How We Constructed
"The Jury":
A Look at Narrative Storytelling

Shana Weiss†

I. CULTURAL IMAGES AND THEIR ALLURE

Throughout O.J. Simpson’s criminal trial and immediately following the verdict, the idea of racial friction took center stage in explaining “why O.J. won.” Yet, this simplistic racial opposition—African American v. white—reduced identity to race at the expense of other socially and politically informed identities. Where “racial pairing . . . essentializes race,” racializing identity submerges gender as well as class. This is not to say that other critiques of the trial and verdict were absent. Indeed, the landscape was replete with diverse and competing readings of what was “really going on.”

My project here is not to declare what was “really going on” but to identify the multiple stories that emerged and to explore what their presence suggests. Particularly, my focus is on what these narratives convey about the intersection of race, gender, and class within the Anglo-American legal system. Part II examines the relationship between narrative and the legal enterprise. Part III examines six “stories of Simpson” with an eye toward intersectionality. Jurors, media observers, and others involved in the trial tell these stories. These stories tell much about how power works and especially

Copyright © 1997, BERKELEY WOMEN'S LAW JOURNAL.
† J.D. Loyola Law School, 1997; B.A., University of California, Berkeley, 1988. The author wishes to thank the editors and staff of the Berkeley Women’s Law Journal for their inspiration as well as their substantive suggestions. Thanks are also due to Yxta Maya Murray and John Silva for their endless encouragement.

1. See Lisa C. Ikemoto, Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed “Los Angeles,” 66 S. CAL. L. REV. 1581, 1581 (1993). Beyond echoing the title of Professor Ikemoto’s article, this essay draws greatly from her approach. Whereas Professor Ikemoto’s article expressly examines the dynamics of race projected through the “master narrative” of the civil disorder following the Rodney King trial in Los Angeles 1992, see id. at 1582, this paper focuses on the dynamics of race, gender, and class as projected through the multiple narratives of the O.J. Simpson murder trial in Los Angeles 1995.


3. Ikemoto, supra note 1, at 1592.
how it can inhere invisibly in the most apparently "neutral" standards. Although each story reveals "truths" beyond the trial, each story is essentialist and myopic in its own way. Part IV concludes by noting that dominant theories about law and justice must be infused with an intersectional, antiessentialist consciousness. This is one way to build bridges between mutually exclusive classifications and the traditionally polarized groups they represent.

II. THE RELATIONSHIP BETWEEN NARRATIVES AND THE LEGAL ENTERPRISE

Arguments about the law are, in effect, arguments about which stories should be privileged.4

In large part, traditional American jurisprudence assumes one definition of proper personhood, that of an objective actor. Generally, the law "presupposes what is essentially a mythical being: a legal subject who is coherent, rational, and freely choosing . . . ."5

The feminist legal project as well as many critical race theorists, have challenged the notion of objectivity in a variety of ways. Professor Martha Minow demonstrates that objects are always defined in relation to other objects.6 Thus, who I am (or who I am not) has everything to do with who you are. Similarly, Professor Patricia Williams' book The Alchemy of Race and Rights7 is subtitled the "diary of a law professor" keying us to the fact that the phenomena she describes is from her perspective. How she sees the world around her is unavoidably affected by her past experience. Combining Professor Minow's and Professor Williams' analyses yields: Who I am has to do with how I see who you are.

Consistent with the American legal system's objective definition of actors, the legal system excludes many facts as unimportant. This is illustrated by the parol evidence rule and by the exclusion of narrative testimony in court hearings.8 Scholars critique these rules for they tend to reject facts which help explain the legal actor's point of view.9 Injecting narrative "fills the gaps"10 of traditional legal discourse with images that cause us to confront our identity more fully.

6. See Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law 1 (1990) (analogizing the practice of law to the skill being honed in Sesame Street's song "Which of these things is not like the other? Can you tell me which one doesn't belong?")
8. See Baron, supra note 4, at 264.
10. Williams, supra note 7, at 7.
Storytelling also serves to create "writerly" texts, where the reader is invited to join in the interpretation of the "open" text, as contrasted with the more familiar "readerly" text of law, where the reader passively takes up a specific message created by the dominant writer." Narrative jurisprudence seeks to creatively and proactively forge a communication between reader and writer. It is this active measure that helps transform racial, gender, and class conflict into coalition.

Building on the critique of American legal doctrine offered by many feminist legal theorists and critical race scholars, this essay attempts to dispel the notion of objectivity in legal analysis by focusing on the narratives that have sprung from the Simpson criminal trial. Recalling Professor Williams' work, these stories use the narrative form to uncover facts which provide the perspective of those involved in the trial. And this project expands on Professor Minow's thesis by showing that the storytellers define components of the trial relationally.

III. INTERSECTIONALITY AND THE STORIES OF SIMPSON

Between the cries of joy and pangs of frustration, competing narratives began to dominate the post-verdict discussion. These stories arose from the tangled thicket of race, class, and gender consciousness. Each story, by focusing on only one stem of awareness, reduced the verdict to its own sound-bite. These separate stories, and the myths they derive from, make racial and gender identity "not only flat, but also transparent." Of the multiple readings that exist, six clearly dominate the stage: (1) the "Race v. Reason" story; (2) the "What About Me?" story of the domestic violence victim; (3) the "Rich Man/Poor Man" story; (4) the "Golf v. Project" story of racial (in)authenticity; (5) the "Uncle Tom" story and its own take on racial authenticity; and (6) the "Gray in the Middle" story about the role of an Asian-American judge as objective arbiter in a trial focused on black-white racial tensions. These stories pointedly illustrate Professor Williams' thesis that traditional Anglo-American jurisprudence can be identified by its reliance on "exclusive categories and definitional polarities . . . that purport to make life simpler in the face of life's complication: rights/needs, moral/immoral, public/private, white/black." Echoing Professor Williams' project, this essay attempts to "occupy the gaps . . . between lived experience and social perception, and between an encompassing historicity and a jurisprudence of generosity."

12. See Ikemoto, supra note 1, at 1593; see also WILLIAMS, supra note 7, at 6 ("I am interested in the way in which legal language flattens and confines in absolutes the complexity of meaning inherent in any given problem . . . .'').
13. WILLIAMS, supra note 7, at 8.
14. Id.
A. The "Race v. Reason" Story

[R]ace was the trickle that turned into a flood, eventually drowning the trial—and the nation along with it.\textsuperscript{15}

"I'm shocked... justice wasn't done. It turned into more of a racial thing than what actually happened. Race played too big a part in it. It's sad to see that, but that's the way it is in this country."\textsuperscript{16}

"It wasn't a trial about right and wrong; it was a trial about black and white."\textsuperscript{17}

"You could say this is like the Rodney King case in reverse... I think the selection of the jury decided the case long before it was heard."\textsuperscript{18}

Even gender and other factors that might be expected to supercede race in a trial that focused on domestic abuse seemed to take a back seat.\textsuperscript{19}

"It was clear—at least it is to me and I think other members of the prosecution team—this was an emotional trial. Apparently, their decision was based on emotion. That overcame reason."\textsuperscript{20}

As the above quotes show, one reading of the verdict describes race as a cloud that eclipsed reason. This story was predominantly articulated by the dominant (read white and affluent) culture angered by what was perceived as an irreconcilable discrepancy between the evidence pointing to Simpson's guilt and his ultimate acquittal. Where DNA evidence reduced the chances to almost zero that the killer was someone other than Simpson, these story-tellers were stunned by the verdict. How could these jurors (read these African-American jurors) dismiss the DNA, the knife, the fleeing, and even the fact that Nicole predicted her own death at the hands of her ex-husband?

I find both the "race" and "reason" aspects of this story flawed. First, the members of the jury are more than their race. Indeed, weren't these African-American, Latino, and white jurors also women and men, mothers and daughters, fathers and sons? Second, the suggestion that the jurors did not use "reason" ignores the reality that "standards of what is rational reflect the interests of those who currently hold power, whose authority is affirmed by how neutral and inevitable these standards appear to be."\textsuperscript{21} Reason was not completely absent from these people's minds—rather, their reasoning may have been informed by experiences not introduced as evidence during the trial.

\textsuperscript{15} Sheryl Stolberg, The Simpson Legacy: Just Under the Skin; Will We Ever Get Along?, L.A. TIMES, Oct. 10, 1995 at S1.
\textsuperscript{17} Id. (quoting William Singleton).
\textsuperscript{18} Peter Kendall & Pamela Cytrynbaum, Race Tints Shared Experience: Reaction to Verdict Split into Black, White, CHI. TRIB., Oct. 4, 1995, at 1 (quoting Al Tone).
\textsuperscript{19} Id.
\textsuperscript{21} BARTLETT & KENNEDY, supra note 5, at 3.
racist cop may say more to a black juror than a white juror. And perhaps a sys-
tem which, on its face, stands for colorblindness and impartiality, means less
to someone who has watched her brother get sent to prison for the rest of his
life under California’s “three strikes” law.\(^\text{22}\)

To reduce these people to their race ignores their gender, their class
positioning, as well as their sexual
orientation.\(^\text{23}\) This racialized reading of
the verdict conspicuously excludes any influence gender played in the formul-
ation of the jury’s verdict. According to the underlying premise of this story,
one’s reading of the verdict is informed, if not wholly guided, by one’s eth-
nicity. But what about women of color? Are these jurors African-American or
are they women? And those who are both, who are they? By setting up this
duality as mutually exclusive, the experience of women of color—the over-
whelming majority of the Simpson jury—is obliterated. The submerging of
gender and class to race in the dominant culture’s account of the trial rein-
forces the point that existing categories inadequately describe the experience
of oppression as oppositional polarities.\(^\text{24}\)

B. The “What About Me?” Story: The Silencing of the
Domestic Violence Victim

“What we need to teach children is . . . not about racism, but is about violence
against women.”\(^\text{25}\)

“I don’t understand . . . I feel like we are so unevolved. We need to deal with
domestic violence in this country.”\(^\text{26}\)

\(^{22}\) See generally Katrina Dewey, A Juror Balks at Calling ‘Strike Three,’ L.A. TIMES, Mar. 28, 1995,
at B9 (discussing the “immoral act” of enforcing a “twisted law”). California’s “Three Strikes”
law allows a defendant convicted of a serious felony to be sentenced to 25 years to life in prison
when he or she has previously been convicted of two or more serious felonies. CAL. PENAL CODE
§§ 667(b)-(i), 1170.12 (West Supp. 1997). The California Supreme Court has recently held that a
sentencing judge has discretion, pursuant to Penal Code § 1385(a), to strike a prior serious felony
conviction in the interests of justice. People v. Superior Court (Romero), 917 P.2d 628, 648 n.13
(Cal. 1996).

\(^{23}\) In the end, the jury was comprised of ten women and two men, nine African-Americans, two white
Americans, and one Latino. Delios & Brandon, supra note 20, at 17. Although there has been no
suggestion of how sexual orientation affected the decision-making process of these jurors, the
negative implication is that they were all heterosexual. Because being straight is presumed, discussions
of sexual orientation are conspicuously absent.

\(^{24}\) See WILLIAMS, supra note 7, at 8.

Los Angeles NOW Chapter President Tammy Bruce’s comments on ABC’s Nightline program). As
a result of this and other statements made by Bruce following Simpson’s acquittal, Patricia Ireland,
National President of NOW, condemned Bruce and demanded an apology for statements the orga-
ization’s leaders interpreted as racially hostile and incendiary. Id. Subsequently, on May 6, 1996,
Bruce resigned from NOW to start a new women’s advocacy group with Denise Brown, sister of
Nicole Brown Simpson. Shawn Hubler, Tammy Bruce, Outspoken President of NOW’s L.A. Chap-

\(^{26}\) Jane Gross & Sheryl Stolberg, Activists Lament Verdict but Applaud Focus on Abuse, L.A. TIMES,
"I am feeling so powerless . . . . This outcome speaks to our oppression. How do we get justice as women?"  

The callers [to battered women's hotlines] . . . , many of them formerly battered women, cried that "their voices had been taken away" by the Simpson jury . . . "Why should I call the police? Why should I go through the ordeal of testifying?"  

In these readings, race again emerges as an eclipsing force. Rather than burying "objective reason," race serves to bury the cries of women harmed by domestic violence. By placing race in opposition to gender, this story suggests that the needs and rights of women as a whole were subsumed by an overwhelming focus on race. Yet, to claim that this verdict forgot all women forgets that (predominantly) women jurors did the forgetting.  

Furthermore, all-encompassing claims, in this case on behalf of women as victims of domestic violence, obscure the multiple realities that many women experience. This critique stems in large part from the scholarship of Professor Angela Harris who challenges the "essentialist" nature of much feminist legal criticism. Professor Harris contends that scholarship which posits a unitary female experience is flawed in that it is premised on the "notion that a unitary 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience." Professor Harris further explains that the result of this "tendency toward gender essentialism . . . is not only that some voices are silenced in order to privilege others . . . but that the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice of 'We the People'—among them, the voices of black women." Thus, the claim that women were forgotten is a claim that forgets certain women, particularly women of color. Thus, in this reading of the Simpson verdict, gender identity is presumed to be the decisive factor. But placing gender before race robs many women of their particular existences.  

This double bind of race and womanhood, as expressed through the "What About Me?" Simpson story, further illustrates how labels separate
what we are from what we are not. If this is true, then we must use labels in a manner that is relational, rather than essential.

C. The “Rich Man, Poor Man” Story: The Power of Wealth

You can try a rich man all you want, but you can never convict a rich man. "It is just a matter of money and who your lawyer is."

We provide extensive rights to criminal defendants in theory, but do so in a system that usually allows only the affluent to employ those rights in practice.

The common theme underlying this set of stories focuses on the influence of wealth in determining freedom. Our legal system has long been criticized for favoring the wealthy. In this telling, Simpson "bought" his freedom through the use of a host of attorneys, paralegals, criminal investigators, forensic pathologists, and jury consultants.

In an L.A. Times poll, those earning more than $50,000 a year—both white and black—were more likely to think Simpson was guilty than those earning less than $30,000. Is the moral of the story that affluence trusts the legal system and poverty distrusts the legal system? Clearly, there is support for this assertion, but the question is more complicated than such a simple retort. When standards of reason reflect power structures, it is a necessary corollary that those who benefit from those structures find that reasoning appealing.

To reduce the verdict to a story of “the haves” and the “have-nots” misses the mark. It is true that money makes a tremendous difference in the criminal justice system, and that Simpson’s pocketbook was put to use in the trial. But the cultural intrigue would not be so strong if a rich white man had...
been charged with the brutal murder of his white ex-wife. Affluence, in this story, is used to erase race. And like “gender essentialism,” the class-based distinction sets up an incomplete polarity of experience.

D. The “Golf v. Project” Story: Authenticity and the Exploitation of Racial Subordination

Gradually completely, Johnnie L. Cochran Jr. had transformed this case from a murder trial into a backhanded hearing about centuries of oppression and racism.

That is a trial that needs to be held, but not here. Not now. We have been giving testimony in that case for centuries, in Birmingham, Montgomery, and Selma; in Watts, Detroit, and Washington, D.C.; in Kenya, Zimbabwe, and the Sudan. O.J. Simpson belittles those struggles.

The revolution is over when the revolutionaries have nothing better to do than decry the treatment of a millionaire who was given every deference by the system. The movement will be a farce when young blacks are forced to storm the streets, yelling “Remember Brentwood!”

The “Golf v. Project” story is striking because it turns the “Race v. Reason” story on its head. Racial identity is recognized as a powerful force, as it is in “Race v. Reason,” but here the focus is on authenticity. Simpson’s acceptance within the dominant culture (illustrated by his white wife, his white Ford Bronco, and his white playground—the Riviera Golf Course), is seen as evidence of his lack of true identification with “the black community.”

This story argues that the legal system wrongly allowed Simpson to disingenuously use racism as a defense. Because Simpson is rich, famous, and male, his “blackness” falls away. He has not lived the experience of oppression, at least not in an on-going way since his childhood growing up in a San Francisco housing project. This story asserts that Simpson opportunistically appropriated racial oppression, diluting more legitimate claims of racial subordination and ultimately destroying the movement toward equal rights.

42. CHRISTOPHER A. DARDEN, IN CONTEMPT 368 (1996).
43. For an interesting discussion of the non-existence of a monolithic African-American community, see Regina Austin, “The Black Community,” Its Lawbreakers, and a Politics of Identification, 65 S. CAL. L. REV. 1769, 1770 (1992). Her article identifies three segments of the African-American community: (1) those who represent the politics of distinction, see id. at 1772-74; (2) those who represent the politics of identity, see id. at 1774-75; and (3) those who serve as bridge people, see id. at 1799. One could argue that O.J. is the ultimate embodiment of Austin’s thesis. After all, Simpson fits all three categories: his rise to fame as a Heisman trophy winner followed by his national prominence as a football star and sports broadcaster (distinction); his record of spousal abuse and as a “target” of the law (identity); and his transition between and among both worlds (bridge).
44. But I wonder if the movement toward greater equality is premised upon a “reversal of fortune” or upon an integration of experience?
This story, however, neglects to examine its notion of racial authenticity. What does it mean to be inauthentic? What does it mean that Simpson was rich and therefore didn’t truly live the “black experience”? This story problematically assumes the experience of class overrides experience of race.

E. The Uncle Tom Story: Another Look at Authenticity

This brother is being used by the Man. This brother is an Uncle Tom.46

You fucking sellout motherfucker! . . . Uncle Tom . . . You are a disgrace to your race . . . Don’t ever refer to yourself as black, ’cause you ain’t.47

The authentic/inauthentic criticism was also lodged against Los Angeles Assistant District Attorney Christopher Darden, co-prosecutor in the Simpson trial. As a young African American who had had his fair share of run-ins with law enforcement, Darden received much criticism for “joining the system” and contributing to the plight of young black men. Invoking the reproachful image of a subservient African American tolerant of discrimination, critics repeatedly labelled Darden an “Uncle Tom.”

Angry whites and blacks sent Darden hate mail, including death threats and hateful phone messages.48 By registering their anger with Darden’s compliant participation in the legal system, his critics indirectly assailed the system’s unjust treatment of blacks. Also, Simpson’s lead defense counsel Johnnie Cochran repeatedly tore at Darden, appealing to his sense of racial solidarity and simultaneously questioning Darden’s loyalty. When Darden’s more prominent role in the trial became evident, Cochran insinuated that Darden was selected not for his experience and expertise, but for his race.49

Despite its well-founded premise, this critical perspective of Darden’s role in the legal system ignores its own dangerous implications for the African-American community. This story implies that African Americans should never participate in mainstream society, further restricting African Americans’ life choices. Darden’s own narrative also suggests his critics overlooked the few ways courts can help some African-American communities. He discusses his legal career prosecuting homicide, rape, and gang-related

45. Professor Williams explores authenticity in the section “Unbirthing the Nation,” in her book The Rooster’s Egg. She refers to New York Times editor Brent Staples’s book Parallel Time: Growing Up Black and White (1995). In an interview for a job with the Washington Post, the interviewer questioned Staples not just on his background, but about his family and upbringing. Staples states, “These were what I’d come to call The Real Negro questions. He wanted to know if I was a Faux, Chevy Chase, Maryland Negro or an authentic nigger who grew up in the ghetto besieged by crime and violence.” PATRICIA J. WILLIAMS, THE ROOSTER’S EGG 58 (1995). This attempt to make Staples “‘fit’ into some preconceived box of blackness” reflects the myth of unitary categorization, be it racial, gender-based, or class-based. See id.

46. DARDEN, supra note 42, at 171 (emphasis removed).

47. Id. at 205-06.

48. See id.

49. See id. at 171.
offenses, where victims are African Americans. He sees his role in the legal system as one way of making African-American communities safer, a competing narrative to the oft-told Uncle Tom story.

F. The Gray in the Middle

Simpson’s defense told the story of racial bias in the law enforcement system. Post-trial stories, like that discussed in “Race v. Reason,” also criticized the legal system’s treatment of race. All of these stories, however, treat the trial as strictly a black/white issue, mirroring the polarization that too often characterizes issues where race is a factor. The stories above obscure one dimension of the race issue. There was an Asian American presiding over the case, in a sense, governing the territory in between that great gulf.

As one author has described, where the “victims were white, [and] the defendant was black,” the appointment of Judge Lance Ito was “terribly convenient.” In a world that commonly sees racial conflict in black and white, the introduction of an arbiter outside that paradigm raises compelling questions. On one hand, it demonstrates an appreciation (if only superficial) of the positionality of each of the players in this drama. On the other hand, it demonstrates the extent to which Asian-ness is marginalized. Using his ethnicity as “other,” Judge Ito was forced into the position of mediating the gray in between. While this could suggest interesting implications about the role of multiplicity in “bridge building,” the effect during the trial was to reinforce the binary quality of discussions of race. And ultimately, this is destructive rather than transformative. “When racial identity is constructed oppositionally, conflict becomes inevitable and coalition becomes unimaginable.”

This is not to say that the presence of Asian Americans within the trial was utterly ignored. Both Judge Ito and criminalist Dennis Fung who testified at the trial were mocked in ways that focused on their racial heri-

50. See id. at 86.
51. See id.
52. In the words of Professor Ikemoto, while dominant culture has used “Asian” to refer to race or to posit a monolithic culture, “Asian American” includes the experience of persons who have immigrated or whose ancestors have immigrated from China, Japan, Korea, the Indian subcontinent, the Philippines, Thailand, Vietnam, Laos, and Kampuchea, and does not exclude others. To the extent that Asian Americans are assumed to be . . . [Japanese Americans], the experience of other Asian Americans is erased. And to the extent that . . . [Japanese Americans] are assumed to be part of a monolithic group of Asian Americans, the experience and consciousness of . . . [Japanese Americans] is erased. Ikemoto, supra note 1, at 1582-83 n.5.
55. See infra Part IV.
56. Ikemoto, supra note 1, at 1583.
By accentuating their race to the exclusion of their other characteristics, critics further polarized the racial divide so commonly associated with the trial.

IV. THE MORAL OF THE STORIES

While the Simpson trial continues to be mined for its deeper significance, it has been manipulated in revealing ways. As the media produces fields of definition, of association, of symbol and rhetoric, the ideological foundations of our culture become manifest and concrete:

The Simpson extravaganza was deadly in its seduction, an almost fatal attraction for a nation hooked on the stuff of which tabloids are made. The case was laden with fascinating characters, plot twists and compelling themes—interracial romance, spousal abuse, celebrity, money, power, race and the courts—all wrapped up into a daytime drama no Hollywood screenwriter could ever have fathomed. But the media have a way of fanning the flames, of reducing complicated matters to their simplest elements. It is through the re-telling of these tales and the dismantling of the oppositional polarities they are built upon, that we can more fully represent the multiple experiences of all people’s lives.

Making sense of this trial requires us to enrich the dominant theories about law and justice by infusing them with race, gender, and other aspects of consciousness in a way that is not solipsistic, but multiplicitous. These efforts are arduous and require the creativity and will about which Professor Harris writes. According to Professor Harris, there is no “passive discovery” of commonality, but “bridges [that] are built, not found.” This essay, then, is an attempt at that bridge-building.

57. For example, Senator Alfonse D’Amato, in publicly criticizing and mocking Ito’s performance, replaced his “R”s with “L”s to create a faux Japanese accent. See Sam Fulwood III, N.Y. Sen. D’Amato Apologizes for Using Japanese Accent in Parody of Judge Ito, L.A. TIMES, Apr. 6, 1995, at A18. Similarly, after Dennis Fung’s poor performance testifying, Simpson defense attorney Robert Shapiro handed out fortune cookies to people in the courtroom, saying “These are from Hang Fung restaurant.” See DARDEN, supra note 42, at 300. For more examples, see Lee, supra note 53.
58. Stolberg, supra note 15, at S1.
59. Harris, supra note 30, at 255.