The John Marshall Law Review

Volume 34 | Issue 1 Article 9

Fall 2000

"A Good Story" and "The Real Story", 34 J. Marshall L. Rev. 181 (2000)

Jane E. Larson

"A GOOD STORY" AND "THE REAL STORY"

JANE E. LARSON*

INTRODUCTION

[A] true lawyer hates facts. A lawyer is like an actor who can never bother about what sort of play he appears in, but tells himself some little story to cover as many of the incidents as he can be bothered to remember. The only thing he hates is to be reminded—for instance by the author—what the real story is about.[1]

This article will address several points Professor Baron has made and elaborate on them,[2] returning periodically to Frank O'Connor's provocative observation about lawyers, facts and stories. Baron makes three points that this article will connect to the role of stories in lawyering, and thus to the teaching of legal skills. Her aspiration is that law better reflect women's lived experiences.[3] This article will argue that this requires knowledge about the powerful and often volatile messages about gender that are incorporated into many stories lawyers tell, meaning that effective teaching of lawyering skills requires feminist insight.

First, Baron observes that although it is liberating to recognize many oppressive aspects of the gender difference as social constructions (and hence within the realm of human choice and change),[4] we chafe at the constricting power of those social constructions. Against such social constructions we contrast the richness and texture of what O'Connor calls the "real story," such as the complex understandings that Tom has of his wife, Nellie, and of their marriage.[5] If it is true that social constructions of gender do not capture "the real story," can we discard them? This article will argue that we cannot. Stories are fundamental to human cognition and judgment.

Second, Baron observes that we tend to draw a boundary

* Professor of Law, University of Wisconsin—Madison Law School.

1. Frank O'Connor, *Counsel for Oedipus*, *in* LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES 442, 444 (Elizabeth Villers Gemmette ed., 1992).

2. Jane B. Baron, *Language Matters*, 34 J. MARSHALL L. REV. 163, 164 (2000).

3. *Id.* at 166.

4. *Id.* at 170.

5. *Id.*

between law and life, and assign stories, with all their richness, to life and not law.[6] O'Connor typifies this perspective, going so far as to claim that "a true lawyer hates facts"—and, by extension, the "real stories" those facts tell.[7] Baron is skeptical, commenting that "[o]ne may need to consider whether the categories 'law' and 'ordinary life' are not two ways of describing a single set of experiences, rather than two altogether separate categories.."[8] If stories are indispensable in life, Baron's point suggests they are also indispensable to law. The conventional view is that legal truthfinding aspires to a higher rationality than that attained by knowing, understanding and judging in ordinary life.[9] Yet social scientists tell us that stories are psychologically necessary for jury decisionmaking, the very instrument of legal fact-finding: "The acceptance of a story and reaching of a verdict seem to be the same human act."[10] If so, then the teaching of legal skills must be the teaching of storytelling.

Finally, Baron suggests that reductive, slanderous, and injurious stories (which, on some readings, describes both her examples of O'Connor's short story, *Counsel for Oedipus* and the popular film, *Notting Hill*)[11] can only be countered with more and other stories.[12] "It seems to me more accurate and more sensible," she writes, "to understand the projects of legal feminism and of the law and literature movement as reflecting a belief that law *can* better reflect lived experiences—especially the experiences of women—or at least reflect the multiple ways in which those experiences might be described."[13] She suggests lawyering skills teachers should "compare legal and nonlegal depictions of events, to tell stories, and to read literature."[14]

On this final point, I want to talk at a practical level about constructing competing stories. Much of feminist theory concerns

---

6 *Id.* at 175, 178.

7. O'Connor, *supra* note 1, at 444.

8. Baron, *supra* note 2, at 179.

9. Robert Burns calls this "the Received View," by which the jury builds up a value-free account of "what happened" out of purely empirical generalizations and operations that can be called "logical." Robert P. Burns, *Some Realism (and Idealism) About the Trial*, 31 GA. L. REV. 715 n.47 (1997). *See also* William Twining, *Narrative And Generalizations in Argumentation About Questions of Fact*, 40 S. TEX. L. REV. 351, 356 (1999) (discussing the idea that jury use of narrative strategies in decision making is "potentially subversive of orthodox rationalist conceptions of fact determination.")

10. Nancy Pennington & Reid Hastie, *A Cognitive Theory of Juror Decision-Making: The Story Model*, 13 CARDOZO L. REV. 519, 535 (1991). For the development of the social science evidence, see *infra* note 25.

11. *See generally* O'Connor, *supra* note 1; NOTTING HILL (Universal Studios, Inc. 1999).

12. Baron, *supra* note 2, at 175.

13. *Id.* at 177.

14. *Id.*

resistance to cultural stereotypes. Within the law, a generation of rape reform activism, for example, focused on ways in which myths and stereotypes "blamed" victims for sexual assault, denying them justice.[15] It may be true, as O'Connor reminds us, that stories in courtrooms and the "real story" are not the same.[16] However, this reminder offers little guidance for effective lawyering or for better reflecting the lived experiences of women in lawyers' work. It is not enough that the "real story" we aspire to tell about women's experiences be true; it must also be a "good story" in the sense of being compelling and persuasive. I frame this discussion with a story of my own, recounting the work of a lawyer litigating a sexual tort case, a potentially transformative area of tort law[17] whose litigation nonetheless remains mired in regressive stories.

I. STORIES AND LEGAL PROCESS

Professor Baron observes that lawyers often use "stock stories both in order to telegraph information there is no time to put directly into evidence and to invoke appealing, positive images."[18] For his part, O'Connor describes lawyers as being "like an actor who can never bother about what sort of play he appears in, but tells himself some little story to cover as many of the incidents as he can be bothered to remember."[19] It is not just that these observations are true, but that they are true about people generally and not just lawyers.[20] Powerful evidence exists from social psychologists that stories, including those we call stereotypes, are a fundamental mechanism of human cognition.[21] The use of narratives to simplify, organize, and interpret our sensory perceptions is not a failure of human reason, it *is* human reason.

By contrast, the orthodox model of legal reasoning is drawn

---

15. *See, e.g.*, Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives in The Courtroom*, 5 S. CAL. REV. L. & WOMEN'S STUD. 387 (1996); Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013, 1027-31, 1040-57 (1991).

16. O'Connor, *supra* note 1, at 444.

17. On the argument for transformative possibility, see generally Jane E. Larson, *Women Understand So Little, They Call My Good Nature Deceit: A Feminist Rethinking of Seduction*, 93 COLUM. L. REV. 374 (1993) [hereinafter Larson, *Seduction*]; Jane E. Larson, *Imagine Her Satisfaction: The Transformative Task of Feminist Tort Work*, 33 WASHBURN L.J. 56 (1993).

18. Baron, *supra* note 2, at 175.

19. O'Connor, *supra* note 1, at 397.

20. *See* Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 3 (1984) (discussing the idea that professional and lay lawyering can be meaningfully described as storytelling).

21 *See infra* notes 22-25 and accompanying text.

from the physical sciences. Each relevant fact must be proven independently; each element of a cause of action must be checked off in turn. If each and every piece is established, then and only then may we organize these pieces into a whole that carries social meaning, determining, for example, that a cause of action has been established. This thought process is deductive or "systematic" reasoning.

Another way to ask and answer the question, "did something happen and what does it mean?"—and one that cognitive psychologists and sociologists describe as broadly characteristic of ordinary human cognition in the context of complex social settings—reverses the systematic approach.[22] We ask instead whether an account of an event is plausible and compelling. We do not separate facts in order to build our house brick by brick. We instead wade into the spider web of interrelated facts, looking all around us for the pattern of meaning that knits together a complex set of connected threads. By this latter approach, one called "heuristic," we judge the adequacy of an interpretation by asking, "does the story I am telling about these facts hang together? Does it persuade?" If we are in the context of a dispute, we ask, "does the story you are telling me seem more likely than competing accounts of the same events?"

O'Connor reflects the power of heuristic argument in his claim that "true lawyers hate facts"; but I believe he overstates the case.[23] Although facts are the building blocks of systematic thought and stories the bricks of heuristic thought, these are not mutually exclusive ways of thinking, "for, by finding the elements, one may find the underlying structure, and by finding the underlying structure, one may find the constituent elements."[24] Facts and stories are thus tightly connected in legal argumentation, so that the accumulation of facts through the formal offerings of evidence at a trial steadily narrows the alternative accounts that are able to account for all the relevant facts.

Studies of jury decisionmaking confirm that this is what juries do when they must decide legal questions. Notwithstanding the judge's instructions and the manner of presenting evidence at trial (which conforms to the orthodox idea of legal truthfinding), jurors construct episodes based upon the factual evidence they hear and the judge's instructions, and then search for goodness of fit between the possible episodes and the possible verdicts.[25]

---

22. *See generally* Pennington & Hastie, *supra* note 10, at 51.

23. O'Connor, *supra* note 2, at 444.

24. Ronald J. Allen, *The Nature of Juridical Proof*, 13 CARDOZO L. REV. 373, 383 (1991).

25. *See* Pennington & Hastie, *supra* note 10, at 556; Nancy Pennington & Reid Hastie, *Evidence Evaluation in Complex Decision Making*, 51 J.

Juries (and, by extension, judges and other triers of fact) thus determine not only "what happened" as historical fact, but the frameworks within which events should be understood.[26]

Counsel for Oedipus artfully reveals the process. Nellie Lynam wants a legal separation on the grounds of cruelty and adultery from her husband, Tom.[27] The adultery is admitted and only the issue of cruelty is contested.[28] Under direct examination at the trial, Nellie, a small and soft-spoken woman of exaggerated respectability, testifies to physical and emotional abuse.[29] Tom has called her names too terrible to repeat, and physically kicked her out of the house with their five-year-old son as a witness.[30] Her testimony is compelling, but O'Connor tells us that it was Tom himself who made Nellie's case by taking the stand, for the errant husband is a recognizable "type": "He was a big, good-looking man with a stiff, morose manner; one of those men who are deceptively quiet and good-humored for months on end and then lay you out with a stick for a casual remark about politics."[31]

So how, then, does Tom's lawyer, Mickie Joe Dougherty, reframe the meaning of this powerful conjunction of facts (Nellie's testimony) and stereotype (Tom's "type")? As Mickie Joe cross-examines Nellie, new facts about her behavior towards her husband, his friends, their children, emerge from the lawyer's questioning.[32] O'Connor writes, "You couldn't any longer see [Nellie] the way you had seen her first. Whether it was right or wrong, another picture was beginning to emerge of a woman who was both ruthless and designing and who ruled her great brute of a husband by her weakness."[33] Mickie Joe sketches another stereotype.

In this contest between competing versions of the plausible, "story" structure is vitally important. Faced with incomplete, ambiguous, conflicting or complex evidence, juries fill in the gaps, constructing a coherent episode that follows typical narrative style, with a beginning, a middle and an end, with all causal

---

PERSONALITY & SOC. PSYCHOL. 242, 244 (1986) [hereinafter Pennington & Reid, *Evidence Evaluation*]. *See also* Nancy Pennington & Reid Hastie, *Juror Decision-Making Models: The Generalization Gap*, 89 PSYCHOL. BULL. 246, 251 (1981).

26. *See* ROBERT P. BURNS, A THEORY OF THE TRIAL 170-72 (1999).

27. O'Connor, *supra* note 1, at 442.

28. *Id.*

29. *Id.* at 443-44.

30. *Id.* at 443.

31. *Id.* at 442.

32. O'Connor, *supra* note 1, at 445-49. Nellie, we learn, fails to cook for her husband, will not go out visiting with him, embarrasses him before his friends, spoils his children so that they cannot be cared for by others, and has refused to have sex with him for over two years. *Id.*

33. *Id.* at 446.

relationships specified. Where does the story structure that organizes these facts come from? It comes from our "frames of world knowledge,"[34] which include not only our own experiences or simulations of our own behavior in particular settings, but more importantly secondary sources of cultural knowledge, including stereotypes.[35]

O'Connor thus shows how "smart" stereotypes can make a lawyer, even one of Mickie Joe's middling abilities, as he states: "It cannot be pretended that the best day he ever was, Mickie Joe was much of a lawyer or made a good appearance in court."[36] Mickie Joe knows all he appears to know about Tom and Nellie's marriage not because he investigated and gained superior knowledge of the facts. Rather, he has access to a set of stock stories. His possession of a powerful image of Nellie, Tom and the story of their union, allows Mickie Joe to "fill in the blanks" with a story plausible not only to a "woman-hater" (as O'Connor describes Mickie Joe), but also to a judge with a "mother-fixation."[37] He fills in those blanks with startling, prescient, eventually discomfiting, accuracy.

The irony of the story comes when Tom, sensing that the tide has turned against Nellie, refuses to abandon her to the judgment of the law.[38] Tom follows Nellie out of the courtroom and they talk, after which Tom announces that "Nellie and me are settling this between us."[39] Mickie Joe is incredulous as he sees his legal victory, just within grasp, being tossed away.[40] Tom, however, responds that the law's stories are not the "real story".[41] "There's a pair of us there .... I [do not] know where you got your information, but you can go back to the people that told you and tell them to mind their own business. I [will not] let you or anyone talk to my wife that way."[42]

If stereotypes make lawyers and juries "smart," they may also make them wrong, unjust, irrational instruments of oppression. The legitimate fear of storytelling in the legal context is that it can be, and is often, used to violate or evade conventional legal norms about relevance, reliability, completeness, prejudicial effect, etc. Stories are regarded as appealing to intuition and emotion, thus

34. *See* Pennington & Hastie, *Evidence Evaluation*, *supra* note 25, at 242-43.

35. *Id.*

36. O'Connor, *supra* note 1, at 444.

37. *Id.* at 442. "But Mickie Joe is a 'woman-hater,' the one [sort of] person who can stand up to a man with a mother fixation." *Id.* at 446.

38. *Id.* at 449.

39. *Id.*

40. *Id.*

41. O'Connor, *supra* note 1, at 446.

42. *Id.* at 449-50.

operating as a vehicle for "irrational means of persuasion."[43] Although the dangers are varied, what we fear is that good stories will push out true stories.[44]

Nowhere in law have the stories that we call gender stereotypes had more power to control interpretation than when the subject is the male-female sexual relationship. Few projects have so consistently engaged feminist legal scholars and activists than decrying, refuting, and resisting both the truth and the power of these sexual stereotypes. Feminist theorists argue not only that law making and enforcement are shaped by gender-oppressive social imagery, but that law reproduces social constructs that distort, confine and defame women's sexuality.[45]

Again, Professor Baron reminds us that our awareness of the risk of stories does not mean we can leave them alone, particularly when our task is to teach effective lawyering.[46] People require stories in order to judge. If Baron is right to describe the project of legal feminism as trying to tell truer stories about women's lived experiences, then we have to have some good stories of our own.

II. FIGHTING FIRE WITH FIRE

Several years ago I consulted with Chicago attorney, Terence Flynn, on a breach of promise to marry case.[47] The case, *Wildey v. Spring*, would become notorious.[48] In the face of denunciations from the media, the public and even the legal community, Flynn won a $178,000[49] jury verdict in federal district court[50] only to lose

43. For a sensible (and non-polemical) summary of these dangers, see Twining, *supra* note 9, at 359.

44. Twining lists various dangers of stories in legal contexts, including:

> (i) sneak in irrelevant facts; (ii) sneak in invented or ungrounded facts; (iii) suggest facts by innuendo; (iv) focus attention on the actor rather than the act; (v) appeal to hidden prejudices or stereotypes; (vi) tell the story in emotionally toned language; (vii) tell a story that may win sympathy for the speaker or the victim but is irrelevant to the argument; (viii) make use of dubious analogies; and (viii) subvert lawyers distinctions between fact, law, and disposition and, more generally, fact and value.

Id. at 359.

45. On successive waves of debate within feminist theory about strategies for contending with sexual stereotypes (in law and elsewhere), see generally Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995).

46. Baron, *supra* note 2, at 159.

47. The case was brought under the 1947 Illinois Breach of Promise Act, 740 ILL. COMP. STAT. 15/1 et. seq. (1993). It was litigated in federal district court on diversity jurisdiction.

48. Wildey v. Springs, 840 F.Supp. 1259 (N.D. Ill. 1994), *rev'd by* Wildey v. Springs, 47 F.3d 1475 (7th Cir. 1995).

49. 840 F.Supp. at 1261. The district court judge reduced the award to $118,000, ruling that Wildey could not collect damages for lost business

at the Seventh Circuit on a dubious procedural ground of notice.[51]

Attorney Flynn's litigation strategy is evidence that we are not wed to a fixed set of stories in the law. New stories can complicate, call into question, and even counter old ones, provided they create meaning and thus organize the world. At the same time, as Professor Baron warns, it is not the case that such alternative accounts counter a stereotype with a view more true to life. They may, in fact, be only a different set of stereotypes. After all, to communicate meaningfully, a heuristic image must be fully resonant in the social world and not stand apart from it.[52] What is notable about Flynn's strategy was his ability to deploy a new "stock story" in our culture: woman as survivor.

Illinois statute authorizes an action for breach of promise to marry, a cause of action long recognized at common law.[53] These actions have fallen into disuse in recent decades. Many states abolished similar statutes beginning in the 1930s, labeling them "heartbalm," conveying the principal criticism that asking for money damages to remedy romantic and relational loss is a misuse of the law.[54] The Illinois legislature tried to abrogate its breach of promise statute,[55] but the state Supreme Court ruled the abolition unconstitutional under a provision of the state constitution

---

profits, leaving in place $25,000 in damages for medical expenses and $93,000 for emotional pain and suffering. *Id.* at 1267-69.

50. The jury consisted of seven men and one woman; they deliberated for only three hours before reaching their verdict. *See* Matt O'Connor, *He Won Her Heart and Broke It; She Won Suit and May Break Him*, CHICAGO TRIBUNE, Nov. 11, 1993, at A11 (source on file with author).

51. *Wildey*, 47 F.3d at 1484. The Illinois statute requires a plaintiff to provide a defendant with notice of her intent to sue. The required notice must be written, signed and sent within three months of the date of the breach. It must contain, among other items, "the date upon which the promise or agreement to marry was made." 740 ILL. COMP. STAT. 15/4. Failure to provide the notice bars the claim. 740 ILL. COMP. STAT. 15/5. Before hiring an attorney, Wildey wrote a letter within the requisite time period that included three of the four items, but failed to state the date of their engagement. *Wildey*, 47 F.3d at 1477. The appeals court ruled this omission was "fatal to her claim." *Id.* at 1484.

52. "There doesn't seem to be any language in which to talk about women that doesn't replicate the problems we are trying to talk our way out of." Baron, *supra* note 2, at 118.

53. 740 ILL. COMP. STAT. 15/1 et. seq.

54. Twenty-four states and the District of Columbia have either abolished or curtailed the cause of action. *See* Jeffrey D. Kobar, *Note, Heartbalm Statutes and Deceit Actions*, 83 MICH. L. REV. 1770, 1770-71 nn.5 & 6 (1985). *See also* Nathan P. Feinsinger, *Legislative Attack on "Heart Balm,"* 33 MICH. L. REV. 979 (1935).

55. *See* ILL. REV. STAT. Ch. 38, Sec. 246.1 & 246.2 (1943) (prohibiting the filing of any pleading in a civil action for, and abolishing the cause of action of, breach of contract to marry).

providing a legal remedy for all injuries:[56] "The contract of marriage has always been known in the law as a contract involving civil rights just as other contracts involve such rights and no reason appears why . . . such rights should not have their day in court."[57]

Sharon Wildey[58] was an attorney and a 50-year old divorced mother of four children.[59] In a whirlwind romance, she became engaged to Richard Springs, an Oregon rancher. With Springs' encouragement, Wildey began to make financial decisions in her business and family in reliance on the pending marriage. After seven weeks of engagement, however, Springs reconsidered and abruptly broke off the engagement. Wildey sued. She claimed her law practice suffered from the decisions she had made in reliance on Springs' assurances of support. In addition, she sought medical expenses for extensive psychiatric counseling and damages for emotional pain and suffering.

Immediately, in both law and life, Wildey was depicted as a woman, like Nellie Lynam, who sought to control and manipulate through her weakness. O'Connor's description of Nellie as a "gentle, insinuating little woman who was being revealed as a grey, grim, discontented monster with a mania for power," could have come from the media coverage of the case.[60] Wildey was painted as a chronic loser at romance[61] who exaggerated her suffering.[62] She was described as bent on revenge[63] or derided as a

---

56. Heck v. Schupp, 68 N.E.2d 464 (1946). The state constitution provides:

> Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay.

ILL. CONST. art. II, sec. 19.

57. *Heck*, 68 N.E.2d at 466.

58. *See* Wildey v. Springs, 840 F. Supp. 1259 (1994). Facts about the case and the parties are taken from the article by Gretchen Reynolds, *A Breach of Promise*, CHICAGO MAGAZINE, April 1994, at 63.

59. Reynolds, *supra* note 58, at 63.

60. O'Connor, *supra* note 1, at 449.

61. Hardly a news story failed to mention that Wildey was thrice-divorced, even though Springs also had been divorced.

62. *See, e.g.*, Debra Saunders, *What Mends a Broken Heart? Lots of Money*, ATLANTA CONSTITUTION, Nov. 19, 1993, at A10. "[Wildey] did concede . . . that after the break-up with Springs, she vacationed in New England, took a cruise with her family and bought a $125,000 home." *Id.*

63. Reynolds, *supra* note 53, at 113. One CHICAGO TRIBUNE headline read: *He Won Her Heart and Broke It; She Won Suit and May Break Him*, CHICAGO TRIBUNE, Nov. 11, 1993, at A11. Barry Schatz, a Chicago lawyer, was quoted as saying "This was an instance of a an attorney using her knowledge of the system to get back at someone who had left her . . . . I believe the breach-of-promise law was used here as a form of emotional blackmail. And I consider that extremely offensive." *Id.*

gold digger who sought to exploit her hold on a wealthy man in order to extract money from him.[64] Legal and lay commentators alike suggested that the jury was off-the-wall.[65] Others held Wildey up as an exemplar of "all that is wrong with society".[66]

Wildey had a history of depression and in years past had sought psychiatric treatment for a phobia.[67] Following the breakup with Springs, she sought further counseling for crippling depression.[68] The defense sought to depict her as unstable, crazy, predisposed to emotional trouble entirely apart from Springs' behavior, uncontrolled in her needs and the demands she made on others. In the same way, O'Connor depicts Nellie's chronic back problem as psychological aggression directed at her husband, notwithstanding undisputed evidence of her husband's repeated battering of that aching body.[69]

Attorney Flynn had to craft a strategy that acknowledged these facts and yet interpreted them differently, to save Wildey from "Nellie-ization." For example, in the pleadings, depositions or at trial, he never used the familiar legal terms "emotional injury" or "psychic or mental distress,"[70] with their troubled gendered history.[71] Rather, he consistently referred to "psychiatric

---

64. *See, e.g.,* Saunders, *supra* note 62, at A10.

> Springs testified that he showered Wildey with $24,000 in gifts. After . . . he broke the engagement, [he] offered to let her keep the $19,000 engagement ring and use $10,000 in his Chicago bank account. Apparently the gifts and the money weren't enough for Wildey. She sued on the grounds that after the breakup she was deeply depressed and had trouble working.

Id.

Such accusations of blackmail are a venerable form of slander with which to discredit women who seek to hold men sexually accountable in law. *See* Larson, *Seduction*, *supra* note 17, at 392-96; LINDA R. HIRSHMAN & JANE E. LARSON, HARD BARGAINS: THE POLITICS OF SEX 165-66, nn.147 & 176 (1998).

65. A Chicago lawyer is quoted as crediting the verdict to "skillful performance by Wildey's lawyer" and "what may have been a softhearted jury." Andrew Gottesman & Matt O'Connor, *Jilted Fiancé's Victory Jolts Lawyers and Lovers*, CHICAGO TRIBUNE, Nov. 14, 1993, § 2, at p.1. An editorialist began her column by observing, "You know there is something wrong with this country when a jury awards . . . ." Saunders, *supra* note 62, at A10.

66. *See, e.g.*, Letter from Pippin Stein to CHICAGO TRIBUNE, Nov. 22, 1993, at 14, stating that: "The idea that a 50-year old woman can recover $178,000 from her ex-fiancé of seven weeks is a gross injustice . . . and an example of what is wrong with this society."

67. *See* Reynolds, *supra* note 58, at 63.

68. *Id.*

69. O'Connor, *supra* note 1, at 447.

70. Terence E. Flynn, Presentation to the Women's Legal Studies Institute at the Chicago Kent College of Law, (July 23, 1994) [hereinafter Flynn Presentation].

71. *See generally* Martha Chamallas & Linda Kerber, *Women, Mothers and the Law of Fright: A History*, 88 MICH. L. REV. 814 (1990).

injury." He repeatedly walked Wildey through painful parts of her life: childhood abuse, divorce, adult psychological suffering and recovery, yet painted her as a survivor and not a victim or damaged goods.[72] Wildey testified at trial that she had been raised in an abusive home.[73] Pregnant at sixteen, she married the baby's father and left home, but the marriage lasted only a few months.[74] A year later, with one young son, she married again and soon thereafter gave birth to a second child, a daughter.[75] The child was born with cystic fibrosis and would later die.[76] This second youthful marriage also ended quickly.[77] At age eighteen, with a young son and a seriously ill daughter, Wildey began college, finished in two years, and went on to law school.[78]

Following graduation, she opened a series of legal clinics that specialized in representing battered women and children.[79] Wildey married a fellow law student and had three more children; after some years, this marriage ended.[80] Wildey raised the four children, supporting them by working as a lawyer, first in Indiana and later in Chicago.[81] Flynn affirmatively demonstrated that Wildey was an independent woman and able to care for herself and her children, as she had done for many years before her engagement to Springs.

Although it may have been tempting to paint Wildey as helpless and in need of protection, Flynn says he judged that in the light of our stereotypes about female weakness (see Nellie), Wildey "would not be seen as having a right to rely on a man unless she didn't really need to."[82] Whatever one may think of breach of promise as a legal theory, and despite Wildey's ultimate loss at the Seventh Circuit Court of Appeals, her attorney constructed a competing and plausible story that explained all the

---

> The law of torts values physical security and property more highly than emotional security and human relationships. This apparently gender-neutral hierarchy of values has privileged men, as the traditional owners and managers of property, and has burdened women, to whom the emotional work of maintaining human relationships has commonly been assigned. The law has often failed to compensate women for recurring harms—serious though they may be in the lives of women—for which there is no precise masculine analogue.

Id. at 814.

72. Flynn Presentation, *supra* note 70.
73. Reynolds, *supra* note 58, at 63.
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*
78. Reynolds, *supra* note 58, at 63.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*

facts, hung together, and ultimately persuaded the jury. Thereby, he saved Wildey from automatic dismissal in the eyes of the law, and in the eyes of the world.

CONCLUSION

The implications for the teaching of legal skills are two. Professor Baron demonstrates how literature illuminates the importance of storytelling in lawyering, and this article supports her claims with a review of the scientific evidence concerning the role of stories in jury decisionmaking. Legal persuasion depends on storytelling and legal skills courses must teach students to understand and construct narrative. Effective lawyering requires more however. This article also contends that lawyers must understand the silent claims that stories make on a listener's prior knowledge. This includes knowledge about the powerful and often volatile messages about gender most human stories incorporate. The lawyer with such insight can understand the ways that gender may have shaped a client's experiences of injury, but also is equipped to strategize the specific gender dynamics of representing those injuries in the courtroom.