe was the murder weapon.³⁵² An important new witness was also produced by the state: Mr. W.F. Haines, a neighbor who had been confined to the insane asylum during the first trial and therefore unable to testify.³⁵³ It was suggested by some that his confinement was a result of his brooding over the Hossack murder.³⁵⁴ In the second trial, he told the jury of the many conversations he had had with Mrs. Hossack in which she had complained about her husband and had asked him to come over to the Hossack home to "settle her husband" or, another time, "to finish him."³⁵⁵

Perhaps, however, Mr. Haines, who had reportedly refused all of Mrs. Hossack's requests, telling her that "there is a law" for a man who abuses his family,³⁵⁶ was not as credible as the prosecution wished. Given his history of insanity, the jury may have been persuaded that his conversations with Mrs. Hossack had been imagined or misinterpreted by him.³⁵⁷ Or perhaps observers agreed with Mrs. Hossack's attorneys, who argued that many things had been said by her "in haste and out of the anguish of her heart."³⁵⁸ For whatever reason, the new testimony, reported by the prosecution as enough to remove every doubt from the minds of the jurors concerning the guilt of Margaret Hossack, seemed to be given little weight in public opinion.

"It is generally conceded that the women have great sympathy for Mrs. Hossack, regardless of the former trial or the statements of the prosecution," reported an article during the early days of the second trial,³⁵⁹ and that support seemed to continue throughout the course of testimony.³⁶⁰ In court, Margaret Hossack continued to be surrounded by her loyal children,³⁶¹ but now, according to one newspaper report, she was "talked to by women and girls, who shake

351. See *Her Children Against Her*, *supra* note 348.

352. See *Hossack Case Moves Slowly*, *supra* note 350.

353. See *Hossack Case Is Very Weak*, *supra* note 349.

354. See *Will Haynes* [sic], *a Neighbor, Accuses Mrs. Hossack*, *DES MOINES DAILY CAP.*, Feb. 18, 1903 [hereinafter *Will Haynes*].

355. *Id.*

356. Coroner's Inquest Testimony of Mrs. Haines at 1.

357. See *Will Haynes*, *supra* note 354.

358. Argument of Appellant, *supra* note 90, at 2.

359. *Her Children Against Her*, *supra* note 348.

360. See, e.g., *Hossack Case Is Very Weak*, *supra* note 349 (reporting that, at the close of the prosecution's case, "the defendant was the recipient of many congratulations upon the remarkably weak case the state has made").

361. See *Hossack Jury Chosen*, *supra* note 344.

hands with her, consoling her and expressing their sympathy.”³⁶² Near the end of the trial, after Mrs. Hossack took the stand, reports were that “public sentiment is strong for the defendant and if she is convicted the community will be disappointed.”³⁶³ During closing arguments, reporters told the public, “The general opinion prevails here that the state has not made so strong a case as in the former trial and that Mrs. Hossack is likely to be acquitted.”³⁶⁴ Newspaper headlines declared “Sentiment Strong for Her”³⁶⁵ and “Sympathy of People Now with Mrs. Hossack.”³⁶⁶ Even while the state’s attorney was making his closing argument to the jury, Mrs. Hossack was reported to be assuming “a more confident air than she has at any time since the murder was committed.”³⁶⁷

Certainly, the change of venue and the passage of time contributed to the changed attitude surrounding the second trial. The grisly details of the crime were less fresh in the minds of those reading about the trial,³⁶⁸ despite the prosecution’s production of the bloody undergarments worn by Mr. Hossack at the time of the attack, the axe with which the murder was allegedly committed, and a human skull showing the location of Mr. Hossack’s wounds.³⁶⁹ And after two years, Mr. Hossack’s reputation as an upstanding citizen was less overpowering, especially to those in Madison County who had had no personal acquaintance with him; perhaps the stronger picture to observers of this second trial was that of a violent and cruel man, the picture which Mrs. Hossack had revealed to her neighbors. And it seems that the testimony of the neighbors was different in tone than it had been in the first trial. Whereas in the first trial neighbors had seemed eager to testify against Mrs. Hossack, now they were described as more reluctant to talk, less willing to volunteer details of what they knew.³⁷⁰

Mrs. Hossack’s defense lawyers would certainly have been aware of the shift in public sentiment in favor of Margaret Hossack. No doubt, they hoped the emotions of the jury would also tend toward sympathy for the aged defend-

362. *Hossack Case Goes On*, *supra* note 347.

363. *An Acquittal for Mrs. Hossack Quite Likely*, DES MOINES DAILY NEWS, Feb. 21, 1903.

364. *Arguments Started at Winterset Today*, DES MOINES DAILY CAP., Feb. 23, 1903.

365. *An Acquittal for Mrs. Hossack Quite Likely*, *supra* note 363.

366. *Hossack Jury Failed to Agree*, DES MOINES DAILY LEADER, Feb. 28, 1903.

367. *Argument in Hossack Case*, DES MOINES DAILY NEWS, Feb. 23, 1903 (“The fact that the state’s case is not the case made when tried in Warren county seems to have renewed hope within her breast and she sits greatly encouraged even while the state’s counsel is dwelling at length upon the horrors of the awful tragedy.”); *see also Mrs. Hossack May Take Stand*, DES MOINES DAILY NEWS, Feb. 20, 1903 (describing Mrs. Hossack, after the state rested its case and while the defense witnesses were appearing, as seeming “more cheerful than at any time during this second hearing”).

368. *See Hossack Case Is Very Weak*, *supra* note 349 (“The evidence, while it is as accumulative, does not seem to have the force it carried when submitted at a time the incidents were fresh in the minds of everyone.”); *see also Only Ten Witnesses Have Been Examined*, *supra* note 350 (“That the crowds attending the trial are not unduly influenced by the solemnity of the occasion is proven by the fact that Judge Nichols frequently finds it necessary to use the gavel to suppress the laughter that starts when some witness turns a question on the attorneys.”).

369. *See Critical Point in Hossack Case Reached*, *supra* note 345.

370. *See Hossack Case Is Very Weak*, *supra* note 349 (“The witnesses for the state do not seem to be so anxious to testify against Mrs. Hossack and the utmost skill on the part of the state’s attorneys has been necessary to get at the seemingly unimportant and certainly now uninteresting details.”).

ant. And the defense produced some new evidence in the second trial that may have significantly contributed to the ultimate outcome.

In the first trial, the defense attorneys suggested in their closing arguments that Mr. Haines, the neighbor who had been committed to the insane asylum, was a possible suspect who had been ignored by investigators.³⁷¹ Aside from his confinement, however, they had little on which to base that claim. In the second trial, the defense produced a new witness who testified about a "mysterious horseman" who had ridden furiously past his house soon after the time of Mr. Hossack's murder.³⁷² According to this witness, "The horse was blowing from nostrils and [the] man was whipping him at every jump."³⁷³ Although the state produced other witnesses who said it was a common occurrence for country boys to ride horses on that road while returning from town late at night, the unknown rider, clothed in a "white hat . . . pulled down over his eyes,"³⁷⁴ at least offered the jury the possibility of a suspect other than Mrs. Hossack.

Perhaps most significantly, the defense took a different tack in its questioning of Mrs. Hossack herself on the witness stand. In the first trial, neither her lawyers nor the prosecutors asked her a single question about her relationship with her husband or their alleged reconciliation.³⁷⁵ Given her testimony at the coroner's inquest,³⁷⁶ her own lawyers would have expected her to deny that she and her husband ever had difficulties. It seems likely that they feared that, in light of the numerous contradictory reports from the neighbors, such testimony would hurt her credibility as a witness, making her entire story less believable. Although her lawyers did not call the neighbors' testimony into doubt, they did heavily rely on the statements of her children to support the claim that all disension had ceased a year before the murder.³⁷⁷

In the second trial, however, the fact of the reconciliation was more important: The jury was instructed that if it found that the reconciliation had been successful, they were to ignore all of the evidence of prior difficulties between the Hossacks as establishing a motive for Mrs. Hossack to kill her husband.³⁷⁸

When Mrs. Hossack took the stand in her own defense at the second trial, she was reported to be "feeble," answering in monosyllables and a voice so low that the court reporter frequently had to ask her to repeat herself.³⁷⁹ The first question put to her by her lawyers concerned the reconciliation that had alleg-

371. See *Hossack to Go to Jury Tomorrow*, *supra* note 101 (reporting the closing argument: "How do you know that some crazy man on the strength of some fancied wrong, impelled by some insane sense of duty, did not enter that home and kill John Hossack? Where is Bill Haines today?").

372. *May Finish the Testimony Tomorrow*, *supra* note 348.

373. *Id.*

374. *Id.*

375. See Appellant's Abstract of Record, *supra* note 94, at 119-24 (testimony of Margaret Hossack).

376. See text accompanying notes 166-170 *supra*.

377. See note 277 *supra* and accompanying text.

378. See *Hossack Jury Is Still Out*, DES MOINES DAILY CAP., Feb. 27, 1903 ("Much therefore will depend upon the weight given to the testimony of the Hossack children, and to that of five neighbors, who contradict them concerning the domestic relation of the defendant and her husband during the year preceding his death.").

379. *Evidence in Hossack Case Is Finished*, DES MOINES DAILY CAP., Feb. 21, 1903.

edly occurred the year before the murder. Did she remember when the neighbors had come to her house the previous year? Yes, she replied. "State whether or not at that time it was agreed between you all that you would let bygones be bygones; that you would forget the past, and all try to live without trouble in the future?"³⁸⁰ Yes, she replied, affirming that there was no quarreling between herself and her husband from that day forward. He was, she said, a good provider for his family, and he treated his children kindly. In answer to questions from her lawyer, she denied specific reports from her neighbors that she had complained about her husband's behavior or that she had talked to others about her fears or her unhappiness in her marriage.³⁸¹

Margaret Hossack then described the day and night of the murder, telling her story just as she had throughout the previous two years. No, she replied, she did not strike John Hossack with an axe. No, she never struck him with anything else. No, she did not know and did not see the person who struck her husband.³⁸²

Of course, the prosecution attempted to show that Mrs. Hossack continued to harbor animosity toward her husband after the "reconciliation," with several neighbors testifying to that fact.³⁸³ Although all of the children now spoke of the success of the reconciliation, the prosecutors produced the testimony of one of the daughters from the coroner's jury inquest when she admitted that the quarrels of her parents continued long after the intervention of the neighbors.³⁸⁴ And yet, by all accounts, Mrs. Hossack was a convincing witness whose account could not be swayed on cross examination. Perhaps her avowals that she had reconciled with her husband, as well as her generous statements about his character, were sufficient to create a reasonable doubt in the minds of some members of the jury or at least provoke their sympathy for Margaret Hossack in a way that was not done before.³⁸⁵

Compared with the reports during the first trial, the newspapers gave few details of the closing arguments of either the prosecution or the defense when Mrs. Hossack was tried the second time.³⁸⁶ We cannot know whether or how the characterizations of the parties changed, what images of Mr. and Mrs. Hos-

380. *Id.*

381. *See id.*

382. *See id.*

383. *See Critical Point in Hossack Case Reached, supra* note 345; *May Finish the Testimony Tomorrow, supra* note 348.

384. *See May Finish the Testimony Tomorrow, supra* note 348.

385. Another point in Margaret Hossack's favor came when, in the second trial, Ivan Hossack testified that he could no longer remember whether, the night before the murder, he had put the axe in the granary or underneath it. *See Coroner on Stand in Hossack Case, DES MOINES DAILY CAP.,* Feb. 17, 1903, at 1. At the first trial, he testified that he had put the axe in the granary the night before the murder. *See Appellant's Abstract of Record, supra* note 94, at 26-27 (testimony of Ivan Hossack). His testimony at the first trial was important in establishing that the family axe, which had been found underneath the granary the morning after the murder, was the murder weapon.

386. *See, e.g., Argument in Hossack Case, supra* note 367; *Arguments Started at Winterset Today, supra* note 364; *Hossack Case Being Argued, DES MOINES DAILY NEWS, Feb. 24, 1903; Hossack Case to Jury Today, DES MOINES DAILY CAP., Feb. 26, 1903; Mrs. Hossack Broken Down, DES MOINES DAILY NEWS, Feb. 26, 1903; Senator Berry Talking, DES MOINES DAILY CAP., Feb. 25, 1903; Still Arguing Case, DES MOINES DAILY CAP., Feb. 24, 1903.*

sack were painted for the benefit of the jury. And it is, of course, impossible to know the substance of the second jury's deliberations, what factors they emphasized in trying to convince each other of Mrs. Hossack's guilt or innocence.

We do know, however, that the twelve men deliberated for thirty hours and that they were unable to agree on a verdict. From the beginning, nine of them were in favor of her conviction while three stood firm for acquittal.³⁸⁷ As soon as the hung jury was announced, newspapers reported predictions, including one by the judge in the case, that it was unlikely that Margaret Hossack would be retried.³⁸⁸

At least one reporter attributed the hung jury to the changed instruction on the effect of the reconciliation, assuming that some of the jury members must have felt themselves bound to ignore the prior marital difficulties in establishing a motive.³⁸⁹ Certainly, that seemed to be the result the defense was hoping to achieve through Mrs. Hossack's testimony. It is possible, however, that the three jurors who would not vote for conviction made their decision on other grounds. Perhaps they shared the public sentiment described by several newspaper reporters, a sentiment that seems to echo what Susan Glaspell apparently felt during the first trial. As one reporter wrote, "The age of Mrs. Hossack and the unhappiness of her married and home life has awakened favorable sentiment among those who believe her guilty, but hold the circumstances of the crime to be extenuating."³⁹⁰ Perhaps she killed her husband, but perhaps she was justified in doing so.

Margaret Hossack was not retried. Two weeks after the second trial ended, the Board of Supervisors of Warren County, where the Hossacks had lived, passed a resolution that it would not further aid in her prosecution, stating its desire that the case be dismissed.³⁹¹ The county attorney of Madison County,

387. See *Hossack Jury Did Not Agree*, DES MOINES DAILY NEWS, Feb. 28, 1903.

388. See *id.* (reporting that Judge Henderson told the reporter, "I hardly believe this case will come to trial again."). Another article stated:

It is doubtful now if twelve men will ever be found to agree upon the question of guilt or innocence in this case. It is rarely that twelve men are found who will agree to convict upon circumstantial evidence.

The taxpayers of Warren county will probably feel inclined to groan when called upon to foot the enormous bills entailed by those two trials, and which will be still heavier in case a third trial takes place.

There is a limit to the capabilities of all earthly courts. They may do what they can to bring the guilty to justice, but if the evidence is lacking to conclusively establish guilt then there the matter must be dropped.

The Hossack Case, DES MOINES DAILY CAP., Feb. 28, 1903.

389. See, e.g., *The Jury Disagree*, WINTerset MADISONIAN, Mar. 3, 1903.

390. *Failure to Agree in Hossack Case*, DES MOINES DAILY CAP., Feb. 28, 1903. According to another article:

It is stated the sentiment of the people of Winterset was largely in favor of acquittal, and the assertion is made that this sentiment prevailed to a considerable extent among even those who believed the evidence as given pointed to the guilt of Mrs. Hossack. They argued that there were extenuating circumstances brought out by the life which the woman and her husband had led. The age of Mrs. Hossack also brought considerable sympathy to her, as well as did the loyalty for their mother displayed by her children.

Hossack Jury Failed to Agree, *supra* note 366.

391. See Resolution of the Board of Supervisors of Warren County, Iowa (Apr. 6, 1903) (on file with the *Stanford Law Review*).

where the second trial was held, stated in a writing to the court that he believed Mrs. Hossack to be guilty of the crime, but he knew of no new or additional evidence that could be produced against Mrs. Hossack, making the "result of another trial . . . very doubtful."³⁹² A year later, he amended his earlier statement to the court, strongly requesting that the case be dismissed, citing the lack of new evidence, the difficulty and cost of getting witnesses to testify yet another time, the publicity surrounding the two earlier trials, and the "advanced years, and enfeebled condition and appearance," of Mrs. Hossack.³⁹³ According to his petition, the case against Mrs. Hossack should be dismissed "not because of the innocence of the defendant, but because it will be impossible to secure her conviction."³⁹⁴

Margaret Hossack lived for thirteen years after her second trial ended. According to one of her grandchildren who lived nearby, she was "very cold, very withdrawn."³⁹⁵ I could not locate any family accounts indicating that Margaret Hossack ever spoke about the murder of her husband. When she died, her obituary ignored the fact that she had been accused in his death. Margaret Hossack was described only as a "loving indulgent mother, a faithful Christian woman loving her church and . . . attentive to its services so far as her health would permit."³⁹⁶ Margaret Hossack was buried in the New Virginia Cemetery in a small family plot. She lies in front of her husband's parents and one of her children, who died in infancy, and next to John Hossack, her husband of thirty-three years.³⁹⁷

CONCLUSION

My investigation into the Hossack case continued for several years. At the time of the coroner's inquest, past quarrels were reported between the Hossack children and their father,³⁹⁸ suggesting that one or more of the Hossack children may have been involved in their father's death. However, none of the children were ever publicly accused. I found no report that any of the children ever admitted to having any specific knowledge about their father's murder, though they all seemed unwavering in their belief that their mother was innocent of the crime.³⁹⁹ No one other than Margaret Hossack was ever arrested or publicly named as a suspect in the murder of John Hossack.

392. Application to the District Court of Madison County by W.S. Cooper, County Attorney of Madison County, Iowa (filed on or about April 13, 1903) (on file with the *Stanford Law Review*).

393. Amendment to the Application to the District Court of Madison County by W.S. Cooper, County Attorney of Madison County, Iowa (dated February 1904) (on file with the *Stanford Law Review*).

394. *Id.*

395. Telephone Interview with (anonymous), great-grandson of Margaret Hossack (Aug. 4, 1994) (discussing his mother's memory of her grandmother).

396. *Our Death List Is Large This Week*, INDIANOLA HERALD, Aug. 31, 1916.

397. See Photographs of Burial Plot (on file with author).

398. See, e.g., Coroner's Inquest Testimony of May Hossack at 8-9; Coroner's Inquest Testimony of Joe Kemp at 1-2.

399. See, e.g., *Mrs. Hossack to Have a Hearing*, *supra* note 90 ("[The family members] are unanimous in the opinion that their mother is innocent, but have no clues to offer.").

I was interested in how later generations of the family understood the story of Margaret Hossack. Information discovered at an Iowa historical society enabled me to contact her great-grandson, who was working on the family genealogy. He was surprised and pleased at my interest in his family's history. He told me that the accepted story within the family is that Margaret Hossack killed her husband after years of being abused and dominated by him.⁴⁰⁰ He sent me a privately published memoir written by his great-uncle, who was living near the Hossacks at the time of the murder and who was a close friend of the youngest Hossack son. Without describing the source of his information, the author writes:

Although I don't know about either Will [the eldest Hossack son living at home at the time of the murder] or Mrs. Hossack's abilities to kill someone, I will say that I am pretty sure Mrs. Hossack swung the axe and Will held the lamp for her to swing it by.⁴⁰¹

Whether Margaret Hossack acted alone or with the help of her children, the view seems to prevail that she was driven to murder because of her husband's cruel treatment of her and the family and her inability to obtain help and protection from others.⁴⁰²

I learned, too, that at least some members of the Hossack family view the story with a sense of shame. When I initially spoke to the great-grandson about my work, he said he was glad "all of this" would finally "come out into the open."⁴⁰³ Later, however, he requested that his name not be included in any published description of his family's history and told me that his mother, Margaret Hossack's grandchild, had spoken of the murder as a "family secret." She said her father, Margaret Hossack's son-in-law, had warned his children never to speak about it.⁴⁰⁴ A great-granddaughter, who also requested anonymity, wrote to thank me for my investigation into the Hossack family history, explaining that her mother had "always been haunted by the thought of her tainted blood."⁴⁰⁵

At one point during my investigation, I thought I would be able to find, both for myself and for the Hossack relatives with whom I had been in touch, a definitive answer to the question of whether Margaret Hossack killed her husband. I read a cryptic "editorial note" included in a history of Warren County

400. See Telephone Interview with (anonymous), *supra* note 395.

401. A. Harold Truitt, Iowa and Wisconsin by Way of Prairie Schooner from Kansas 26 (date unknown) (on file with the *Stanford Law Review*). In describing Will, the author of this privately published memoir writes:

Will Hossack worked for us for two years after the murder, and I believe he was a nervous man, after that for a long time. I had to sleep with him when he was with us and I learned soon after his arrival to arouse him before I got into bed with him, because I almost caught his fist in the middle of my face.

Id.

402. See Telephone Interview with (anonymous), *supra* note 395.

403. *Id.*

404. See *id.*

405. Letter from (anonymous), great-granddaughter of Margaret Hossack, to Patricia L. Bryan, Professor of Law, University of North Carolina (Dec. 22, 1994) (on file with the *Stanford Law Review*).

published in 1953.⁴⁰⁶ In a section on crimes, the murder of John Hossack is described.⁴⁰⁷ Explaining how Margaret Hossack was tried twice for the crime, one of the authors, identifying himself only by his initials, D.L.B., added the following footnote:

As a young newspaper reporter I covered the first trial of Margaret Hossack for the Des Moines Register. While the testimony did not prove her "not guilty," to my mind it fell short of proving her guilty. In the years passed since the trial, evidence has come to me still further casting doubt on her guilt; but I cannot repeat it here without casting a shadow on another party, now dead and against whom the evidence is not conclusive. However, I cannot allow this permanent record to go to press without saying more in defense of the name of Margaret Hossack than simply that the second jury disagreed. I do not believe she was guilty of the murder of her husband.⁴⁰⁸

I tried, unsuccessfully, to track down the reporter's personal papers to see whether he had recorded the clue he had discovered. And yet, even as I began to make the appropriate contacts, I realized that I was narrowing my vision in that I had begun to focus my attention primarily on the question of who killed John Hossack. In a certain way, I was repeating the mistake Susan Glaspell attributes to the men in *A Jury of Her Peers*, who seem to focus solely on the facts of the crime, ignoring the more complicated story that surrounds it. And it is the fuller story I want to tell, including not only what Margaret Hossack must have endured during her marriage, but also how others reacted to her and how she was ultimately judged under the legal system and by members of her community.

The story of Margaret Hossack raises questions about stories and storytelling in the law, questions which are provoked by Susan Glaspell's work, but which have also, in more recent years, been the subject of much scholarly attention.⁴⁰⁹ Many legal scholars have focused on the importance of narratives in the law, specifically on the fact that much of what lawyers do is listen to stories and then retell them ways that will persuade another lawyer, a judge, or a jury.⁴¹⁰ Substantive legal rules and rules of evidence determine what facts may be included in the story told,⁴¹¹ and legal conventions often determine the particular style the narrative takes.⁴¹² When a judge renders a decision, the facts

406. See GERARD SCHULTZ & DON L. BERRY, *HISTORY OF WARREN COUNTY IOWA* 225 (1953).

407. See *id.*

408. *Id.*

409. See note 15 *supra*.

410. See Thomas L. Shaffer & James R. Elkins, *Solving Problems and Telling Stories*, in *NARRATIVE AND THE LEGAL DISCOURSE*, *supra* note 15, at 90, 97 ("A lawyer is a storyteller. . . . [T]he story told by the lawyer must develop, both in human terms and in legal terms, a narrative that is plausible and that suggests to the audience some obvious, indeed necessary, conclusion—what the client wants." (quoting unpublished manuscript by Gerald P. López)); see also WHITE, *supra* note 32, at 168.

411. See, e.g., Baron, *Many Promises of Storytelling*, *supra* note 15, at 103, Scheppele, *supra* note 80, at 2097.

412. See, e.g., Baron, *Many Promises of Storytelling*, *supra* note 15, at 94-97; William M. O'Barr & John M. Conley, *Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives*, 19 L. & SOC'Y REV. 661, 698 (1985) (describing how differences in narratives are due to the different evidence rules in small claims courts as compared to those in more formal courts).

are typically related in the form of a narrative, with the story structured so that the legal conclusion selected by the judge appears necessary and inevitable.⁴¹³

As many scholars have noted, the narrative form corresponds to the way we understand the world.⁴¹⁴ We make sense of our experiences through stories, which provide explanations, predictions, and interpretations. Stories tell us about how people act, how and why specific events occur, and how certain events lead to certain consequences. The stories we use to give meaning to the world reflect a background of assumptions and expectations. Some of these expectations derive from our personal experiences while others develop out of a shared culture and are passed on to us as common knowledge.⁴¹⁵ These are the stories that help us to decide what other stories to believe. We tend to trust those stories that satisfy our expectations. As we see the facts fit into a familiar story line, the conclusion comes as no surprise.

Inevitably, the stories told and accepted in the law—the stories that underlie established legal doctrine—are based on certain background norms and expectations.⁴¹⁶ Increasingly, scholars have questioned those underlying assumptions, suggesting that they may represent only the dominant patriarchal culture.⁴¹⁷ When society accepts one group of competing stories as the defini-

413. See, e.g., Scheppele, *supra* note 80, at 2088.

414. See WHITE, *supra* note 32, at 169 (“The story is the most basic way we have of organizing our experience and claiming meaning for it.”); Baron, *Many Promises of Storytelling*, *supra* note 15, at 100 (“[W]e construct our world out of stories.”); Richard Delgado, *Shadowboxing: An Essay on Power*, 77 CORNELL L. REV. 813, 818 (1992) (“[W]e construct the social world . . . through stories, narratives, myths, and symbols—by using tools that create images, categories, and pictures.”); Patricia Ewick & Susan Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 L. & SOC’Y. REV. 197, 198 (1995) (“In philosophy, sociology, and psychology, much has been written about how people explain their actions to themselves and to others through stories.”); Gerald P. López, *Lay Lawyering*, 32 U.C.L.A. L. REV. 1, 23 (1984) (discussing how meaning is derived from stock stories); David H. Richter, *General Introduction to NARRATIVE/THEORY* 1, 2 (David H. Richter ed. 1996) (“[N]arrative is an unavoidable part of everyday life, arguably the single most important way we come to understand the world we live in.”); Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2228 (1989) (“The attraction of narrative is that it corresponds more closely to the manner in which the human mind makes sense of experience than does the conventional, abstracted rhetoric of law.”).

415. See, e.g., ROGER C. SCHANK, TELL ME A STORY: A NEW LOOK AT REAL AND ARTIFICIAL MEMORY 30 (1990) (noting that stories originate from five basic sources, including the official, invented, firsthand, secondhand, and culturally common); Baron, *Many Promises of Storytelling*, *supra* note 15, at 97-200; Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2416 (1989) (arguing that “much of social reality is constructed” through narratives); Gerald López, *supra* note 414, at 23; see also Scheppele, *supra* note 80, at 2088-91.

416. See, e.g., W. LANCE BENNETT & MARTHA S. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM 171 (1981) (discussing how bias enters legal judgments through the “norms, experiences, and assumptions” of both storytellers and their audiences); Baron, *Many Promises of Storytelling*, *supra* note 15, at 93-94; Delgado, *supra* note 414, at 818; Scheppele, *supra* note 80, at 2097. The problem of domestic violence, and the response of courts and lawmakers, provides an example. Many scholars have considered how that response has been affected by a deeply embedded belief in the patriarchal structure of marriage under which the husband is assumed to have the right to control his wife by whatever means he chooses. See, e.g., PLECK, *supra* note 253, at 8-9 (noting the coercive powers of the traditional patriarch, such as the right to demand sexual intercourse with his wife, physically discipline his family, and even—in Roman times—legally put them to death); Isabel Marcus, *Reframing “Domestic Violence”: Terrorism in the Home*, in THE PUBLIC NATURE OF PRIVATE VIOLENCE, *supra* note 172, at 20-21 (discussing the doctrine of coverture); Schneider, *supra* note 172, at 40-41.

417. See Baron, *Many Promises of Storytelling*, *supra* note 15, at 97-100; Leslie Bender, *A Lawyer’s Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 7 (1988) (discussing how, in legal

tive truth in every case, other stories that challenge the accepted narratives are either rejected as lacking credibility or never told.⁴¹⁸ Therefore, as the law develops, it reflects the norms and expectations of those in power rather than considering the full diversity of human experiences.⁴¹⁹

In the case of Margaret Hossack, the defense and the prosecution told competing stories to the jury. The arguments of both sides appealed to the underlying preconceptions they expected those twelve men would hold.⁴²⁰ By portraying Margaret Hossack as either a virtuous and submissive wife or a depraved monster, the lawyers sought to shape the facts into one of the stock stories they knew the jurors would rely on in reaching their decision. Because

practice and substantive law, "[m]en have created and named a world in which men have power over women"). See generally Taub & Schneider, *supra* note 50 (discussing the law's role in maintaining women in an inferior status by "refusing to regulate the domestic sphere" and by legitimizing sex discrimination).

The lack of legal regulation of the domestic sphere has been justified on the basis of the right of family privacy, which many argue has left women powerless and unprotected, lacking the possibility of legal recourse or escape from abusive relationships at home. See, e.g., PLECK, *supra* note 253, at 9-10; Siegel, *supra* note 172, at 2118-20; see also note 172 *supra*.

418. See, e.g., Scheppele, *supra* note 80, at 2096. According to Professor Scheppele:

Outsiders often have a different history, a different set of background experiences and a different set of understandings than insiders. . . . So, when taken out of their context, outsiders' actions often look bizarre, strange, and not what the insider listening to the story would do under similar circumstances. And without knowing more about how the situation fits into a context other than the 'obvious' insider's one, courts may find it hard to rule for outsiders.

Id.; see also Baron, *Many Promises of Storytelling*, *supra* note 15, at 97-100; Delgado, *supra* note 415, at 2437-38 (discussing how storytelling can benefit members of "outgroups" by helping to preserve their morale and providing a means to respond to the dominant culture's "stock stories").

For example, the legal treatment of battered women has historically silenced stories at odds with the dominant legal and social characterization. One scholar, Martha Mahoney, discusses the portrayal of such women in a few highly publicized cases as pathologically weak, dependent, and dysfunctional. She concludes that the prevailing image of battered women as weak and dysfunctional has allowed many to perceive the problem as limited in scope and has disserved battered women in other contexts, such as child custody disputes. See Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 9-10 (1991); Schneider, *supra* note 232, at 480. See generally CYNTHIA K. GILLESPIE, *JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW* (1989) (reviewing self-defense as a justification for killing one's abusive husband).

In the context of rape, see Lisa A. Binder, "With More Than Admiration He Admired": *Images of Beauty and Defilement in Judicial Narratives of Rape*, 18 HARV. WOMEN'S L.J. 265, 284-98 (discussing the danger of the "beauty and the beast" mythology that is prevalent in rape cases and its potential to punish people whose stories are not consistent with that paradigm); Kim Lane Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 N.Y.L. SCH. L. REV. 123, 125-28 (1992) (describing the conflict between culturally acceptable stories of rape and the actual experiences of many women).

419. This proposition has most often been discussed in the context of gender, with many scholars concluding that the law represents an exclusively male perspective. See, e.g., Janet Rifkin, *Toward a Theory of Law and Patriarchy*, 3 HARV. WOMEN'S L.J. 83, 84 (1980) (arguing that the "[l]aw is powerful as both a symbol and a vehicle of male authority"); Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 559 (1992) (suggesting that there is a "deep gender-bias in the concept of 'reasonableness'"); Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151, 2153 (1995) (arguing that the "criminal justice system is dominated . . . by a preoccupation with men and male perspectives"); Heather Ruth Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, 1 BERKELEY WOMEN'S L.J. 64, 68 (1985) ("Male-vision legal scholarship is to law what law is to patriarchy: each legitimates, by masking and by giving an appearance of neutrality to, the maleness of the institution it serves.").

420. See texts accompanying notes 228-258 & 279-281 *supra*.

they appealed to the jury's preconceptions, the lawyers' arguments reinforced the prevailing ideology on which those stock stories were based—the idea that a woman was either a model of feminine virtue or hardly human.⁴²¹ Neither the defense nor the prosecution developed the complex story of Margaret Hossack's life, her relationship with her husband, or her interactions with her neighbors.

Despite this failure, many people eventually realized the limitations of the stories the lawyers told. Because society largely ignored or tolerated domestic violence,⁴²² no public discourse on the issue existed; members of the community had no language with which to articulate why they felt that the conviction of Margaret Hossack was unfair. And yet, as many came to support Margaret Hossack, they may have recognized that none of the courtroom versions of her story came close to capturing the reality of her life. The stories told in the second trial, as Mrs. Hossack continued to deny what seems to have been the reality of her marriage and the lawyers continued to debate the relevance of the domestic abuse, were not necessarily any closer to the real-life story that surrounded the crime. But members of the community and at least some members of the jury seemed to recognize that there was a different narrative than the one that emerged in court, one in which the issue of her guilt was more complex, both factually and morally, than many initially thought.⁴²³

Without doubt, Susan Glaspell also felt that justice was not done in Margaret Hossack's first trial. Like the historical narrative of Margaret Hossack, *A Jury of Her Peers* invites questions about how stories are told in the courtroom as we, the readers, consider how Minnie Wright's life will be depicted by the lawyers and judged by the members of the jury. As Glaspell tells the story, we can imagine the life that Minnie Wright lived and feel her isolation and despair. And then, like the two women in the story, we are confronted with the arrogance of those who will judge Minnie Wright under the legal system and their inability to empathize with her experience. We are led to question whether the men, with their preconceived assumptions and biases, are capable of doing justice in the case of Minnie Wright and whether the law, as it developed, ever took into account experiences such as hers.

A Jury of Her Peers and the story of Margaret Hossack together illustrate a narrowness of vision that, even today, frequently determines the stories told in the courtroom and the decisions rendered under the law.⁴²⁴ On a more personal

421. These arguments are consistent with the virgin/whore dichotomy that, even today, affects the characterization of women, both in and out of court. See note 36 *supra*.

422. See DAVIDSON, *supra* note 172, at 101-03; PLECK, *supra* note 253, at 7-9.

423. See text accompanying notes 307-390 *supra*.

424. Many examples come readily to mind, especially those involving deeply embedded and stereotypical views of women and marriage in cases involving not only domestic abuse, but also, among other issues, sexual harassment and rape. See, e.g., Meda Chesney-Lind, *Women and Crime: The Female Offender*, in GENDER, CRIME AND FEMINISM 3, 17 (Ngaire Naffine ed., 1995) (discussing research findings suggesting that the criminal justice system has been involved in "the enforcement of traditional sex-role expectations as well as, and sometimes in place of, the law"); Susan Estrich, *Rape*, 95 YALE L.J. 1087, 1090 (1986) (discussing rape as an "illustration of sexism in the criminal law"); Elizabeth M. Iglesias, *supra* note 36, at 929-43 (discussing the "virgin/whore dichotomy [as] a culturally dominant narrative that is repeatedly asserted in the formulation of legal rules that govern the processing of rape

level, I recognize that the same narrowness of vision too often affects our own judgments about other people, which are frequently based on assumptions, biases, and expectations that may or may not be consistent with the reality of the lives of others.

And yet, even while the two stories, one fictional and one historical, suggest the limitations of our ability to understand other people, they also suggest the possibility of expanding our perspective. Both *A Jury of Her Peers* and the story of Margaret Hossack are narratives, stories that invite our participation in worlds unknown to us. Narratives enlighten us in different ways than other forms of discourse: They offer an imaginative experience rather than a specific message, and they appeal to our emotions rather than to our rational thought.⁴²⁵

As such, narratives can be transformative.⁴²⁶ By allowing us to step into the shoes of another person, they help us to overcome our isolation and self-centeredness, to realize that our experiences and expectations might not be shared by everyone.⁴²⁷ In reading stories about other people, we learn that other people, just like us, are multifaceted and multimotivational, and we come to appreciate that simplistic explanations for behavior and reactions are often impossible. We begin to empathize with people unlike ourselves, to feel the pain of a harm—whether it be domestic abuse, racial discrimination, or sexual harassment—that we may never experience.⁴²⁸ Reading certain texts, as Professor White has said, does “not merely add to one’s stock of information but [can] change one’s way of seeing and being, of talking and acting.”⁴²⁹ Stories allow us to expand our sense of the human experience beyond our own, to enlarge our perspective to include realities that would otherwise remain foreign and unfamiliar.⁴³⁰

Stories, whether fictional or historical, allow us to acquire an empathic understanding of the experiences of others. By reading and listening to stories,

cases”); Martha R. Mahoney, *Victimization or Oppression? Women’s Lives, Violence, and Agency*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE*, *supra* note 172, at 59, 60-61 (discussing the “[s]ocial stereotypes and cultural expectations about the behavior of battered women . . . that hide the interaction of social structures that oppress women”); Paul Nicholas Monnin, Note, *Proving Welcomeness: The Admissibility of Evidence of Sexual History in Sexual Harassment Claims Under the 1994 Amendments to Federal Rule of Evidence 412*, 48 VAND. L. REV. 1155, 1156 n.4 (1995) (citing commentators who have seen “the prevalence of gender-based stereotypes [as] an obstacle to effective sexual harassment litigation”); Taslitz, *supra* note 255, at 440 (discussing the “culturally pervasive tales of proper intergender sexual behavior that affect the crafting of court and rape narratives at trials”).

425. See, e.g., MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 53-78 (1995) (defending the contribution of emotion to public rationality and deliberation); West, *supra* note 43, at 868-73 (contrasting gendered concepts of rationality and empathy); White, *supra* note 43, at 2016-26 (describing differences between scientific and humanistic texts).

426. See White, *supra* note 43, at 2019.

427. See, e.g., West, *supra* note 43, at 873 (discussing empathy as the “moral promise of the Literary Person”); Winter, *supra* note 414, at 2276-79 (arguing that narrative and experience are crucial to understanding and reconstructing laws).

428. See West, *supra* note 43, at 873; see also NUSSBAUM, *supra* note 425, at 27-33; Rob Atkinson, *How the Butler Was Made to Do It: The Perverted Professionalism of The Remains of the Day*, 105 YALE L.J. 177, 219 (1995); White, *supra* note 43, at 2018-19.

429. White, *supra* note 43, at 2018.

430. See, e.g., ROBERT COLES, *THE CALL OF STORIES* 57-58 (1989); Delgado, *supra* note 415, at 2411, 2440 (“If we would deepen and humanize ourselves, we must seek out storytellers different from ourselves and afford them the audience they deserve.” (citation omitted)); see also note 427 *supra*.

we can begin to perceive more accurately how other people live and why they behave as they do.⁴³¹ We can become more aware of our own biases and expectations, which affect the way we see other people, as well as the biases and expectations that influence the stories lawyers tell and the way judges and juries interpret them. We can begin to achieve a more realistic sense of community, appreciating our similarities to other people, as well as our differences. We can, I believe, enrich and expand our perspective in a way that contributes to our ability, as a society, to define and achieve justice.

431. See NUSSBAUM, *supra* note 425, at 3.