



2013

In Her Own Voice: Ann Scales as Philosopher, Storyteller, Feminist, and Jurisprude

Patricia A. Cain

Santa Clara University School of Law, pcain@scu.edu

Follow this and additional works at: <http://digitalcommons.law.scu.edu/facpubs>



Part of the [Law Commons](#)

Recommended Citation

91 *Denv. U. L. Rev.* 53 (2013).

This Article is brought to you for free and open access by the Faculty Scholarship at Santa Clara Law Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

IN HER OWN VOICE: ANN SCALES AS PHILOSOPHER, STORYTELLER, FEMINIST, AND JURISPRUDE

PATRICIA A. CAIN[†]

ABSTRACT

This Essay references numerous articles written by Ann Scales and discusses ways in which she spoke as a philosopher, a storyteller, a feminist, and a jurist. The author's favorite lines from these articles are reproduced and explored in the context in which they were written. Many of the quotes are witty and capture the gist of a situation or a feminist point without the need for further explanation. Others express a point of view in such creative ways that they bring new insights to those of us who grapple with feminist issues.

TABLE OF CONTENTS

INTRODUCTION.....	54
I. THE FOUR ATTRIBUTES	54
<i>A. Ann Was a Philosopher.</i>	54
<i>B. Ann Was a Storyteller.</i>	56
<i>C. Ann Was a Feminist.</i>	57
<i>D. Ann Was a Jurist.</i>	58
II. IN HER OWN VOICE.....	58
<i>Number 10: "There is no woman who has not had some practice at trying not to exist too loudly."</i>	58
<i>Number 9: "Law is second-rate philosophy backed by the force of the state."</i>	60
<i>Number 8: "'Choice' is that essential conjure. It has the same meaning as if I chose to be Aretha Franklin or the Princess of Wales."</i>	61
<i>Number 7: "[S]tuckness."</i>	61
<i>Number 6: "The law is organized around a set of bottom lines, presented as unquestionable. These false necessities are the conversation-stopping arguments, as in 'when you say Bud, you've said it all.'"</i>	62
<i>Number 5: "[T]here is no sex discrimination when pregnant men and pregnant women are treated the same."</i>	62

[†] Professor of Law, Santa Clara University, Aliber Family Chair in Law, University of Iowa, Emerita. I'd like to thank the Ann Scales community, her colleagues, her students, her family, and her expansive wealth of friends, especially her girlfriends and partners, who provided comfort and memories during and after the events of her untimely death.

Number 4: “Men in need of abortions.”	62
Number 3: “You are a strange bedfellow when you sleep alone.” ...	63
Number 2: “[P]atriarchy is Running Scared.”	63
Number 1: “The last Article of the Constitution, Article VII, is so much shorter than the others because it was drafted at the end of a very hot summer day in Philadelphia. And when it gets that hot, you know, it’s ‘Miller time.’”	64
III. CONCLUSION	64

INTRODUCTION

My chosen title for this Symposium Essay is “*In Her Own Voice: Ann Scales as Philosopher, Storyteller, Feminist, and Jurisprude.*” I’m not sure I have the order exactly right in the title—it sort of came to me by cadence rather than by ascending or descending order of importance.

First, I will say a word about why I chose these four words to describe Ann and her work. Then I will move to a description of my ten favorite passages from her work. And, of course, these passages will be “in her own voice”—because no one could say things quite the way Ann did.

I. THE FOUR ATTRIBUTES

A. *Ann Was a Philosopher.*¹

I use the term “philosopher” to describe Ann for several reasons. I certainly mean to reference the fact that Ann was a scholar and a thinker; *Der Denker*,² so to speak.³ The Rodin sculpture comes to mind, in part, because it seems so contrary to the way I picture Ann as “the thinker.” Yet I can also picture her with furrowed brow, biting her knuckles as she tried to unravel the tricky problems of things like causation. And I couldn’t resist including the reference to *Der Denker* because it reminds me of her close friendship with Sheila James Kuehl, who, if you are of my era, you would have fallen in love with when she played Zelda on the Dobie Gillis sitcom. Each episode began with Dobie sitting by a replica of that Rodin statute, *Der Denker*, as he typically wrangled with a knotty teenage romance problem. (This is the sort of connection that Ann would have appreciated.)

1. Ann herself might contradict me. *Contra* Ann C. Scales, *Feminists in the Field of Time*, 42 FLA. L. REV. 95, 99 n.10 (1990) (“Because I am neither philosopher nor anthropologist . . .”).

2. “Der Denker” is German for “The Thinker” or for “Le Penseur” as the Rodin sculpture is generally referred to in French. “Der Denker” seems more appropriate given Ann’s frequent reference to German philosophers (thinkers) such as Kant.

3. I also like the following alternative definition of “philosopher” from the Merriam-Webster dictionary: A philosopher is “a person whose philosophical perspective makes meeting trouble with equanimity easier.” MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/philosopher> (last visited Nov. 12, 2013).

But the Rodin sculpture reminds me of Ann for other reasons and not just because it is an image of a person thinking big thoughts. When Rodin was asked about his sculpture and what it meant, he replied in part: “*The Thinker* has a story. In the days long gone by I conceived the idea of the Gates of Hell. Before the door, seated on the rock, Dante thinking of the plan of the poem behind him”⁴

And so the image is of a thinker who is a poet. And, as Rodin said in further explanation of who *Der Denker* was: “Guided by my first inspiration I conceived another thinker, a naked man, seated on a rock, his fist against his teeth, he dreams. The fertile thought slowly elaborates itself within his brain. He is no longer a dreamer, he is a creator.”⁵

Ann, like the Rodin image, was a thinker who was also a poet and a creator. She painted images for us with her words; images that make us smile and help us to understand big thoughts in deeper ways.

I describe Ann as philosopher for an additional reason: I mean to acknowledge that philosophy was important to Ann and that fact is reflected in her work. She uses the work of many dead, white philosophers to make her points from time to time. And when she does, she typically describes them gleefully in very put-down ways, while according them a partial stamp of approval for what she thought they got right.

She often invoked Ludwig Wittgenstein in her writing. Once, when explaining the problems of universalizing experience, she said: “The philosopher Ludwig Wittgenstein did a good job of showing how either/or categorizations actually disable the usefulness of concepts. I hate to rely on a dead white man to illustrate this, but I like his weird clarity.”⁶

Of course, she often added some weird clarity of her own after explaining what these earlier thinkers had opined.

She described Immanuel Kant as the stodgiest, most sweeping systematizer of all. She added that, though he was undoubtedly wrong about many things, he was right about at least one thing:

Whatever else we as human beings may perceive, understand, or judge, and however we may differ in those pursuits, we could not do anything without using the underlying notions of time, space, and causality. They are percepts of reason: these are notions the truth of which cannot be proven but without which we could not think or be human. I can imagine space and time as empty, but I cannot comprehend a nonspatial object nor a nontemporal event. I can understand the difficulties in causal analysis, but I cannot help but believe that

4. Joseph Phelan, *Who Is Rodin's Thinker?*, ARTCYCLOPEDIA (Aug. 2001), <http://www.artcyclopedia.com/feature-2001-08.html>.

5. *Id.*

6. Ann C. Scales, *Surviving Legal De-Education: An Outsider's Guide*, 15 VT. L. REV. 139, 154 (1990).

the orange juice got cold because I put it in the fully operational refrigerator. All of us rely on contingently reliable measurements of time, space, and causality in everything we do.⁷

Then comes her own twist. Having agreed with stodgy old Professor Kant that time, space, and causality are ideas without which we cannot function, she says: "I do not believe that everyone has the same concept of these percepts. On the contrary, I claim that in legal education, for example, we inculcate the percepts of reason from a white male legal point of view, a point of view substantially at odds with other experiences."⁸

It is this combination of philosophy and feminist critique that I most love about her work. And I list "philosopher" first because it is a connection Ann and I always had. We both came to law from philosophy. She majored in it at Wellesley and I minored in it at Vassar and then did postgraduate work in philosophy at the University of Liverpool. And while we both studied the work of dead white men like Kant and Wittgenstein (and in my case, Sartre), we have both found some of their work relevant to the development of our feminist theories of the law.

B. Ann Was a Storyteller.

My next attribute for Ann as teacher and scholar is storyteller. She used storytelling in her scholarship and in her teaching with tremendous success. Storytelling is an important part of feminist theory. It is what makes the abstract concrete. In 1990, Martha Fineman made the point that what we need is more feminist theory of the middle range—something between abstract grand theory, unconnected to women's everyday reality, and a series of individual stories from which it is hard to generalize.⁹ Ann didn't generalize from her own stories, but she used them effectively to make abstract points become more concrete. And she listened well to the stories of others so that they could be used to similar effect.¹⁰

And I know she told stories in class that her students have never forgotten. She and I shared a student recently; a student who did her first year at Denver Law and then transferred to Santa Clara Law. When I learned that this student had been at Denver, I immediately asked her if she had taken a class from Ann Scales. "Yes," she said, with much enthusiasm. It was obviously her favorite course in law school. As fate would have it, it was this shared student who sought me out when she

7. Scales, *supra* note 1, at 99–100 (footnotes omitted).

8. *Id.* at 100.

9. See Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 U. FLA. L. REV. 25, 25 n.1, 28–29 (1990).

10. Consider her effective use of her knowledge and experience with the Greenham Common Women's Peace Camp in England. See Ann Scales, *Militarism, Male Dominance and Law: Feminist Jurisprudence as Oxymoron?*, 12 HARV. WOMEN'S L.J. 25, 26–29 (1989).

first heard of Ann's accident. The student needed to talk about Ann and so she shared several Ann Scales stories with me; one of which I loved and ultimately clarified with another one of Ann's Denver Law students.

The story she told me involved a question that Ann posed to her constitutional law class. The question Ann posed was: Do you know why each successive Article of the Constitution gets shorter and shorter? Well, she explained to the class, the Constitution was drafted over the summer in Philadelphia, and it was very hot in Philadelphia that summer, and so, you know, by the time they got to the final Article it was 4:00 p.m. on one of the hottest days—and you know what that means—why it's "Miller time." I think I laughed out loud—it sounded so like Ann. Yes, Ann was a storyteller, both in her scholarship and in her teaching.

C. Ann Was a Feminist.

Ann was an unrepentant feminist and was forever reshaping what that meant. When researching my 1989 article called *Feminist Jurisprudence: Grounding the Theories*,¹¹ I was curious about the phrase "feminist jurisprudence." I wondered where the phrase had come from and who might have conjured it up. "Women and the Law" conferences, which had started in the 1970s, were hosting panels on feminist jurisprudence by the early 1980s¹²—so I had some sense of when use of the phrase had begun—but I wanted more precise information. Ann's first article, published in the 1981 issue of the *Indiana Law Journal*, gave me my first clue.¹³ In that article, Ann told the story of a conference at Harvard in 1978, which celebrated the first twenty-five years of women at Harvard.¹⁴ The student organizers, including Ann, decided to do a panel called "Towards a Feminist Jurisprudence." The panel was to be an inquiry into the question of whether or not there should be something called feminist jurisprudence, and if so, what it should look like. Ann later told me that the panel was not well received. Why? Because critics viewed the question as one about establishing special legal rights for women and that is not jurisprudence. Jurisprudence is the "view from nowhere" and cannot be established from the special perspective of one group. "Really?" was Ann's response. And so she titled her first article *Towards a Feminist Jurisprudence*. Of course. Unrepentant.

11. Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989–90).

12. The first conference to sponsor such a panel was the 1983 conference hosted in Washington, D.C. Patricia A. Cain, *The Future of Feminist Legal Theory*, 11 WIS. WOMEN'S L.J. 367, 370 (1997).

13. Ann C. Scales, *Towards a Feminist Jurisprudence*, 56 IND. L.J. 375 (1981).

14. *Id.* at 375 n.2.

D. Ann Was a Jurisprude.

Finally, I use the word “jurisprude” to describe Ann. I wasn’t sure this actually was a word and so I looked it up. The Merriam-Webster Dictionary defines it as “a person who makes [an] ostentatious show of learning in jurisprudence and the philosophy of law or [someone] who regards legal doctrine with undue solemnity or veneration.”¹⁵ “Right,” I said to myself. I am, of course, using the term jurisprude tongue in cheek.

II. IN HER OWN VOICE

These are the attributes of Ann and her scholarship—the philosophical slant, the storyteller, the feminist, and the smirky jurisprude—that drove me to curl up in a corner and start rereading her work when I learned of her death. I wanted to re-engage with that bouncy person I first encountered in the spring of 1989 at a conference at the Harvard Law School entitled “Conference on Sexual Orientation and the Law School Curriculum.” I was there to talk about teaching wills in a way that would include issues about same-sex couples and their estate plans. I had no idea who Ann Scales was. All I remember is being in a large room somewhere in the bowels of the law school when a young woman got up to give a keynote-style address. I didn’t catch her name. I didn’t recognize her. I couldn’t for the life of me figure out who she was. She was talking about the military, male dominance, and law. With great clarity and lots of bright rhetoric, she explained why sexual dominance was necessary to make the military possible and why the military was necessary for the continuation of sexual dominance. There were lots of mentions of objectification and “thingification.”

As I began to remember Ann by rereading her writings, I decided that I wanted to share with you my favorite passages from her work, in her own words, because no one could say it better than Ann. And I’ll do this in the style of David Letterman, starting with the passage I rank at number ten and working my way to the top-ranked passage. These are the ten things that many of us wish we could have said ourselves because the words capture some inner truth that we already know, but alas, we are not all philosophical, poetic, feminist storytellers. Thank God, Ann was.

Number 10: “There is no woman who has not had some practice at trying not to exist too loudly.”¹⁶

Most professional women of my era complain that they can never be heard.¹⁷ Women often speak out at meetings where men predominate

15. MERRIAM-WEBSTER.COM, <http://unabridged.merriam-webster.com/unabridged/jurisprude> (last visited Sept. 7, 2013).

16. Scales, *supra* note 10, at 43.

and no one acknowledges what they have just said until a man says it. How ironic that women can't be heard when we want to be heard and yet we also practice not existing too loudly.

Let me put Ann's single sentence in context by quoting from the published version of that first speech I ever heard Ann give:

[M]ilitarism *normalizes* the oppression of women. It supplies the moral authority for relations of dominance and submission. . . .

. . . .

. . . The military produces a class of false moral agents, a class of persons who have been forced to internalize the commands of an absolute authority. Furthermore, the militaristic individual has been drilled in the necessity and legitimacy of the use of force. . . . When force is legitimated, it is a constant potentiality. Those threatened by it have no choice but to "imitate nothingness in their own persons." And that is a definition of woman's otherness. Women have been imitating nothingness for a long time. . . . There is no woman who has not had some practice at trying not to exist too loudly. The needs of militarism serve as a legitimating basis for subjecting others to this process of silencing.

Just as militarism normalizes the oppression of women, the oppression of women normalizes militarism. The men at the front need to be expert at thingification before they can pull that trigger or push that button.¹⁸

"Women have been imitating nothingness for a long time. . . . There is no woman who has not had some practice at trying not to exist too loudly."¹⁹ That's it. No more words are needed. Every woman and probably most men in that Harvard Law School room understood those words. At the time I heard her speak, the connection she made between women imitating nothingness and the military's practice of subjecting troops to a silencing in order to erase their subjectivity sent a chill down my spine. And it certainly gave me renewed insight regarding the import of *Goldman v. Weinberger*,²⁰ the case she was analyzing; the case in which the Supreme Court upheld the military's right to prohibit a Jewish soldier from wearing a yarmulke.²¹ Subordination of individuality—*thingification*, in Ann's words—is necessary to the military's success.²²

17. See, e.g., Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. Legal Educ. 147 (1988) (collecting references).

18. Scales, *supra* note 10, at 42–44 (quoting SIMONE WEIL, *THE ILIAD, OR THE POEM OF FORCE* 7 (Pendle Hill Press 1983)).

19. *Id.* at 43.

20. 475 U.S. 503 (1986).

21. *Id.* at 510.

22. Scales, *supra* note 10, at 43–44.

Number 9: "Law is second-rate philosophy backed by the force of the state."²³

When I first read this sentence I disagreed—not about the force of the state, but about the proposition that law is second-rate philosophy. For I think that law is *applied* philosophy, and that is what made me choose law over philosophy. From this perspective, law is superior to philosophy.

My personal view of the relationship between philosophy and law is influenced by my own past academic connections with philosophy. In 1970, I was in Liverpool working on my master's thesis, which focused on existentialism and free will, a fairly impossible topic. I was toying with the idea of law school. I remember at the time reading Simone de Beauvoir's book, *The Ethics of Ambiguity*.²⁴ I immediately connected with a statement she makes in her conclusion to the book. She had been reading Hegel in the *Bibliothèque Nationale* and experiencing a great sense of calm when confronted with the abstractness and theory of his great system.²⁵ I suspect the calmness was derived from the ability to rise to the plane of the universal, the infinite. But then she returned to the street, and described the following feeling:

[O]nce I got into the street again, into my life, out of the system, beneath a real sky, the system was no longer of any use to me: what it had offered me, under a show of the infinite, was the consolations of death; and I again wanted to live in the midst of living men.²⁶

In my own experience, the calmness of the truly abstract has always been momentary. The comfort of the concrete is more lasting. So, if philosophy is the abstract and law is the concrete, which one is truly second-rate?

I returned to Ann's article, *Midnight Train to Us*,²⁷ to see if she had something more to say on this topic. Here's what she said:

Law is applied philosophy of a sort, but better than "pure" philosophy in two ways. First, it is not as rigorous; it has no requirement of logical consistency. Indeed, for law to work and move, it can't be logically consistent. Second, though philosophy in my opinion has amazing persuasive power (ideas matter), there are no winners or losers. In law, at least theoretically, if you've got the best argument, you win, and the world changes.²⁸

23. Ann C. Scales, *Midnight Train to Us*, 75 CORNELL L. REV. 710, 710 (1990).

24. SIMONE DE BEAUVOIR, *THE ETHICS OF AMBIGUITY* (Bernard Frechtman trans., Citadel Press 5th ed. 1970) (1948).

25. *Id.* at 158.

26. *Id.*

27. Scales, *supra* note 23.

28. *Id.*

Law is better than “pure” philosophy, but it is second-rate because it can’t be “pure.” That is because law is real and concrete, not abstract and universal. When I reread Ann’s sentence in context, it made me smile, not in disagreement this time, but in appreciation. She and I share the value of law as applied philosophy after all, and that value makes it better than philosophy. And I have a new understanding of law as second-rate philosophy.

Number 8: “‘Choice’ is that essential conjure. It has the same meaning as if I chose to be Aretha Franklin or the Princess of Wales.”²⁹

As you may recall, the United States Supreme Court has held that it is not sex discrimination to refuse to provide governmental assistance for poor women who want to have abortions.³⁰ The explanation appears to be that states can refuse to provide the funding, so long as the poor woman can still choose to have an abortion.³¹ Ann’s rejoinder: “‘Choice’ is that essential conjure. It has the same meaning as if I chose to be Aretha Franklin or the Princess of Wales.”³²

Fortunately, the New Mexico Supreme Court listened to Ann’s argument and ruled differently from the United States Supreme Court, finding that failure to provide funding violated the state’s Equal Rights Amendment.³³ This, in my view, is law as *applied* philosophy. And, in this instance, “law” appears pretty first-rate.

Number 7: “[S]tuckness.”³⁴

This is such an Annie word. It is a favorite of mine. It showed up for the first time in a law review article, as in “[i]t was a time of stuckness for me.”³⁵ It then becomes the organizing principle of her book, which she divided into two parts: “Places of Stuckness” and “Places [B]eyond Stuckness.”³⁶

I love it now that I can explain my lack of total comprehension, or my inability to explain something, by saying I am in a place of stuckness. Ann gave the word such a dignified meaning. And she showed us that we will all, if we think hard enough, get beyond it.

29. Ann Scales, *Feminist Legal Method: Not So Scary*, 2 UCLA WOMEN’S L.J. 1, 12 (1992).

30. See *Harris v. McRae*, 448 U.S. 297, 314 (1980); *Maher v. Roe*, 432 U.S. 464, 469–471, 475–76 (1977).

31. *Harris*, 448 U.S. at 316–17 (explaining that a woman’s constitutionally protected choice does not entitle her to the funds that might be necessary to make it possible for her to exercise that choice in reality).

32. Scales, *supra* note 29, at 12.

33. See *New Mexico Right to Choose/NARAL v. Johnson*, 975 P.2d 841 (1998).

34. Scales, *supra* note 29, at 11.

35. *Id.*

36. ANN SCALES, *LEGAL FEMINISM: ACTIVISM, LAWYERING, & LEGAL THEORY* (2006).

*Number 6: "The law is organized around a set of bottom lines, presented as unquestionable. These false necessities are the conversation-stopping arguments, as in 'when you say Bud, you've said it all.'"*³⁷

I now imagine sharing this passage with a class of first year law students. Too many students arrive at law school believing that the law provides absolute answers. They need to learn that law is full of contingencies. Facts matter, and sometimes facts matter more than the abstract principles or rules. Ann Scales continuously taught her students to question. Law is not the same as a mathematical proof of the inevitable. There is no QED. in law. "Bud" is the replacement for QED., and in this one phrase, she has enlightened us all, with a smile of course, as to law's contingency.

*Number 5: "[T]here is no sex discrimination when pregnant men and pregnant women are treated the same."*³⁸

If you haven't used this statement to introduce the *Geduldig*³⁹ case to your students, then you have missed the boat. Here's what Ann said in full: "*Dwight Geduldig v. Carolyn Aiello*, decided the year I was admitted to law school, and holding essentially that there is no sex discrimination when pregnant men and pregnant women are treated the same. Nobody at law school could explain that."⁴⁰

*Number 4: "Men in need of abortions."*⁴¹

Building on the *Geduldig* dig, Ann made a similar point when she discussed *Bray v. Alexandria Women's Health Clinic*,⁴² a case in which the government relied on *Geduldig* to argue that blocking access to abortion clinics was not motivated by gender discrimination.⁴³ Here is what she said: "Last fall, the U.S. Supreme Court heard argument on whether blocking access to abortion clinics might discriminate against women, or whether, one supposes, men in need of abortions might be discriminated against as well."⁴⁴

37. Scales, *supra* note 29, at 13.

38. Ann Scales, *Disappearing Medusa: The Fate of Feminist Legal Theory?*, 20 HARV. WOMEN'S L.J. 34, 39 (1997).

39. *Geduldig v. Aiello*, 417 U.S. 484 (1974).

40. Scales, *supra* note 38, at 39 (footnote omitted).

41. Scales, *supra* note 29, at 12.

42. 506 U.S. 263 (1993).

43. Brief for the United States as Amicus Curiae Supporting Petitioners at 12-13, 29-33, *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) (No. 90-985), 1991 U.S. S. Ct. Briefs LEXIS 941 (Current Chief Justice John G. Roberts authored this brief for the Solicitor General and relied on *Geduldig* even though the Petitioners that the brief supported did not, as can be seen in Brief for Petitioner at 1-64, *Bray*, 506 U.S. 263 (No. 90-985)).

44. Scales, *supra* note 29, at 11-12.

Number 3: "You are a strange bedfellow when you sleep alone."⁴⁵

Enough said.

Number 2: "[P]atriarchy is Running Scared."⁴⁶

Ann wrote this passage in 1992, after the 1991 confirmation hearings of Justice Clarence Thomas. In the midst of the horror and excitement we all felt while living through the Anita Hill and Clarence Thomas episode,⁴⁷ Ann had an optimistic insight. A flash came to her and she said: "[P]atriarchy is running scared."⁴⁸

Surely this is a Roy Orbison reference.⁴⁹ "Just runnin' scared . . ." ⁵⁰ But Ann is using Orbison's words with reversed roles. In the song, Orbison was the one running scared and the other guy, the big one, the old flame, is the one he's scared of. Despite "running scared," in the end Orbison wins against the other guy. Ann's emphasis is in the opposite direction. She thinks it is a good thing that patriarchy is "running scared" and I don't think she thought it meant patriarchy would win out in the end in the way that Orbison did.⁵¹ Here's my new interpretation of the Orbison lyrics using patriarchy as the other guy: "Yeah, patriarchy might show up . . . and if he does . . . which one will you choose?"

45. *Id.* at 9.

46. *Id.* at 1 (footnote omitted).

47. At these confirmation hearings, then-Professor Anita Hill accused Thomas of sexual harassment in the workplace. Thomas denied the charges completely calling the affair a "high tech lynching." PBS NewsHour, *Supreme Court Moments in History: Clarence Thomas & Anita Hill*, YOUTUBE (June 29, 2010), <http://www.youtube.com/watch?v=1IEEDD2vxaE> (depicting PBS news account of the event in 1991).

48. Scales, *supra* note 29, at 1.

49. I should note that Aretha Franklin had more of an impact on Ann than Orbison did. Ann cites Aretha Franklin in footnotes at times. *See, e.g., id.* at 8–9 n.26. She also names Aretha Franklin in the first footnote of one article as one of the women whose voices can be heard throughout the article. Scales, *supra* note 23, at 710 n.1.

50. The full lyrics to the Orbison hit, *Running Scared*, are:

Just runnin' scared each place we go
So afraid that he might show
Yeah, runnin' scared, what would I do
If he came back and wanted you

Just runnin' scared, feelin' low
Runnin' scared, you love him so
Just runnin' scared, afraid to lose
If he came back which one would you choose

Then all at once he was standing there
So sure of himself, his head in the air
My heart was breaking, which one would it be
You turned around and walked away with me.

ROY ORBISON, *Running Scared*, on *CRYING* (Monument Records 1962), available at <http://www.lyrics.com/running-scared-lyrics-roy-orbison.html>.

51. Ann's sense that patriarchy was running scared, and thus women were gaining ground, was based on events after the Thomas hearings. Thomas was confirmed, but in the process the power of one woman who stood up to speak truth to power and participate fully in the political process was alarming to many men. The entire event suggested harder battles might lie ahead to keep women out of the process and in their proper places. *See* Scales, *supra* note 29, at 1–2.

Yeah, we've been runnin' scared, afraid to lose. But in the end, when patriarchy is all at once standing there, so sure of himself with his head in the air, what happens? We all turn around and walk away with Ann." Patriarchy loses just like the guy in the Orbison song. And if you've never heard the song that way, go back and listen to it and try it out. It's quite a trip.

*Number 1: "The last Article of the Constitution, Article VII, is so much shorter than the others because it was drafted at the end of a very hot summer day in Philadelphia. And when it gets that hot, you know, it's 'Miller time.'"*⁵²

I still smile every time I imagine her explaining this to her students.

III. CONCLUSION

Ann had her favorite dead white philosophers and she quoted from them regularly. I'd like to end with a quote from one of my favorite such philosophers, sometimes known as the father of existentialism, Søren Kierkegaard. It expresses a sentiment that reminds me of Ann and her scholarship: "To dare is to lose one's footing momentarily. Not to dare is to lose oneself."⁵³

52. See *supra* Part I.B.

53. Attributed to Søren Kierkegaard. THINKEXIST.COM (last visited Nov. 28, 2013), http://thinkexist.com/quotation/to_dare_is_to Lose_one-s_footing_momentarily-not/14796.html.