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An Unusual Suspect? Unreliable Narrators in Fiction and Law

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An Unusual Suspect? Unreliable Narrators in Fiction and Law

Cathren Page†

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INTRODUCTION

“I haven’t blocked out the past. I wouldn’t trade the person I am, or what I’ve done, or the people I’ve known, for anything. So I do think about it. And at times it’s a rather mellow trip to lay back and remember.”

It seems almost as if this quote originates in a self-help book, designed to aid in developing strong self-esteem. The speaker appears aware and reflective of his or her past and seems to own it.

Any “tells” in the statement are mild. Blocking out the past may seem extreme, so perhaps some may wonder why the speaker would refer to blocking out the past or trading what the speaker has done.

“So I do think about it” further alludes to something important from the past that the speaker is thinking about. The speaker then proceeds to invoke drug language- “mellow trip”- when referring to whatever these significant past events might be.

What did the speaker do in the past? Did he have an affair, steal a pack of gum, overreact, lie on a job application, or cheat on a test?

In fact, the speaker was a law student, a son, a boyfriend, and ultimately a stepfather.

He was also one of the world’s most notorious serial killers, rapists, and necrophiliacs.¹ According to his uncontroverted confession, he murdered at least thirty women.²

1. Barbara Maranzani, *8 of History’s Most Notorious Serial Killers*, HISTORY STORIES (July 18, 2017), <https://www.history.com/news/8-of-historys-most-notorious-serial-killers>. The quote that opened this article can be found in STEPHEN G. MICHAUD AND HUGH AYNESWORTH, CONVERSATIONS WITH A KILLER (Barnes and Noble 2005).

2. James E. Coleman, Jr., *Litigating at the Speed of Light: Postconviction Proceedings Under A Death Warrant*, LITIGATION 14, 15 (Summer 1990) (discussing the confession).

Though his quote above seems only subtly unreliable, his narrative at trial shares many of the characteristics of unreliable narrators in both legal and fictional stories.

This article discusses the common traits of unreliable narrators and provides solutions for those seeking to defeat unreliable narrators in legal battles. Since the unreliable narrator concept first developed and evolved in literary analysis, the article explores and compares unreliable narrators in both fiction and law.

When the audience cannot depend on the accuracy or reliable character of a narrator's account, literary criticism deems these storytellers "unreliable narrators."³ Unreliable narrators exhibit certain "tells," which disclose to savvy or intuitive audience members that some aspect of the narrators' tale is dubious.⁴ These unreliable narrators can be divided into two broad categories, self-serving and self-undermining.⁵ In the self-serving category, the narrators may be outright "shady" characters who deceive others or perhaps even deceive themselves.⁶ However, in the self-undermining category, the narrators may simply be extremely naïve, insecure, intellectually or emotionally disabled, or incapacitated in some way.⁷ This article will touch only briefly on the self-undermining unreliable narrators. A future article will address how to aid self-undermining unreliable narrators in greater detail. This article's purpose is to aid advocates in defeating unreliable opponents and is not intended as a means of discerning the truth.

Part II of this article provides a brief synopsis of the primary examples of unreliable narrators in fiction and law used in the article. Part III briefly discusses self-undercutting unreliable narrators. Part IV examines self-serving unreliable narrators' traits in closer detail. It underlines the common traits shared by non-fictional unreliable narrators in legal narratives and in unreliable narrators in fiction. Part V explores some of the reasons why certain audiences forgive unreliable narrators and offers insight into ways of holding self-serving unreliable narrators accountable. Part VI concludes this article.

3. WILLIAM HARMON, *A HANDBOOK TO LITERATURE* 492 (University of North Carolina Chapel Hill 2012).

4. See Omri Ben-Zvi, Eden Sarid, *Legal Scholarship As Spectacular Failure*, 30 *YALE J. L. & HUMAN.* 1, 4 (2018).

5. See URSULA K. LE GUIN, *STEERING THE CRAFT* 84 (1998) (stating that unreliable narrators deliberately or innocently misrepresent the facts); cf. Ben-Zvi, *supra* note 5, at 13 (2018) (listing narrators who are confused, mentally ill, deceived, or deceiving); MICHAEL SMITH, *UNDERSTANDING UNRELIABLE NARRATORS* 16 (Urbana NCTE 1991) (listing more numerous reasons that narrators may be unreliable); WILLIAM RIGGAN, *PÍCAROS, MADMEN, NAÏFS, AND CLOWNS: THE UNRELIABLE FIRST-PERSON NARRATOR* (listing more detailed categories).

6. Cf. Ben-Zvi, *supra* note 5, at 13 (2018) (mentioning that some unreliable narrators may be deceiving others).

7. Cf. SMITH, *UNDERSTANDING* *supra* note 6, at 25 (noting that unreliable narrators in a couple of vignettes provided either lacked knowledge or experience); cf. Peter Brooks, *Storytelling Without Fear? Confession in Law & Literature*, 8 *YALE J. L. & HUMAN.* 1, 28 (1996) (discussing skepticism people have regarding confession narratives).

I.SELF-UNDERMINING UNRELIABLE NARRATORS

The self-serving unreliable narrators, comprising this article's focus, differ in a couple of ways from self-undercutting unreliable narrators. Self-undercutting unreliable narrators are most typically inaccurate in either of the two following manners: 1) they paint inaccurately unflattering portrayals of themselves; or 2) they are inaccurate owing to confusion or misunderstanding. These narrators are often either children, people with disabilities that which affect their perception in some way, people with temporary perception incapacities, or people with language or cultural barriers.⁸

Ikasa Spider from Adam Thaxton's Spider and Turtle is a self-undercutting unreliable narrator; she provides an inaccurately unflattering portrayal of herself.⁹ She is an early teenage, gender-ambiguous girl from the Spider Tribe.¹⁰ The indigenous people of Ikasa's world consider her tribe to be of a socially lower class, and Ikasa is under-privileged, poverty-stricken and suffers from low-self-esteem.¹¹ She often views herself and her abilities in a negative light, and, since others are harsh with her, she sometimes projects these negative perceptions of herself onto others.¹²

While the following two narrators do not suffer from low self-esteem, both Christopher from The Curious Incident of the Dog in the Night Time by Mark Haddon¹³ and Jack from Room¹⁴ are unreliable child narrators who often misinterpret situations in the world around them. Fifteen-year-old Christopher is a dog-lover on the autism spectrum.¹⁵ When his dog friend Wellington shows up dead, Christopher sets out to solve the mystery.¹⁶ Ultimately, Christopher learns that someone close to him has been lying.¹⁷ Christopher flees, but comes to an experiential understanding behind the reasons for his own deception.¹⁸

8. See Ben-Zvi, *supra* note 5 (discussing unreliable narrators who are incapacitated in some way); Cf. HARMON, *supra* note 4, at 360 (discussing naïve narrators); Rachel Josephon, *Four Unreliable Narrators: How the Tools of Subtext Reveal and Hide the Truth within their Narrative*, Vermont College of Fine Arts 36 (2015) (unpublished student thesis) (on file with author).

9. See generally ADAM J. THAXTON, *SPIDER AND TURTLE* (2017).

10. See *id.* at 13-4 (describing Ikasa and explaining that her mother prohibited her from "act[ing] like no boy").

11. See *id.* (featuring derogatory marks regarding the Spider tribe and a discussion about Ikasa's family losing their home).

12. *Id.*

13. MARK HADDON, *THE CURIOUS INCIDENT OF THE DOG IN THE NIGHT TIME* (2003); see also Tracy Culleton, *The Unreliable Narrator and the Art of Misdirection*, Writing.ie, <https://www.writing.ie/resources/the-unreliable-narrator-the-art-of-misdirection/> (last accessed July 31, 2019)

14. EMMA DONOGHUE, *ROOM* (2010); see also E. CE Miller, *9 Unreliable Narrators Who Make Us Love Uncertainty*, Bustle (July 9, 2018); but see Eiza Tahir, *Jack, the Not So Unreliable Narrator*, ENGL 201.08: The Stories We Tell, <http://english201108.ucalgaryblogs.ca/2016/11/03/jack-the-not-so-unreliable-narrator/> (last accessed Aug. 10, 2019).

15. HADDON, *supra* note 14.

16. *Id.*

17. *Id.*

18. *Id.*

Similarly, Jack from Room is a child raised in captivity.¹⁹ Jack is ignorant of the world outside his room and unaware of its existence.²⁰ Once he and his mother break free, he finds himself constantly misjudging the situations and circumstances in this newly discovered outside world.²¹

Self-undercutting unreliable narrators like Jack, Christopher, and Ikasa appear in legal narratives as well.²² Trauma survivors,²³ clients with psychological or cognitive disabilities, clients with cultural or language barriers,²⁴ child clients, or even clients with low self-esteem may all narrate a story, which, to the eyes of an unempathetic audience, appear falsely unfavorable to the clients themselves. The legal clients in these narratives deserve at least an entire article to themselves. This concept will be the subject of a future article focusing on representing the self-undercutting unreliable narrator.

II. TRAITS OF UNRELIABLE NARRATORS

In most unreliable narratives, both fictional and legal, other accounts or external facts contradict some aspects of the narrator's account.

However, in the self-serving category, unreliable narrators' accounts also share the following traits²⁵:

1. Other accounts or external facts contradict some of the narrator's account;
2. The unreliable narrator engages in the magician's trick of misdirection, which often includes the following subcategories of misdirection:
 - a. The unreliable narrator packs the story with verisimilitude, including concrete details that "prove everything" yet crumble under closer inspection;
 - b. In the same vein, the unreliable narrator rambles, becomes verbose, and meanders into topics of questionable

19. EMMA DONOGHUE, *ROOM* (2010).

20. *Id.*

21. *Id.*

22. Professor Derek H. Kiernan-Johnson suggests that "narrativity" should be used rather than storytelling in law to encompass the broader objectives and scope of legal narratives. Derek H. Kiernan-Johnson, *A Shift to Narrativity*, 9 *LEGAL COMM. & RHETORIC: JALWD* 81 (2012); *see also* Anne E. Ralph, *Narrative-Erasing Procedure*, 18 *NEV. L.J.* 573, 576 (2018) (explaining the difference between narrative and story).

23. *See* Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 *U. PA. L. REV.* 399, 424 (2019).

24. *See* Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 *SANTA CLARA L. REV.* 457, 460 (2016) (explaining how trauma survivors may be wrongfully perceived as less credible); Ilene Durst, *Lost in Translation: Why Due Process Demands Deference to the Refugee's Narrative*, 53 *RUTGERS L. REV.* 127, 160-5 (2000) (discussing factors that cause judges to become skeptical of asylum narratives).

25. Some think the narrators' tone itself can indicate unreliability in oral narration. For instance, in televisions' *Desperate Housewives*, the narrator often strung the audience along with red herrings and adopted a playful tone indicating she might be toying with the audience.

- relevance;
- c. The self-serving unreliable narrator further invokes pedigree, religion, or other authority as a substitute for actual relevant facts;
 - d. The unreliable narrator battles strawmen by reducing the charges against the narrator and then ridiculing the charges;
 - e. The self-serving unreliable narrator additionally shifts blame onto others and refuses to take responsibility;
 - f. Likewise, the self-serving unreliable narrator often expresses indignation or outrage even becoming physically demonstrative; and
 - g. Finally, the unreliable narrator often makes either over-the-top claims or demonstrations.

III. PRIMARY EXAMPLES OF UNRELIABLE NARRATORS

This article uses the following narratives as primary examples of these traits. To provide some context, a brief description of each is set out below.

A. *Keir Sarafian in Inexcusable by Chris Lynch*

Keir Sarafian, the narrator-protagonist in Inexcusable, defends himself against accusations of date rape.²⁶ A high school football player, Keir is quick to tell readers what a good guy he is.²⁷ For example, in one instance, Keir permanently injured an opposing player,²⁸ but Keir tries to blame the opposing team for their own teammates' injury.²⁹ Further, he claims that his high school crush, Gigi Bodakian, mistakenly alleges that he raped her; according to him, it is a tale of budding romance and unrequited love.³⁰ Sure, Keir drinks, takes drugs, and pulls a prank on an opposing team's town, but the town is the real culprit for failing to see the spirit of vandalism.³¹

B. *Verbal Kint in The Usual Suspects (Spoilers Warning)*

In contrast, initially, small-time crook, Roger "Verbal" Kint seems to shift blame away from certain others when he gets arrested after a ship explodes.³² A customs agent, Agent Kujan, interviews Kint as Kint narrates the tale of a

26. CHRIS LYNCH, INEXCUSABLE 2 (2005); *see also* Josephon, *supra* note 9, at 36 (2015) (unpublished student thesis) (including the Keir in her analysis of unreliable narrators); Shannon Morgan, *The Storytelling Dynamic: Engaging Readers with an Unreliable Narrator*, 15, Vermont College of Fine Arts (2014) (unpublished student thesis) (on file with author) (including the Keir in her analysis of unreliable narrators).

27. LYNCH, *supra* note 27, at 3, 11-15.

28. *Id.* at 11-20.

29. *Id.* at 17.

30. *Id.* at 1-3, 23-4, 53-69.

31. *Id.* at 36, 41, 43, 46-52, 95, 98, 103, 112-115.

32. THE USUAL SUSPECTS (MGM 1995).

criminal conspiracy.³³ Kujan hopes little minnow, Kint, will turn over the big fish, Dean Keaton.³⁴ As the interview moves forward, soon investigators also focus on an even bigger fish, Turkish crime lord, Keyser Söze.³⁵ They hope that Kint, a low-level con artist, with cerebral palsy will “rat” on this whale.³⁶

As he begins his tale, Kint explains that the conspiracy began when police placed the five co-conspirators together in a line-up.³⁷ One of Söze’s representatives approached the five men to tell them that Söze set up the line-up and wanted them to do a job because they all owe a debt to him.³⁸ No one crosses Söze.³⁹ In flashback, Kint relates that once when rival crime lords threatened Söze’s family, Söze killed his own family rather than let them be killed. Then he killed every rivals’ kids, wives, parents, and parents’ friends and burned down the houses they lived in and stores they worked in.⁴⁰ Kint explains that Söze is a “spook story that criminals tell their kids at night,” and that no one really believes Söze is real.⁴¹ After Kint is released, Agent Kujan discovers that Kint is really the able-bodied, seemingly-mythical Söze.⁴²

C. Holden Caulfield in *The Catcher in the Rye*

Unlike this crime lord, in *The Catcher in the Rye*, prep schooler, Holden Caulfield, once again gets himself expelled from school and goes on an adventure to New York City.⁴³ He lies to others throughout the book about his expulsion from prep schools and other events in addition to frequently complaining that his classmates and all the adults around him are phonies.⁴⁴ Ultimately, he confesses his expulsion to his little sister, Phoebe, in the end.⁴⁵

D. Ted Bundy Litigation

In the category of unreliable legal narrators is Ted Bundy, the man who made the seemingly reflective quote in the beginning of this article. Utah convicted Ted Bundy of kidnapping, and the State of Florida convicted him of murdering two women and a twelve-year-old girl.⁴⁶ Ted Bundy himself also confessed to murdering twenty-eight more women.⁴⁷ In addition, Bundy is also

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. J.D. SALINGER, *THE CATCHER IN THE RYE* (1951).

44. *Id.*

45. *Id.*

46. Michael Mello, *Commentary Bundy*, 45 No. 4 CRIM. LAW BULLETIN ART 6.

47. Coleman, *supra* note 3, at 15 (discussing the confession).

alleged to have raped numerous women.⁴⁸ Bundy gave interviews to the press, and, ultimately, he represented himself and testified in court.⁴⁹ Thus, he frequently narrated his own tale.⁵⁰ At a glance, Bundy's life prior to becoming known as a serial killer might have seemed "normal." Bundy grew up in Washington in the 1950's.⁵¹ He obtained a psychology degree from the University of Washington,⁵² volunteered with the Republican Party and the Suicide Hotline Crisis Center,⁵³ and attended law school for two years.⁵⁴ While to some he might have seemed a surprising killer, according to most accounts he murdered, raped, and committed necrophilia on numerous women.⁵⁵

E. Brett Kavanaugh Senate Hearing

Even more Americans seem to have found Supreme Court Judicial Nominee, Brett Kavanaugh, to be a more surprising criminal. One of Kavanaugh's possible victims, Christine Blasey Ford, wrote to her senator, Diane Feinstein, to inform her that Supreme Court Judicial Nominee, Brett Kavanaugh, sexually assaulted her.⁵⁶

Dr. Ford ultimately testified to the following at Brett Kavanaugh's Senate hearing.⁵⁷ When she was only fifteen-years-old, seventeen-year-old Brett Kavanaugh and his friend Mark Judge attacked her.⁵⁸ Kavanaugh pinned her down on the bed and put his hand over her mouth.⁵⁹ He ground against her and tried to remove her swimsuit.⁶⁰ As his hand covered her mouth while she tried to scream, she feared he would accidentally smother her.⁶¹ The two older boys laughed as Kavanaugh pulled at her clothes.⁶² That laughter left a permanent

48. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, TED BUNDY MULTIAGENCY TEAM REPORT 4-5 (1992).

49. Richard Perez Pena, *Why Do Killers Represent Themselves*, NEW YORK TIMES (Jan. 5, 2017).

50. *See generally id.*

51. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, TED BUNDY MULTIAGENCY TEAM REPORT 13 (1992).

52. *Id.* at 16.

53. ANN RULE, *THE STRANGER BESIDE ME: THE SHOCKING INSIDE STORY OF SERIAL KILLER TED BUNDY*, 22-23 (2018).

54. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, TED BUNDY MULTIAGENCY TEAM REPORT 26-27, 36 (1992).

55. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, TED BUNDY MULTIAGENCY TEAM REPORT 4-5 (1992); Maranzani, *supra* note 2; Coleman, *supra* note 3, at 15 (discussing Bundy's confession).

56. *Read the Letter Christine Blasey Ford Sent Accusing Brett Kavanaugh of Sexual Misconduct*, CNN (Sept. 17, 2018), <https://www.cnn.com/2018/09/16/politics/blasey-ford-kavanaugh-letter-feinstein/index.html>.

57. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *Kavanaugh hearing: Transcript*, (Sept. 27, 2018), <https://www.washingtonpost.com/news/national/wp/2018/09/27/kavanaugh-hearing-transcript/>.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

echo, which as an adult, Dr. Ford describes as “indelible in the hippocampus.”⁶³ When Mark Judge jumped on the bed, she finally escaped, ran to the bathroom, and locked herself in.⁶⁴

*F. Former Congressman James Traficant’s Trials and Congressional
Expulsion Hearing for Racketeering, Extortion, Bribery, and Tax
Evasion*

In contrast, the late convicted former Democratic Party Congressman, James Traficant, did not escape prosecution for non-violent crimes. Congressman Traficant represented himself twice in court and once at his congressional expulsion hearing. First, prior to becoming a congressman, he successfully represented himself when he was accused of taking bribes in his capacity as a sheriff.⁶⁵ Second, he lost his later trial when prosecutors brought charges on him for racketeering, bribery, and tax evasion.⁶⁶ Subsequently, Congress held an expulsion hearing regarding the charges from the second trial and expelled Traficant.⁶⁷

In his second trial, fifty-five witnesses testified against Traficant. Prosecutors submitted large cash deposit records and a cash-filled briefcase that Traficant asked a witness to hide.⁶⁸ Traficant’s former administrative counsel, Allen Sinclair, testified that Traficant had bags of cash and urged him to burn the envelopes the cash had come in; Sinclair extinguished the fire and, at trial, the prosecution introduced the scorched envelopes into evidence.⁶⁹ Sinclair also testified that he had to pay Traficant \$2,500 of his salary monthly.⁷⁰ Other government workers testified that Traficant had them working with pitchforks in his barn.⁷¹ In addition to the allegations, a contractor testified that he agreed to waive \$13,000 in debt in exchange for Traficant’s help in Congress.⁷²

IV.COMMON TRAITS OF SELF-SERVING UNRELIABLE NARRATORS

Traficant and other self-serving unreliable narrators exhibit a collection of traits that seem to appear both in fictional narrators and real-life narrators in legal stories. Their primary trait is their inaccurate narrative; however, they also engage in various forms of misdirection detailed below.

63. *Id.*

64. *Id.*

65. Neela Banerjee, *James Traficant, Jr., Expelled From Congress in 2002, Dies at 73*, L.A. TIMES (Sept. 27, 2014).

66. *Id.*

67. H.R. Res. 495, 107th Cong. (2002); *Adjudicatory Hearing in the Matter of Rep. James A. Traficant, Jr., Before Comm. On Standards of Official Conduct*, 107th Cong. (2002).

68. *See, e.g., id.* at 1668-78

69. *Id.* at 1693-99, 1705-6.

70. *Id.* at 1650, 1654-5.

71. *Id.*

72. *Id.*

A. Inaccuracy

1. In Fiction

Perhaps the unreliable narrator's primary trait involves relaying facts contradicted by either other characters' accounts or by other external facts in the narrative. For example, in The Usual Suspects, narrator, Verbal Kint, initially tells Agent Kujan that he and his co-conspirators were destroying a drug boat for Keyser Söze.⁷³ However, the investigator learns that the boat was not carrying any drugs.⁷⁴ Likewise, Verbal says that he saw a man with a slim build shoot at Dean, yet Verbal failed to shoot back.⁷⁵ His facts ultimately unravel when many of the details Kint uses throughout his story turn out to be lifted from items on the office bulletin board or even the coffee cup.⁷⁶ The final blow to his story comes when Agent Kujan receives the police sketch of Söze-Kint and learns that the supposedly disabled Kint is really the arch-crime lord, Keyser Söze.⁷⁷

Likewise, in The Catcher in the Rye, Holden essentially contradicts anything he might say when he tells readers, "I'm the most terrific liar you ever saw in your life."⁷⁸

Though he doesn't confess to lying, other facts contradict Keir Sarafian's narrative as well. His frequent drug use impeaches his credibility.⁷⁹ By his own account, he was "a part" of disabling an opposing football team member.⁸⁰ Moreover, Gigi Bodakian's version of events, the fact that she withheld consent, contradicts Keir Sarafian's bald assertion that it was not rape because of how he felt about Gigi.⁸¹

2. In Law

The unreliable narrators' legal narrative similarly crumbles in the face of actual facts. Just as Gigi Bodakian's account contradicted Keir Sarafian's, Dr. Christine Ford's tale contradicted Brett Kavanaugh's. Though not presented at the hearing, the other accusers' tales contradicted Kavanaugh's self-portrayal as well.⁸² Moreover, his calendar and yearbook arguably corroborated the picture of a drunken and sexist young man.⁸³

73. THE USUAL SUSPECTS, *supra* note 33.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. SALINGER, *supra* note 44. In CHRONICLES, Bob Dylan similarly admits in the first chapter to lying to a record executive collecting biographical information. BOB DYLAN, CHRONICLES 8 (Simon and Schuster 2004)

79. LYNCH, *supra* note 27.

80. *Id.*

81. *Id.*

82. Transcript Courtesy of Bloomberg Gov't, *Kavanaugh*, *supra* note 58.

83. *Id.*; Li Zhou, *Brett Kavanaugh's July 1 Calendar Entry That Could Help Ford's Case, Explained*, Vox (Sept. 28, 2018) <https://www.vox.com/policy-and-politics/2018/9/28/17914174/brett-kavanaugh-calendar-christine-blasey-ford> (last accessed Aug. 9,

Ultimately, Kavanaugh's own calendar also impeached his testimony. He claimed that he never attended a gathering like the one that Dr. Christine Blasey Ford described.⁸⁴ However, Dr. Ford described a small gathering at a house for a few beers.⁸⁵ She testified that Kavanaugh and his friend Mike Judge were present.⁸⁶ Brett Kavanaugh's own calendar that he offered at the hearing corroborated her story rather than his.⁸⁷ On July 1, he went to Timmy's house for "skis," which he explained were "brewskis," beers.⁸⁸ He listed a small group at the gathering, including Mike Judge.⁸⁹

Similarly, Ted Bundy's narrative crumbled. Initially, when arrested in Florida, Bundy gave false names. His fake identity was easily identifiable. Later, eyewitnesses testified to seeing a man matching Bundy's characteristics, and a witness picked Bundy out of a photo line-up and again identified him at trial.⁹⁰ Hair analysis further indicated that Bundy could be a match.⁹¹

B. Misdirection

Though unreliable narrators present facts that crumble in the face of hair analysis and alternate accounts, perhaps audiences are slow to catch onto inaccuracy⁹² because the unreliable narrator frequently pairs these crumbling factual equations with misdirection.⁹³ The term "misdirection" is often associated with magic tricks. Magicians frequently use misdirection to distract audiences with something showy so that audiences fail to notice the magicians' sleight of hand.⁹⁴

Storytellers also use misdirection.⁹⁵ For instance, author K.M. Wieland

2019).

84. See Transcript Courtesy of Bloomberg Gov't, *supra* note 58; Zhou, *supra* note 84.

85. See Transcript Courtesy of Bloomberg Gov't, *supra* note 58; Zhou, *supra* note 84.

86. See Transcript Courtesy of Bloomberg Gov't, *supra* note 58; Zhou, *supra* note 84.

87. See Transcript Courtesy of Bloomberg Gov't, *supra* note 58; Zhou, *supra* note 84.

88. See Transcript Courtesy of Bloomberg Gov't, *supra* note 58; see Zhou, *supra* note 84.

89. See Transcript Courtesy of Bloomberg Gov't, *supra* note 58; see Zhou, *supra* note 84.

90. *Bundy v. State*, 455 So. 2d 330, 334-35 (Fla. 1984); but see Michael Mello, *On Metaphors, Mirrors, and Murders: Theodore Bundy and the Rule of Law*, 18 N.Y.U. REV. L. & SOC. CHANGE 887, 899 (1991) (pointing out some of the criticisms of the other evidence at trial).

91. *Id.* at 336; but see Michael Mello, *On Metaphors, Mirrors, and Murders: Theodore Bundy and the Rule of Law*, 18 N.Y.U. Rev. L. & Soc. Change 887, 899 (1991) (pointing out some of the criticisms of the other evidence at trial).

92. Cf. SMITH, UNDERSTANDING *supra* note 6, at 17-21 (explaining the kind of priming that literature students sometimes require to realize that a narrator is unreliable).

93. Culleton, *supra* note 14; see also Lenore Appelhans, *Spoiler Alert: An Analysis of Misdirection Techniques in Novels with Twist Endings*, Vermont College of Fine Arts MFA Program in Writing for Children and Young Adults (2015) (unpublished student thesis) (on file with author).

94. *What Is Misdirection in Magic? Learn About Types of Misdirection Used in Magic and 5 Tips for Using Misdirection*, MasterClass (May 20, 2019), <https://www.masterclass.com/articles/what-is-misdirection-in-magic-learn-about-types-of-misdirection-used-in-magic-and-5-tips-for-using-misdirection#what-is-misdirection-in-magic> (last accessed Aug. 9, 2019); see also John W. Cooley, *Mediation Magic: Its Use and Abuse*, 29 LOY. U. CHI. L.J. 1, 7 (1997) (discussing use of misdirection in mediation).

95. K.M. Weiland, *Misdirection: Why We Have to Fool Our Readers*, Helping Writers

discusses how authors plant “fake clues” much as a magician might; those clues send readers “sniffing the wrong scent.”⁹⁶

These same misdirection techniques appear not merely in fiction narratives but in legal narratives as well. A juror from James Traficant’s trial summed up Traficant’s misdirection by stating, “He was trying to confuse us. He didn’t succeed.”⁹⁷

An examination of unreliable narrators reveals multiple subcategories of misdirection in their tales. These include: weaving in concrete details, rambling, appealing to prejudice, relying on strawmen, becoming indignant, shifting blame, and making over-the-top displays.

1. Concrete Details

a. In Fiction

In the first misdirection subcategory, the unreliable narrator may often weave concrete details into the story to lend it a sense of reality. But upon close examination, the relevance of those details is questionable, and the math on them crumbles. These reality-establishing, sensory details themselves can be either true or false though they will often be irrelevant to the underlying story.

For example, in The Usual Suspects, Verbal Kint loads his story with false details that lend credence to the persona he has established though they bear little relevance to the underlying conspiracy story he’s telling. By walking with a limp, holding his arm in a crooked way, and speaking and dressing as a person from the U.S., Kint conveys the impression that he is a disabled man from middle-America. When he first meets Agent Kujan, Kint layers a few details into this backstory as he says he was in a barbershop quartet in Skokie, Illinois, with a “big fat guy, I mean like orca fat.”⁹⁸

Like Kint, Keir Sarafin in Inexcusable packs his story with details, many of which may be true. For instance, early in his tale, he says:

My dad and I had a game of Risk going forever. It started on the Sunday night when we got back from trucking the girls off all the way to college, three hours and one state line one way and three more and one more back this way, and we came back wrecked and empty to a house without the girls in it and even though that should have come as no surprise, inside, it was a big surprise.⁹⁹

Become Authors (October 2, 2013), available at <https://www.helpingwritersbecomeauthors.com/misdirection-fool-readers> (last accessed July 31, 2019); Michael Kurland, *The Art of Misdirection*, Gotham Writers, available at <https://www.writingclasses.com/toolbox/articles/the-art-of-misdirection> (last accessed July 31, 2019); see also Appelkans, *supra* note 94.

96. WEILAND, *supra* note 96.

97. Francis C. Clines, *Ohio Congressman Guilty in Bribery, Kickbacks*, NEW YORK TIMES (Apr. 12, 2012).

98. THE USUAL SUSPECTS, *supra* note 33.

99. LYNCH, *supra* note 27.

These seemingly mundane tidbits throw the reader off track and breathe a sense of reality into the tale.¹⁰⁰

b. In Law

These same concrete details appear in legal narratives as well. For example, in Ted Bundy's trial, Bundy lent an air to reality to his story of police invasiveness with the following testimony:

After he told me to stand by his car, he proceeded to my car walking—he began to walk around it and shining his flashlight around through the windows and peering in through the windows. The officer that I was standing with next to the patrol car began asking me questions, asking me what I was doing in the neighborhood, why I was there. . . so on and so forth.¹⁰¹

Bundy weaved in action and sensory details like “shining his flashlight” to create a vivid picture for his audience. Regardless of whether these details were accurate, this picture makes his story seem more real.

Likewise, James Traficant breathed a sense of reality into his story by inserting concrete details into it. He tried to contend that he did not receive help on his barn construction as the result of extortion or bribery.¹⁰² In so doing, he included concrete details in his opening statement in his congressional expulsion hearing:

I had an old bank barn. . . and they said. . . we'll send some guys out. I didn't want the guys out. I said if you get close to that bank barn, if you're familiar with an old bank barn, that barn will collapse. Members of the committee, they collapsed my barn. Henry Mangaro testified that he was there on other business. If he and I didn't jack up that one northwest corner, the bank barn would have completely collapsed, costing my father thousands and thousands of dollars.¹⁰³

Traficant included specifics like “old bank barn” and “northeast corner” to lend both an air of reality and credibility to his story. His recollection of specific details relevant to his story lent his unreliable story some reliability.

100. Cf. J.A. CUDDON, *DICTIONARY OF LITERARY TERMS & LITERARY THEORY* 755 (M.A.R. Habib, 5th ed. 2013) (discussing the concept of verisimilitude, the appearance of being real); John Gardner, *THE ART OF FICTION* 22-3 (Vintage Books 1991) (discussing how including concrete details establishes verisimilitude); Helene S. Shapo, Marilyn Walter & Elizabeth Faians, *WRITING AND ANALYSIS IN THE LAW* 414-5 (2008) (encouraging inclusion of important details); Cathren Page, *Stranger Than Fiction: How Lawyers Can Accurately and Realistically Tell A True Story by Using Fiction Writers' Techniques That Make Fiction Seem More Realistic Than Reality*, 78 *LA. L. REV.* 907, 909 (2018).

101. ArchiveNewsFootage, Ted Bundy in Court 1/5, YOUTUBE (Apr. 21, 2015), available at https://www.youtube.com/watch?v=HIU9megg_P3A.

102. *Adjudicatory Hearing*, *supra* note 68, at 47-48.

103. *Id.*

2. Irrelevant Babble

a. In Fiction

Sometimes these specific details can become irrelevant and rambling as the self-serving unreliable narrator meanders into unrelated topics. For instance, initially, when Agent Kujan questions Verbal Kint, Kint babbles about being in a barbershop quartet, meanders into discussing a “big fat guy,” and rambles about picking beans in Guatemala.¹⁰⁴

Keir Sarafian also rambles in *Inexcusable*.¹⁰⁵ He goes on at length for most of the book before returning to the events that happened in the cabin with Gigi.¹⁰⁶ He babbles about things such as playing board games with his dad, eating frozen pizza, talking to his sister on the phone, and more.¹⁰⁷

Audiences may sometimes get lost in these details, which shift the focus away from the lie at hand.

b. In Law

The self-serving unreliable narrators in legal narratives can similarly lead audiences into a maze of confusion as they meander into irrelevant details. For example, Justice Kavanaugh’s narrative bears a resemblance to Keir’s rambling about playing board games and eating frozen pizza in high school when he rambled on about cutting lawns and playing basketball during high school.¹⁰⁸ While the focus of Kavanaugh’s Senate hearing was supposed to be on his alleged assault and attempted rape of Christine Blasey Ford,¹⁰⁹ Justice Kavanaugh testified in his opening statement:

In the summer of 1981, I had worked construction. In the summer of 1982, my job was cutting lawns. I had my own business of sorts. You see some specifics about the lawn cutting listed on the August calendar page, when I had to time the last lawn cuttings of the summer of various lawns before football training camp.

I played in a lot of summer league basketball games for the Georgetown Prep team at night at Blair High School in Silver Spring. Many nights, I worked out with other guys at Tobin’s house. He was the great quarterback on our football team and his dad ran workouts — or lifted weights at Georgetown Prep in preparation for the football season. I attended and watched many sporting events, as is my habit to this day.¹¹⁰

All the time that Kavanaugh is talking, many audience members may be picturing lawn cuttings, weightlifting, and football games instead of picturing the assault

104. THE USUAL SUSPECTS, *supra* note 33.

105. LYNCH, *supra* note 27.

106. *Id.*

107. *Id.*

108. Transcript Courtesy of Bloomberg Gov’t, *supra* note 58.

109. *Id.*

110. *Id.*

of Christine Blasey Ford. As I myself re-read this passage for the fifth time, I found my attention drifting towards wondering whether Kavanaugh was actually on the football team or whether he just worked out with the football team.

More colorful than mowing lawns or watching football was James Traficant's babble in his congressional expulsion hearing. In his opening statement, he ranted, "I say that Janet Reno has exposed our children to a Chinese bomb, and, damn it, I want it on record. Judge Wells was approved by President Clinton and approved by Janet Reno."¹¹¹

Traficant's babble includes fewer sensory details. Thus, it may paint a hazier picture for the readers. Nonetheless, any audience members who are already angry at Janet Reno, the Chinese, or Bill Clinton may find their attention span drifting away from Traficant's crimes and towards these matters.

Irrelevant though such babble may be, detailed babble may work to distract audiences. The more those details invoke the audience's five senses, the more audiences begin to imagine the details in their heads and focus on the pictures in their minds as opposed to the focusing on allegations against the narrators.

3. *Appeal to Prejudice*

a. *In Fiction*

In addition to rambling, self-serving unreliable narrators frequently misdirect by invoking pedigree, religion, or other authority. They replace harmful facts with prejudices that favor them.

In one such instance, protagonist Keir Serafian defends against rape allegations by saying, "You could ask pretty much anyone and they would tell you. . . . He was brought up right that boy was."¹¹²

Likewise, Verbal Kint plays on these prejudices, but he flips them. Rather than positing himself as a blueblood with a pedigree and incapable of crime, Verbal Kint posits himself as a low-rate con-artist with cerebral palsy.¹¹³ He plays into societal prejudice to portray himself as someone incapable of masterminding a crime.¹¹⁴ More importantly, he plays on Agent Kujan's prejudice; Kujan brags that the first thing he learned was "how to spot a murderer,"¹¹⁵ indicating he believes that a murderer looks a certain way.

When Agent Kujan informs Verbal that Dean Keaton used him, Verbal cries. "I'm stupid. I'm a cripple. Why me?"¹¹⁶

Agent Kujan tells him, "Because you're a cripple, Verbal. Because you're stupid. Because you're weaker than them."¹¹⁷

111. *Adjudicatory Hearing*, *supra* note 68, at 46.

112. LYNCH, *supra* note 27.

113. THE USUAL SUSPECTS, *supra* note 33.

114. *Id.*

115. *Id.*

116. *Id.*

117. THE USUAL SUSPECTS, *supra* note 33.

Thus, Agent Kujan’s prejudice against the disabled leads him to believe that Verbal is just a pawn whom Dean Keaton has played. In fact, Verbal is Keyser Söze himself.¹¹⁸

b. In Law

Just as in fiction, the unreliable narrators in legal narratives frequently similarly substitute prejudicing facts for relevant facts. For example, during his hearing, Justice Brett Kavanaugh grew red in the face and shouted as he proclaimed, “I got into Yale Law School.”¹¹⁹

Similarly, in discussing his case with the press, Ted Bundy also invoked his law school pedigree when he stated, “I intend to complete my legal education and become a lawyer and be a damn good lawyer.”¹²⁰ In a later interview, Bundy stated, “Which one are they going to pick, a law student with no criminal background, or are they going to go after the guy with the arrest record for robbery, or you know, the types? The real weirdos.”¹²¹

4. Reliance on Straw Men

a. In Fiction

Having built up their own authority and credibility by relying on prejudice, unreliable narrators then misdirect by attacking straw men. Self-serving unreliable narrators focus on the smallest accusations and act as though those accusations are the ones that are at stake.

For example, Keir Sarafin turns his rape into a romance plot with him as the protagonist. He admits to lying.¹²² “I lied to you earlier. I lied earlier because I loved Gigi Boudakian when I said I didn’t.”¹²³ In his story, he is guilty—not of rape—but rather of loving a girl who misunderstood his intent.¹²⁴ He has changed the plot of the story to one of unrequited love, but he has erased the girl’s intent and wishes in the process.¹²⁵ Some readers may even find themselves cheering for him and wishing the girl would understand.¹²⁶

Likewise, in The Usual Suspects, Verbal Kint switches the plot to a story

118. *Id.*

119. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

120. ABC 20/20 ABC News, *Bundy 20/20 Pt 5: Ted Bundy is arrested and found guilty of kidnapping in Utah*, YOUTUBE (May 7, 2019), available at <https://www.youtube.com/watch?v=xg2D-unD9Cc>.

121. One of Us, *Conversations with a Killer The Ted Bundy Tapes* (Netflix 2019). See generally Coleman, *supra* note 2, at 14, 15 (discussing other prejudicing facts in favor of Bundy).

122. LYNCH, *supra* note 27.

123. *Id.*

124. *Id.*

125. *Id.*

126. See INEXCUSABLE, GOODREADS, INC. (2020), available at <https://www.goodreads.com/book/show/307652.Inexcusable> (including reviews from readers like Luke who failed to understand that a rape had occurred, Shelby who related to Keir in some ways, or Angela who was unsure whether a rape had occurred).

about a lesser crime that is practically a Robin Hood adventure. Kint admits to conspiring to steal smuggled emeralds from crooked police officers and to being threatened into helping destroy a ship full of drugs.¹²⁷

b. In Law

The unreliable narrators in legal narratives often similarly battle straw men and change the plot. For instance, in response to his murder arrest, Ted Bundy retorted, “Does that include the time I stole a comic book when I was five years old? I’m not guilty of the charges which have been filed against me.”¹²⁸ Yet Bundy was not on trial for stealing a comic book; he was on trial for kidnapping and murder.

Similarly, Brett Kavanaugh misdirected from the physical attack and attempted rape of Christine Blasey Ford and instead battled the straw man of prudish sobriety. He framed the issue as being a trial for beer drinking. In his Senate hearing, Brett Kavanaugh made remarks such as, “I liked beer. I still like beer.”¹²⁹ Thus, he converted the plot to fighting for the American man’s right to drink a beer.

5. *Indignant Body Language, Tone, and Expressions*

a. In Fiction

Having reduced the charges to straw men, the self-serving, unreliable narrator further misdirects and often displays indignation when accused of wrongdoing.

For instance, Keir Serafian proclaimed several times in the novel that his victims or accusers behaved “inexcusab[ly].”¹³⁰ When he permanently crippled a football player on an opposing team, he complained that the opposing team’s overconfidence in the game was inexcusable.¹³¹

Similarly, Holden Caulfield complains throughout the novel of others’ phoniness.¹³² In one of various examples of indignation, Holden complains about young women who failed to offer to pay for their own drinks.¹³³ Though he believed the men should pay, he was indignant that the young women did not offer.¹³⁴

127. THE USUAL SUSPECTS, *supra* note 33.

128. Raúl Agraz Campos, *Ted Bundy Interview (1977) (Rare footage) (Recopilation)*, YOUTUBE (Feb. 7, 2013), available at <https://www.youtube.com/watch?v=AEWsxCrMM1U>.

129. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

130. LYNCH, *supra* note 27.

131. *Id.*

132. SALINGER, *supra* note 44.

133. *Id.*

134. *Id.*

b. *In Law*

Likewise, in legal narratives, unreliable narrators display indignation. For instance, former congressman James Traficant proclaimed that the judge in his racketeering case treated him unfairly.¹³⁵ Traficant brandished a roll of toilet paper during his closing¹³⁶ and told the jury, “I’m going to leave this with you because that is all they have.”¹³⁷ He became physically demonstrative, waving his hands and shouting.¹³⁸

Later, he wrote the attached, barely legible, handwritten indignant letter to the Ethics Committee regarding his expulsion hearing:

7-11-02

ETHICS COMM.

SINCE I HAVE NOT HAD A
CONFIRMATION OF APPROVAL OF MY
WITNESS LIST, I WOULD NOT
ATTEND THE HEARING!!

I WAS RAUORATED ONCE IN
CLEVELAND, OHIO AND DENY
WAS ANYMORE CHARGES OF A
TRAFI LION NO PHYSICAL
EVIDENCE NO LIES!!

WITNESS MY WITNESS LIST IS
APPROVED - YOU CAN GO
FORWARD AND PROCEED YOUR
WAY WHICH IS SUICIDE IN
THIS COMMUNICATIONS I HAVE
RECEIVED!

I WAS PROHIBITED FROM ATTENDING
A HEARING IN CLEVELAND -- I TRUST
THE CONGRESS JUST MIGHT BE
CONCERNED WITH 6TH AMMUNITION
RATES AND POLITICAL TRAFFIC
BECAUSE OF DEMANDS, FBI, FBI,
AND A GOVT. THAT AMERICA 'LOVES'!

[Signature]

135. Clines, *supra* note 98.

136. *Id.*

137. *Id.*

138. Robert E. Pierre and Juliet Eilperin, *Traficant is Found Guilty*, WASH. POST (Apr. 12, 2002), available at https://www.washingtonpost.com/archive/politics/2002/04/12/traficant-is-found-guilty/cc784d2c-e2b6-4571-ac8f-e90dcf437c6e/?utm_term=.1866f391a605 (last accessed July 28, 2019).

Just as Traficant became indignant in his proceedings, Justice Kavanaugh frequently appeared enraged during his Senate hearing. He grew red in the face, shouted, smirked, and wrinkled his face in anger.¹³⁹ He pointed his pen at an examining Senator, and he threw his hands up in the air.¹⁴⁰

Ted Bundy displayed indignant body language at his trial as well. At one point, he shook his finger at the judge.¹⁴¹ The judge admonished him not to shake his finger, but¹⁴² Bundy continued to do so until the judge admonished him a second time.¹⁴³ Bundy also admitted to becoming angry and indignant when a victim witness testified.¹⁴⁴ In an interview he stated, “I was beside myself with rage. . . I got up and I pointed at the judge and I pointed at her and said, ‘She’s lying. She’s lied before, and she’s lying now.’”¹⁴⁵

6. *Blame-Shifting*

a. *In Fiction*

In keeping with the unreliable narrator’s indignation, self-serving unreliable narrators may often shift blame and become accusatory towards others,¹⁴⁶ often towards their accusers themselves. For instance, when Keir Sarafin and his football buddies destroyed a Paul Revere statue and vandalized the opposing teams’ town, instead of taking responsibility for his illegal actions, he blamed the locals.¹⁴⁷ “They couldn’t see the spirit of the thing, the locals,” he contended. “You can’t simply go by what you see, without seeing the spirit. That’s inexcusable.”¹⁴⁸

Earlier in the book, Sarafin similarly shifted blame when he disabled a

139. *Supreme Court Nominee Brett Kavanaugh Sexual Assault Hearing, Judge Kavanaugh Testimony*, C-Span (Sept. 27, 2018), <https://www.c-span.org/video/?451895-2/supreme-court-nominee-brett-kavanaugh-sexual-assault-hearing-judge-kavanaugh-testimony> (last accessed Aug. 10, 2019); *Kavanaugh Angry, Chokes Up During Senate Hearing Testimony*, YOUTUBE (Sept. 27, 2018), available at <https://www.youtube.com/watch?v=A-QpXVV6qLk> (last accessed Aug. 9, 2019); Aaron Blake, *Brett Kavanaugh Just got Remarkably Angry — and Political — for a Supreme Court nominee*, WASH. POST (Sept. 27, 2019); see also Transcript courtesy of Bloomberg Government, *supra* note 56.

140. *Supreme Court Nominee Brett Kavanaugh Sexual Assault Hearing*, *supra* note 136; *Kavanaugh Angry*, *supra* note 140; Blake, *supra* note 140; see also Transcript Courtesy of Bloomberg Government, *supra* note 58.

141. Ted Bundy: Judge Edward Cowert... Don’t Shake Your Finger At Me Young Man (July 30, 2012), YOUTUBE, <https://www.youtube.com/watch?v=yCEa9o4Ixi8>.

142. *Id.*

143. *Id.*

144. *One of Us*, *supra* note 122.

145. *Id.*

146. Cf. SMITH, UNDERSTANDING, *supra* note 5, at 25 (indicating that students should recognize that narrators are trying to shift blame in some vignettes provided); Melissa H. Weresh, *Wait, What? Harnessing the Power of Distraction or Redirection in Persuasion*, 15 LEGAL COMM. & RHETORIC: JALWD 81, 103 (2018) (explaining that attorneys may “redirect” by shifting blame onto the victim).

147. LYNCH, *supra* note 27.

148. *Id.*

player from an opposing football team. He proclaimed, “I didn’t cripple a guy. He got crippled, and I was part of it.”¹⁴⁹ He even went so far as to blame the opposing team for the injury, stating, “They were getting too comfortable. Too lazy, spoiled, entitled. You need to never do that. Never, ever, ever. It is inexcusable.”¹⁵⁰

Likewise, in *The Usual Suspects*, Verbal Kint begins his narrative by shifting blame onto the police. “It was bullshit. The whole rap was a setup. . . . It was all the cops’ fault.”¹⁵¹

b. *In Law*

Self-serving unreliable narrators in legal narratives shift blame in a similar manner. For instance, Justice Kavanaugh began his narrative with blame-shifting:

This whole two-week effort has been a calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election. Fear that has been unfairly stoked about my judicial record. Revenge on behalf of the Clintons and millions of dollars in money from outside left-wing opposition groups.¹⁵²

At one point, rather than answer a question, Brett Kavanaugh even asked the examining Senator Amy Klobuchar if she had ever blacked out due to drinking.¹⁵³

Similarly, former congressman James Traficant shifted blame during his second trial. He complained that the judge had treated him unfairly.¹⁵⁴ He accused the prosecution of a vendetta and said, “You wouldn’t bring this case against a dope dealer.”¹⁵⁵ Traficant again shifted blame in his congressional expulsion hearings. In his opening statement, he said, “I have called Janet Reno a traitor. Evidence will show part of the genesis of this trial was the vindictive nature of Janet Reno and the U.S. Justice Department because of my stand relative to Reno not investigating Chinese money.”¹⁵⁶

7. *Over-The-Top Gestures*

a. *In Fiction*

The colorfulness in Traficant’s blame-shifting exemplifies another common trait in unreliable narrators: over-inflation. They either amplify their story with adjectives, adverbs, and inflated analogies or present over-the-top

149. *Id.*

150. *Id.*

151. *THE USUAL SUSPECTS*, *supra* note 33.

152. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

153. *Id.*

154. *See Clines*, *supra* note 98.

155. *Id.*

156. *Adjudicatory Hearing*, *supra* note 68, at 45.

tales.

Regarding the latter, unreliable narrators often put on performances that beg belief. For example, when Holden Caulfield runs into one of his classmates' mothers, instead of admitting that he has been expelled from school, he says that he is having "minor brain surgery."¹⁵⁷

Verbal Kint similarly weaves a larger than life tale of Keyser Söze. As mentioned previously, rather than let rival crime lords kill his family, Söze kills them himself and then kills his rivals' kids, wives, and parents; burns down their stores and houses; and even kills everyone who owes them money.¹⁵⁸

b. In Law

Though none of our legal narrators purported to kill their own families, they have presented over-the-top tales as well. For instance, in a television interview related to his hearing, Justice Kavanaugh presented a saintly picture of himself, stating, "I was focused on academics and athletics, going to church every Sunday at Little Flower, working on my service projects, and friendship."¹⁵⁹

In a more over-the-top performance, Ted Bundy put his girlfriend Carol Boone on the stand during the trial.¹⁶⁰ She testified that Bundy was a kind and warm man.¹⁶¹ Then he proposed to her during the examination.¹⁶²

Although he never proposed to anyone at trial, James Traficant was known for his larger-than-life performances. Not only did he often say, "Beam me up,"¹⁶³ in Congress, but he also said it in his opening statement for his second trial.¹⁶⁴ He also asked numerous witnesses, "Did I ever hug you?"¹⁶⁵

V. AUDIENCE FORGIVENESS OF UNRELIABLE NARRATORS

The narrators discussed above, all have holes in their stories; yet, they still enjoy fans. In the legal narratives, Traficant escaped guilt in his first trial.¹⁶⁶ Despite suffering much infamy, Ted Bundy still received support from fans.¹⁶⁷ Justice Kavanaugh, rather than being tried for his alleged offenses, was placed in one of the most powerful positions in the world. Thus, it seems that these

157. SALINGER, *supra* note 44.

158. THE USUAL SUSPECTS, *supra* note 33.

159. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

160. *The Day Ted Bundy Wed in the Courtroom*, THE ORLANDO SENTINEL (June 2, 1986), available at <https://www.orlandosentinel.com/news/os-xpm-1986-07-02-8606300398-story.html>).

161. *Id.*

162. *Id.*

163. Catalina Camia, *Beam Me Up: 5 Classic Jim Traficant Quotes*, USA TODAY (Sept. 27, 2014), available at <https://www.usatoday.com/story/news/politics/onpolitics/2014/09/27/jim-trafficant-quotes-beam-me-up/81202836/>.

164. *Quotes From Corruption Trial Of U.S. Rep. James A. Traficant Jr.*, 19 NEWS (Apr. 11, 2002), available at <https://www.cleveland19.com/story/740781/quotes-from-corruption-trial-of-us-rep-james-a-trafficant-jr/>.

165. Banerjee, *supra* note 66.

166. *Id.*

167. Mello, *supra* note 91, at 933.

narrators have either succeeded in deception, or, perhaps, the audience realizes that the unreliable narrator is lying and yet forgives and embraces the narrator anyway.¹⁶⁸

In the self-undercutting category of unreliable narrators, it is understandable that an audience would empathize with the naïve, insecure, disabled, or incapacitated narrator.

However, less understandably, some audience members forgive and embrace more deceptive and self-advancing unreliable narrators as well. Confirmation bias likely plays a role in this forgiveness.¹⁶⁹ Confirmation bias springs from people's pre-held beliefs, which are rooted in people's deep frames, values that shape how they view the world.¹⁷⁰ When a story is one that appeals

168. Compare Durst, *supra* note 25, at 163 (explaining that narrator's unreliability does not demand disbelief in the story itself) with Weresh, *supra* note 147, at 103 (explaining that stories do not have to be true to be believable only internally and externally consistent); Scott Fraley, *A Primer on Essential Classical Rhetoric for Practicing Attorneys*, 14 LEGAL COMM. & RHETORIC: JALWD 99, 104 (2017) (discussing the logical consistency within a story); J. Christopher Rideout, *A Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 LEGAL COMM. & RHETORIC: JALWD 67, 72 (2013) (discussing how narratives must have both internal and external consistency); Jennifer Sheppard, *What If the Big Bad Wolf in All Those Fairy Tales Was Just Misunderstood?: Techniques for Maintaining Narrative Rationality While Altering Stock Stories That Are Harmful to Your Client's Case*, 34 HASTINGS COMM. & ENT L.J. 187, 232 (2012) (indicating that stories must have internal consistency); Steven J. Johansen, *Was Colonel Sanders A Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ASS'N LEGAL WRITING DIRECTORS 63, 67 (2010) (explaining that a story does not have to be true to be believable but merely externally and internally coherent); Helena Whalen-Bridge, *The Lost Narrative: The Connection Between Legal Narrative and Legal Ethics*, 7 J. Ass'n Legal Writing Directors 229, 234 (2010) (discussing how narratives can create their own truths); Elizabeth Fajans & Mary R. Falk, *Untold Stories: Restoring Narrative to Pleading Practice*, 15 LEGAL WRITING: J. LEG. WRITING INST. 3, 20 (2009) (indicating that stories must have internal consistency); J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 53, 64 (2008) (indicating that stories must have internal consistency). Nonetheless, a single lie may lead people to doubt a person's overall credibility. Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain's Negativity Bias and Persuasion*, 15 NEV. L.J. 605, 610 (2015).

169. See Joy Kanwar, *When Truth Is Not Truth: Thoughts on Teaching in an Era of "Alternative Facts"*, 58 WASHBURN L.J. 717, 718 (2019) ("Most people do not seek truth; they merely seek a truth that works for them."); see also Teri A. McMurtry-Chubb, *The Practical Implications of Unexamined Assumptions: Disrupting Flawed Legal Arguments to Advance the Cause of Justice*, 58 WASHBURN L.J. 531 (2019) (illustrating how people often base conclusions on assumptions as opposed to fact); cf. Linda H. Edwards, *Where Do the Prophets Stand? Hamdi, Myth, and the Master's Tools*, 13 CONN. PUB. INT. L.J. 43, 71 (2013) (discussing how strong arguments actually lead people to generate counter-arguments to defend their pre-existing beliefs); Kathryn M. Stanchi, *The Science of Persuasion: An Initial Exploration*, 2006 Mich. St. L. Rev. 411, 440-42 (2006) (indicating that stories and metaphors are more likely to change beliefs than strong arguments); Marilyn R. Walter & Elizabeth Fajans, *The Impact of Cognitive Bias on Persuasion and Writing Strategies*, 22 J.L. & POL'Y 1 (2013) (summarizing how several different types of biases can impact conclusions); see generally Bill Kanasky, Jr., *Juror Confirmation Bias: Powerful, Perilous, Preventable*, TRIAL ADVOC. Q., SPRING 2014, at 35.

170. RUTH A. ROBBINS, KEN CHESTEK, AND STEVE JOHANSEN, YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING 122 (Wolters Kluwer 2013); see also GEORGE LAKOFF, THE ALL NEW DON'T THINK OF AN ELEPHANT KNOW YOUR VALUES AND FRAME THE DEBATE—THE ESSENTIAL GUIDE FOR PROGRESSIVES 1-29 (2014) (discussing the two overarching frames, the strict father worldview versus the nurturant parent worldview); Cathren Page, *Astonishingly*

to these pre-held beliefs, the audience often seeks reasons to believe the story. Thus, the audience may be more susceptible to a combination of factors that aid in winning audience forgiveness.¹⁷¹

Perhaps some audience members forgive unreliable narrators because misdirection works, and the audience fails to see the extent to which the tale is false. However, maybe they know the tale is false, yet they admire the narrator's cleverness in some way or find the narrator humorous. Or, more importantly, maybe it is the fact that narrators show the audience their point of view on events, and, thus, create empathy.¹⁷² These ideas are examined in greater detail below.

A. Misdirection

When an unreliable narrator uses misdirection, audience members may vary regarding how much of the narrative they believe is false. Magicians and storytellers, for example, use misdirection because it often works.¹⁷³ While babbling about irrelevant events can be distracting, creating a sense of reality by including concrete details is a widely successful storytelling technique.¹⁷⁴ Despite the wrongness of it, appealing to prejudice can also succeed as all people, some more than others, have pre-held beliefs and values that a narrator can tap into.¹⁷⁵

Excellent Success or Sad! Loser! Failure: Why President Trump's Legal Narratives "Win" with Some Audiences and "Lose" with Others, 18 CONN. PUB. INT. L.J. 53, 108 (2019).

171. ROBBINS, *supra* note 170, at 122; *see also* LAKOFF, *supra* note 171, at 1-29 (discussing the two overarching frames, the strict father worldview versus the nurturant parent worldview); Page, *Astonishingly Excellent Success*, *supra* note 171, at 108; *see also* Clare Keefe Coleman, *Dangerous Tongues: Storytelling in Congressional Testimony and an Evidence-Based Solution*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 291, 298-9 (2016) (discussing how story truth sometimes overcomes actual truth).

172. *Cf.* Steven J. Johansen, *This Is Not the Whole Truth: The Ethics of Telling Stories to Clients*, 38 ARIZ. ST. L.J. 961, 961 (2006) ("Stories are told from a point of view, and that point of view necessarily limits the story. If told from another point of view, the "truth of the story would change.")

173. *Cf.* Weresh, *supra* note 147 (focusing throughout the article on "redirection" techniques and explaining their effectiveness); *but see* Stephen A. Reynes, Esq. & Professor Greg Johnson, *The Connection Between Writing Effective Briefs and Remaining Fully Human*, VT. B.J., Fall 2015, at 21 (indicating how some of the misdirection techniques mentioned in this article will destroy credibility for some audience members).

174. *See* Page, *Stranger than Fiction*, *supra* note 101.

175. *See* Sherri Lee Keene, *Stories That Swim Upstream: Uncovering the Influence of Stereotypes and Stock Stories in Fourth Amendment Reasonable Suspicion Analysis*, 76 MD. L. REV. 747, 751, 754-6 (2017) (explaining how implicit racial bias can fuel beliefs that black persons are more prone to crime); *cf.* Rideout, *Twice Told*, *supra* note 170 (indicating that people look outside a story for a narrative's external consistency); Sheppard, *supra* note 170, at 199 (indicating that stories must correspond to the audiences beliefs regarding what is possible in the outside world); Fajans, *supra* note 170, at 20 (indicating that stories must correspond to the audiences beliefs regarding what is possible in the outside world); Rideout, *supra* note 170, at 66 (indicating that stories must correspond to the audiences beliefs regarding what is possible in the outside world); *see also* Melissa H. Weresh, *Morality, Trust, and Illusion: Ethos As Relationship*, 9 LEGAL COMM. & RHETORIC: JALWD 229, 233 (2012) (indicating that a person's perceived intelligence, competence, or power can be some of the factors that lead people to deem someone credible). For a discussion regarding how subtly bias can shape viewpoint, *see generally* Anne E. Mullins, *Jedi or*

Although over-the-top stories do sometimes raise suspicion, persuasion research shows that audiences may have varying responses to either a “too perfect” tale or disclosure of negative information.¹⁷⁶ While the conventional wisdom indicates that disclosure more likely succeeds, other factors such as audience bias could override these concerns.

The other two techniques, blame-shifting and indignation, may be greater tells to some audience members and may come across as low-brow or even mentally ill. Nonetheless, when the blame-shifting reinforces an audience member’s confirmation bias, that blame-shifting is likely to be successful.

In many well-matched lawsuits, the lawyer for one party can argue that opposing counsel is battling straw men. The debate in a lawsuit is often a debate over what the conflict is really about. The person who shifts the plot and the theme of the story to their preferred plot and theme often receives their preferred outcome.

B. Loveable tricksters

Even if the audience fully knows that the unreliable narrator is lying or believes that the unreliable narrator is at least lying at points, the audience sometimes still loves a trickster.

The trickster is a character archetype. Archetypes consist of character patterns that repeat throughout history.¹⁷⁷ Drawing on Joseph Campbell’s work, Chris Vogler has narrowed archetypes down to the hero, the shapeshifter, the threshold guardian, the trickster, the herald, the allies, and the mentor.¹⁷⁸ The trickster archetype represents mischief and is frequently depicted as a clown or comical sidekick.¹⁷⁹ Unreliable narrators often fall within this archetype.¹⁸⁰

Perhaps audiences forgive unreliable narrators because they love tricksters. Inside us all lurks a clever child who would love to sneak a cookie behind a scolding adult’s back. So, when someone “beats the system” or “puts one over” on an authority figure, our inner sneaky, clever child applauds the cookie thief.

Judge: How the Human Mind Redefines Judicial Opinions, 16 WYO. L. REV. 325 (2016).

176. Kathryn Stanchi, *What Cognitive Dissonance Tells Us About Tone in Persuasion*, 22 J.L. & Pol’y 93, 103-20 (2013).

177. CUDDON, *supra* note 101, at 13-14; CHRIS VOGLER, *THE WRITERS’ JOURNEY: MYTHIC STRUCTURE FOR WRITERS* 29 (2007); *see also* Clare Keefe Coleman, *Dangerous Tongues: Storytelling in Congressional Testimony and an Evidence-Based Solution*, 19 N.Y.U. J. LEGIS. & PUB. POL’Y 291, 311 (2016) (mentioning archetypes); Kenneth D. Chestek, *Competing Stories: A Case Study of the Role of Narrative Reasoning in Judicial Decisions*, 9 LEGAL COMM. & RHETORIC: JALWD 99, 103 (2012) (discussing archetypes); Linda H. Edwards, *Once Upon A Time in Law: Myth, Metaphor, and Authority*, 77 TENN. L. REV. 883, 890 (2010) (discussing archetypal stories and characters and their repetition throughout law and history); Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 SEATTLE U. L. REV. 767 (2006).

178. VOGLER, *supra* note 178 at 31.

179. *Id.* at 77.

180. *Id.*

Thus, in The Usual Suspects, some part of us admires Kint's cleverness.¹⁸¹ Here we are spellbound, yet Kint simply lifted the details he used to fuel his narrative from the agent's bulletin board.¹⁸² The mystery intrigues us—we wonder which parts of the tale are true and how long has Söze evaded capture.

Indeed, when living under an unfair authority's rule, perhaps the unfair or rigged system justifies our applause for tricksters. Thus, audiences flock to movies like Beverly Hills Cop where Eddie Murphy's character Officer Axel Foley disobeys his boss and goes to Beverly Hills to investigate a murder.¹⁸³ Initially, the Beverly Hills powers-that-be treat the brown-skinned Foley as outsider, and the police chief orders him escorted out of town.¹⁸⁴ However, through a series of tricks and deceptions Foley outwits crooks and turns racism on its head.¹⁸⁵ The audience cheers for this trickster's defiance towards unfair authority.¹⁸⁶

Likewise, the audience often cheers when tricksters battle prudish sobriety. Perhaps lamenting Puritanical tales like the ostracizing of adulteress Hester Prynne in The Scarlet Letter,¹⁸⁷ the audience longs for the likes of Kevin Bacon to come along and teach a Puritanical town to dance in Footloose.¹⁸⁸ The little cookie monster inside each of us cheers at defiance.

Yet, a problem arises when our inner cookie thief transfers our hostility towards unfair authority towards authority sources built to ensure fairness, equality, safety, or even necessary structure.

The film Ferris Bueller's Day Off reveals this problem. Bueller is a classic comedy trickster.¹⁸⁹ As teenagers, perhaps all of us would have loved to have a day off of school to cavort around the city like a celebrity in a sports car.¹⁹⁰ If we ever attended an oppressive school or had an abusive teacher, it may have seemed just and fair that we should do so. Thus, teenagers, and, perhaps even adults, may universally relate to Ferris Bueller and cheer for him as he plays tricks on the system.¹⁹¹ As a teenager, I cheered for Ferris.

However, as a professor, I sometimes feel as though I shot myself in the foot by backing Ferris. I want my students to learn, and, to do so, they have to attend, participate in class, and respect class rules establishing structure. Unfortunately, Ferris made skipping class and disrespecting the teacher and the rules cool. Fortunately, it seems that most of our students distinguish between

181. THE USUAL SUSPECTS, *supra* note 31.

182. *See id.*

183. Beverly Hills Cop (Paramount Pictures, Don Simpson/Jerry Bruckheimer Films 1984).

184. *See id.*

185. *See id.*

186. *See generally* Vogler *supra* note 178, at 79 (mentioning that Murphy plays a trickster in this role).

187. NATHANIEL HAWTHORNE, THE SCARLET LETTER (1850).

188. FOOTLOOSE (Paramount 1984) (dancing and rock music are illegal in this religious town until Bacon's character comes to town).

189. FERRIS BUELLER'S DAY OFF (Paramount Pictures 1986).

190. *Id.*

191. *Id.*

tricking the unfair authority figure and respecting the just authority figure.

Nonetheless, this trope becomes more insidious in the teenage or collegiate trickster movies that appeared frequently during the era of Judge Kavanaugh's coming of age.¹⁹² These movies feature young men, often white and middle to upper class, fighting for their right to party.

These tricksters fool their teachers,¹⁹³ engage in underage drinking,¹⁹⁴ and trick often under-aged girls into sexual encounters that otherwise would be nonconsensual.¹⁹⁵ Some of the more famous party movie tricksters include Ted from *Sixteen Candles*,¹⁹⁶ John from *The Breakfast Club*,¹⁹⁷ and nearly all the characters from *Porky's*,¹⁹⁸ *Animal House*,¹⁹⁹ and *Revenge of the Nerds*.²⁰⁰

Fooling the headmaster may seem like a tolerable joke. Underage drinking may be debatable.

However, these movies and their tricksters turned sexual offenses against women and girls into a funny joke. Perhaps it matters that the women and girls in these movies are often thinly drawn, object characters—the audience sees none of the female trauma after a non-consensual encounter. For instance, in *Porky's*, when young men spy on young women showering, the women laugh them off as “rascals.”²⁰¹ Both *Sixteen Candles* and *Revenge of the Nerds* reinterpret rape. In *Sixteen Candles*, Ted has sex with an inebriated teenage girl who is passing out,²⁰² and in *Revenge of the Nerds*, Lewis takes another man's party costume and tricks his girlfriend into having sex with him.²⁰³ In both movies, the girls fall for their rapists afterward.²⁰⁴ Thus, rape is presented as a funny joke and a means of romancing a teenage or college girl.²⁰⁵

192. Judge Kavanaugh was born February 12, 1965, which would make him a teenager in 1978. He graduated from law school in 1990. CNN Editorial Research, Brett Kavanaugh Fast Facts, CNN (Feb. 7, 2020, 11:55 AM), available at <https://www.cnn.com/2018/07/16/us/brett-kavanaugh-fast-facts/index.html>.

193. THE BREAKFAST CLUB (A&M Films, Channel Productions 1985); SIXTEEN CANDLES (Universal Pictures 1984); PORKY'S (Astral Films, 20th Century Fox 1981); NATIONAL LAMPOON'S ANIMAL HOUSE (Universal Pictures 1978); REVENGE OF THE NERDS (20th Century Fox 1984).

194. See THE BREAKFAST CLUB, *supra* note 194.

195. See THE BREAKFAST CLUB, *supra* note 194; SIXTEEN CANDLES, *supra* note 194; PORKY'S, *supra* note 194; NATIONAL LAMPOON'S ANIMAL HOUSE, *supra* note 194; REVENGE OF THE NERDS, *supra* note 194.

196. SIXTEEN CANDLES, *supra* note 194.

197. THE BREAKFAST CLUB, *supra* note 194.

198. PORKY'S, *supra* note 194.

199. NATIONAL LAMPOON'S ANIMAL HOUSE, *supra* note 194.

200. REVENGE OF THE NERDS, *supra* note 194.

201. PORKY'S, *supra* note 194.

202. SIXTEEN CANDLES, *supra* note 194; Constance Grady, *The Rape Culture of the 1980's Explained by Sixteen Candles*, VOX (2018).

203. Arthur Chu, *Your Princess is in Another Castle: Misogyny, Entitlement, and Nerds*, DAILY BEAST (May 27, 2014); *Revenge of the Nerds* (20th Century Fox 1984).

204. SIXTEEN CANDLES (Universal Pictures 1984); Constance Grady, *supra* note 203; Chu, *supra* note 204; REVENGE OF THE NERDS (20th Century Fox 1984).

205. For a discussion regarding how even judicial opinions reinterpret rape, see generally Andrea McArdle, *Book Review: Judicial Opinions Reimagined, Engendering A Language of*

Readers who have never seen these movies may be appalled. In actuality though, like nearly everyone,²⁰⁶ as a teen I loved Sixteen Candles, The Breakfast Club, and Revenge of the Nerds. Were it not for the sexism and other prejudices in these movies, they all feature well-drawn plots, snappy dialogue, hilarious moments, charismatic actors that can make almost anything funny, well-fleshed main characters, and a lot of cool clothes and music. They fit into and shaped the dominant cultural narrative of the time.

I separated the “jokes” in these movies from the sexual offenses in other stories because the cultural narrative taught me to do so.²⁰⁷ Sure, television and movies taught society to hate rape. However, in popular media rapists were some combination of: 1) strangers,²⁰⁸ 2) suspects, 3) lower-class people,²⁰⁹ 4) uneducated people, and 5) people of color.²¹⁰

Justice, 15 *Legal Communication & Rhetoric*: JALWD 299, 302 (2018) (reviewing Kathryn M. Stanchi, Linda L. Berger, & Bridget J. Crawford, *Feminist Judgments: Rewritten Opinions of the United States Supreme Court* (2016)); Linda L. Berger, Bridget J. Crawford, & Kathryn M. Stanchi, *Using Feminist Theory to Advance Equal Justice Under Law*, 17 *Nev. L.J.* 539, 546 (2017).

206. For a collection major critics reviews, see SIXTEEN CANDLES, ROTTEN TOMATOES, available at https://www.rottentomatoes.com/m/sixteen_candles (last accessed Aug. 10, 2019); THE BREAKFAST CLUB, ROTTEN TOMATOES, available at https://www.rottentomatoes.com/m/breakfast_club (last accessed Aug. 10, 2019); REVENGE OF THE NERDS, ROTTEN TOMATOES, available at https://www.rottentomatoes.com/m/revenge_of_the_nerds (last accessed Aug. 10, 2019).

207. See DeShayla M. Strachan, *The Triple Threat: The Black, Female Attorney*, 11 *S. J. Pol’y & Just.* 112 (2017) (discussing how movies and television shape society’s views so much that some studies show that heavy television watchers are more likely to believe they will be mugged if they visit a big city); Cf. Kim D. Chanbonpin, *Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission*, 45 *Loy. U. Chi. L.J.* 1085, 1090 (2014) (discussing how an audience deferred to narrative that was simply the more dominant narrative); see generally Linda H. Edwards, *Speaking of Stories and Law*, 13 *Legal Comm. & Rhetoric*: JALWD 157, 171 (2016) (discussing how audiences are influenced by stock stories); Professor Jeanne Kaiser & Scott Brown, *When the Story Is Too Good to Be True: A Lawyer’s Role in Resisting the Lure of Narrative*, 37 *W. New Eng. L. Rev.* 233, 241-6 (2015) (explaining how media circulation of stock stories can lead to collective belief in narratives that are actually wholly or partially false); Nancy Levit, *Reshaping the Narrative Debate*, 34 *Seattle U. L. Rev.* 751, 752, 760-1 (2011) (explaining how media stories shape public perception); Linda L. Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: A Rhetorical Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 *S. Cal. Interdisc. L.J.* 259, 262 (2009) (discussing how stock stories shape perception); Jennifer Sheppard, *Once Upon A Time, Happily Ever After, and in A Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 *Willamette L. Rev.* 255, 296 (2009) (explaining how people are influenced by stock stories).

208. Grady, *supra* note 203; cf. Renae Franiuk, Jennifer L. Seefelt, Sandy L. Cephress & Joseph A. Vandello, *Prevalence and Effects of Rape Myths in Print Journalism*, 14 *Violence Against Women* 287, 291 (2008) (indicating that acquaintance rape storylines became more prevalent in the late 80’s and that stranger rapes were reported on more frequently).

209. Cf. Susan Hanley Kosse, *Race, Riches & Reporters-Do Race and Class Impact Media Rape Narratives? An Analysis of the Duke Lacrosse Case*, 31 *S. Ill. U. L.J.* 243, 256 (2007) (finding that victims lower class than the defendant are more frequently victim-blamed); cf. Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for A Judicial Audience*, 57 *U. Kan. L. Rev.* . 631, 655 (2009) (indicating that people evaluate others as having more intelligence and credibility when they wear higher status clothing).

210. Strachan, *supra* note 208, 115, 118-9 (2017); cf. Lucy Jewel, *Neurorhetoric, Race, and*

Many have written about the more frequently portrayed stranger rape narrative.²¹¹ A stranger breaks into a woman's home, or a woman accidentally winds up in the wrong place, such as a dark alley.²¹² Then, the stranger violently attacks and rapes her.²¹³ For example, in the 1980's movie, *Ms. 45*, a masked man in an alley rapes a mute seamstress at gunpoint, and, shortly thereafter, a burglar breaks into her home and rapes her again at gunpoint.²¹⁴

The prevalence of these narratives impacts our legal system. Though even survivors of stranger rape face an uphill battle,²¹⁵ one study has found that stranger rape narratives increase the likelihood that jurors will convict.²¹⁶

the Law: Toxic Neural Pathways and Healing Alternatives, 76 Md. L. Rev. 663, 677 (2017) (explaining how repeat stories and rhetorical terms seal neural pathways and not only lead to prejudiced outcomes but also trigger fear of black faces); Keene, *supra* note 176, at 751, 754-6; Levit, *supra* note 208 (indicating that the media over-represents persons of color as criminals and white women as victims); Andrew E. Taslitz, Rape and the Culture of the Courtroom 19 (Richard Delgado & Jean Stefancic eds. N. Y. Univ. Press 1999); Kosse, *supra* note 210, at 250-254, 279; Robert M. Entman & Kimberly A. Gross, *Race to Judgment: Stereotyping Media and Criminal Defendants*, 71 Law & Contemp. Probs. 9397-108 (2008) (discussing how news media often more frequently reports on persons of color who commit crimes and on white crime victims); Xabier Agirre Aranburu, *Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases*, 35 Law & Soc. Inquiry 855, 862 (2010) (discussing how rape narratives have often been used as propaganda against a particular group, such as Native Americans, the Viet Cong, or German forces in WWI). Persons of color also receive harsher sentences for rape. Martha Chamallas, *Lucky: The Sequel*, 80 Ind. L.J. 441, 454 (2005); Gary D. Lafree, Rape and Criminal Justice 132 (1989). Between 1930-1967, eighty-nine percent of the men executed for rape were black. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581, 600 (1990); Susan Estrich, *Real Rape* 107 (1987).

211. See Iris Halpern, *Rape, Incest, and Harper Lee's to Kill A Mockingbird: On Alabama's Legal Construction of Gender and Sexuality in the Context of Racial Subordination*, 18 COLUM. J. GENDER & L. 743, 806 n. 175 (2009) (discussing the disproportionate attention for stranger rape); Erin Sheley, *A Broken Windows Theory of Sexual Assault Enforcement*, 108 J. CRIM. L. & CRIMINOLOGY 455, 470-1 (2018); Franiuk, *supra* note 209; see generally Sheppard, *supra* note 169, at 188 (discussing stock stories in general and how audiences are quicker to make determinations when supplied with a recognizable stock story).

212. See, e.g., A VERY CAREFUL RAPE, ALFRED HITCHCOCK PRESENTS (1988); THE LADIES CLUB (Heron Communications 1986); EXTREMITIES (Atlantic Releasing 1986); TIGHTROPE (Warner Bros. 1984); SAVAGE STREETS (Ginso Investment Corp. 1984); THE INCUBUS (Kings Road Entertainment 1982);

213. See, e.g., A VERY CAREFUL RAPE, ALFRED HITCHCOCK PRESENTS, *supra* note 213; THE LADIES CLUB *supra* note 213; EXTREMITIES, *supra* note 213; TIGHTROPE, *supra* note 213; SAVAGE STREETS, *supra* note 213; THE INCUBUS, *supra* note 213.

214. MS. 45 (Navaran Films 1981).

215. The "public service" video, *Girls Beware*, manages to shift blame to girls in every instance of crime against girls, Shaggylocks, *Vintage Stranger Danger Film for Girls: "Girls Beware" (1961)*, YOUTUBE (Feb. 26, 2020), available at <https://www.youtube.com/watch?v=qN98Odzbeeo>

216. Sheley, *supra* note 212, at 461; see also Jeffrey J. Pokorak, *Rape As A Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities*, 7 NEV. L.J. 1, 39 (2006) (indicating that prosecutors are more likely to prosecute stranger rape cases); Aviva Orenstein, *No Bad Men!: A Feminist Analysis of Character Evidence in Rape Trials*, 49 HASTINGS L.J. 663, 679 (1998) (indicating that prior romantic involvement with the rapist mitigates the perceived gravity of the offense); cf. Linda L. Berger, *The Lady, or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L.J. 275, 278 (2011) (indicating that providing a handful of details regarding a "stock story" will lead the audience to fill in the blanks on the rest).

Although the majority of rapes are actually acquaintance rapes, these typically go unpunished.²¹⁷

Notwithstanding the stranger rape narrative, popular media often first introduced sexual offenders as suspects or at least villains of some sort. By first introducing the character as a suspect, stories primed audiences to distrust or dislike the character.²¹⁸

From there, popular media played to prejudices and reinforced them by frequently portraying sexual offenders as either lower class, uneducated, or as persons of color and victims as middle to upper class, white, and educated. For example, the 1984 rape revenge movie, *Savage Streets* combines several of these elements.²¹⁹ The audience meets the lower class, black-leather clad gang rapists, one of whom wears a razor blade as an earring.²²⁰ Shortly thereafter, the gang roughs up a “preppie” white male and sexually assaults his blonde, white girlfriend.²²¹ A few scenes later, the gang encounters a young, pale white, blonde, blue-eyed deaf mute girl wearing no make-up and clad in clothes that symbolize innocence—a crisp white shirt, a full, pale pink skirt, and childish bobbie socks.²²² They rape her.²²³

While this film is poorly reviewed pulp, even more critically acclaimed works have borrowed some of these elements. For example, even in the more literary psychological exploration, *Prince of Tides*, the stranger, home invader, and rapist is a black man.²²⁴ News media has even gone so far as to use “brutal beast” language more frequently when referring to minority offenders.²²⁵

In light of these narratives, it is unsurprising that the race of the defendant or survivor strongly increases the likelihood that a defendant will be sentenced to death.²²⁶ In fact, scholar Angela Harris points out that through much of

217. Franiuk, *supra* note 209.

218. Cf. Cathren Page, *Not So Very Bad Beginnings: What Fiction Can Teach Lawyers About Beginning A Persuasive Legal Narrative Before A Court*, 86 Miss. L. Rev. J. 315, 318 (2017) (discussing priming); Lucille A. Jewel, *The Doctrine of Legal Writing-Book Review of Linda H. Edwards's Readings in Persuasion: Briefs That Changed the World*, 1 Savannah L. Rev. 45, 52 (2014) (discussing priming); Steven J. Johansen, *Coming Attractions: An Essay on Movie Trailers & Preliminary Statements*, 10 LEGAL COMM. & RHETORIC: JALWD 41 (2013); Linda Edwards, *Readings in Persuasion: Briefs that Changed the World* 115 (2012) (discussing priming); Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 Or. L. Rev. 305 (2010) (discussing the role of priming in persuasion); Michael J. Higdon, *Something Judicious This Way Comes . . . the Use of Foreshadowing As A Persuasive Device in Judicial Narrative*, 44 U. Rich. L. Rev. J. 1213 (2010) (discussing the role of foreshadowing in persuasion).

219. See *Savage Streets* (Ginso Investment Corp. 1984)

220. *Id.*

221. *Id.*

222. *SAVAGE STREETS* (Ginso Investment Corp. 1984)

223. *SAVAGE STREETS* (Ginso Investment Corp. 1984)

224. PAT CONROY, *PRINCE OF TIDES* (Bantam Books 1986).

225. Hanley Kosse, *supra* note 210, at 256.

226. Pokorak, *supra* note 217, at 38; U.S. Gen. Acct. Off., Report to the Senate and House Committees on the Judiciary, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* (1990), available at <http://archive.gao.gov/t2pbat11/141293.pdf> [hereinafter GAO

American history, legally, rape was non-existent for black women.²²⁷ Though rape permeated the lives of women who were considered property, society employed the legal tool of rape prosecution to protect the white male's property—their women—against black men.²²⁸ In fact, if a black woman fought or testified against rape, white men were likely to lynch her.²²⁹

When the offender has power by virtue of race, class, money, and/or education, accusation becomes harder for the survivor of a criminal offense; a psychological hurdle will always make standing up to the offense exceedingly difficult. However, it is nearly impossible to stand up to someone with more power²³⁰ or someone whom the survivor depends upon in some fashion. Moreover, the narrative overwrites the survivor's perspective replacing a trauma story with a funny comedy.²³¹ Psychology and narrative then bury the trauma deep in the survivor's psyche,²³² so that it manifests as the survivor's psychological and behavioral problems as opposed to the offender's responsibility.

However, the cultural narrative provides society with scapegoats.²³³ Survivors can pour their repressed rage onto strangers,²³⁴ but it is much harder for a survivor to blame the popular classmate she's known since elementary school and considered a friend.

Report] (statement of Lowell Dodge, Director, Admin. of Just. Issues); *see also* Teri A. McMurtry-Chubb, *The Codification of Racism: Blacks, Criminal Sentencing, and the Legacy of Slavery in Georgia*, 31 T. MARSHALL L. REV. 139 (2005) (exhaustively detailing not only the higher incarceration rate of black people but also the historical legal codification of harsher penalties for black persons committing crimes).

cf. Sha-Shana Crichton, *Incorporating Social Justice into the 11 Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 MICH. J. RACE & L. 251, 253 (2019) (indicating how common it is for police to shoot unarmed black men).

227. Harris, *supra* note 211, at 600.

228. *Id.*

229. Teri A. McMurtry-Chubb, *#sayhername #blackwomenslivesmatter: (Fn2) State Violence in Policing the Black Female Body*, 67 MERCER L. REV. 651, 670 (2016)

230. Francine Banner, *Honest Victim Scripting in the Twittersverse*, 22 WM. & MARY J. WOMEN & L. 495, 498 (2016) (indicating that Twitter often shames survivors who accuse the powerful when the story does not fit the stranger rape paradigm); *cf.* Suzanne Rowe, *The Elephant in the Room Responding to Racially Charged Words*, 15 LEGAL COMM. & RHETORIC: JALWD 263 (2018) (illustrating how difficult people find it to even stand up against racially charged words or microaggressions).

231. *Compare* Grady, *supra* note 203 with Cathren Page, *Brett Kavanaugh and Christine Blasey Ford could Both be "Right": A War of Gender Narratives*, Salon.com (2018); <https://www.salon.com/2018/10/03/brett-kavanaugh-and-christine-blasey-ford-could-both-be-right-a-war-of-gender-narratives/>.

232. *See* Page, *Brett Kavanaugh*, *supra* note 232.

233. *See* Hanh Nguyen, *The Sinner Boss Addresses Scapegoating and its Horrifying Implications for the Commune*, INDIE WIRE (Aug. 29, 2018), <https://www.indiewire.com/2018/08/the-sinner-season-2-episode-5-part-5-recap-spoilers-derek-simonds-1201998939/> (discussing the concept of symbolically imbuing a figure with qualities we want to rid ourselves of and then sacrificing that figure).

234. *Cf.* Mello, *supra* note 91, at 917 (discussing placing all society's sins on one individual like Bundy as a catharsis).

Thus, popular classmates, brothers, fathers, spouses, friends, boyfriends, and powerful persons who offend are funny tricksters playing a sexual joke and sticking it to a Puritanical system. The survivor must have misunderstood and must be to blame for the event. If the survivor blames these actual powerful offenders, society will most likely shift that blame back onto the survivor, reinforcing inner blame and shame. That blame-shifting will probably have severe psychological,²³⁵ social,²³⁶ and economic consequences for the survivor.²³⁷

So strangers, suspects, lower-class people, uneducated people, and people of color²³⁸ are offenders. They receive the brunt of all of society's repressed rage and shame.

These dynamics manifest in the degree to which society punished or forgave two of the self-serving unreliable legal narrators in this article. People likely more often vilify Ted Bundy because he fit both the stranger²³⁹ and the suspect category. He was a stranger to his middle-class, white victims. Moreover, the police, the media, and the public first met him as a suspect.²⁴⁰ He likely was also more vulnerable than other criminals and unreliable narrators due to coming

235. Orenstein, *supra* note 217, at 688; Evelyn Mary Aswad, *Torture by Means of Rape*, 84 GEO. L.J. 1913, 1941 (1996).

236. Aswad, *supra* note 236 at 1941. Social exclusion in one's profession or family can have profound economic consequences for some women. Moreover, social isolation and ostracization often predict suicide. Nonetheless, breaking apart the dynamics of offending unreliable narrators may be key to both to healing the survivor's psyche and diminishing the prevalence of offenses. Thus, survivors like Christine Blasey Ford, Susan Estrich, and Anita Hill continue in their fight.

237. Ilene Seidman, Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 SUFFOLK U. L. REV. 467, 473-81 (2005).

238. D. BALDUS, C. PULASKI & G. WOODWORTH, EQUAL JUSTICE AND THE DEATH PENALTY (1990); W. BOWERS, LEGAL HOMICIDE (1984); S. GROSS & R. MAURO, DEATH AND DISCRIMINATION (1989); Baldus, Pulaski & Woodworth, *Arbitrariness and Discrimination in the Administration of the Death Penalty*, 15 STETSON L.REV. 133 (1986); Baldus, Pulaski & Woodworth, *Monitoring and Evaluating Contemporary Death Sentencing Systems: Lessons From Georgia*, 18 U.C. Davis L.Rev. 1375 (1985); Baldus, Pulaski & Woodworth, *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J.CRIM.L. & CRIMINOLOGY 661 (1983); Bowers, *The Pervasiveness of Arbitrariness and Discrimination Under Post-Furman Capital Statutes*, 74 J.CRIM.L. & CRIMINOLOGY 1067 (1983); Gross & Mauro, *Patterns of Death: An Analysis of Racial Disparities in Capital Sentencing*, 37 Stan. L.Rev. 27 (1984); Jacoby & Paternoster, *Sentence Disparity and Jury Packing: Further Challenges to the Death Penalty*, 73 J.Crim. L. & Criminology 379 (1982); Paternoster, *Race of Victim and Location of Crime: The Decision to Seek the Death Penalty in South Carolina*, 74 J.CRIM. L. & CRIMINOLOGY 754 (1983); PATERNOSTER & KAZYAKA, RACIAL CONSIDERATIONS IN CAPITAL PUNISHMENT: THE FAILURE OF EVENHANDED JUSTICE, IN CHALLENGING CAPITAL PUNISHMENT (K. Haas & J. Inciardi eds. 1988); Radelet, *Racial Characteristics and the Imposition of the Death Penalty*, 46 Am. Soc. Rev. 918 (1981); WOLFGANG & RIEDEL, RACIAL DISCRIMINATION, RAPE, AND THE DEATH PENALTY, IN THE DEATH PENALTY IN AMERICA 194 (H. Bedau ed. 1982).

239. Cf. Paul J. Heald, *Medea and the Un-Man: Literary Guidance in the Determination of Heinousness Under Maynard v. Cartwright*, 73 Tex. L. Rev. 571, 594 (1995) (discussing how Bundy fit the archetype of "Un-man," an unfeeling person reduced to his murderous traits).

240. See Michael Mello, *On Metaphors*, *supra* note 91, at 933 (discussing how Bundy had already been publicly connected with sexual murders when he made his first escape); Mello, *Bundy Commentary*, *supra* note 47.

from a lower-class family background. Importantly, his violence was both extreme and showy. Thus, while his narration techniques still worked for some,²⁴¹ fraternity boys showed up for tailgate parties at his execution.²⁴²

In contrast, the public first met Justice Kavanaugh as a nominee for the Supreme Court of the United States, if not as a prosecutor or federal judge.²⁴³ Christine Blasey Ford first met him at a party²⁴⁴ rather than a dark alley. He's white,²⁴⁵ Christian,²⁴⁶ and from the highest economic and educational classes of society.²⁴⁷ Importantly, the sexual offenses women have accused him of all fall within the category of offenses joked about in party comedies.²⁴⁸

Justice Kavanaugh cleverly plugged himself into the plot of these trickster-drinking comedies when he changed the narrative by battling the beer straw man. "I liked beer. I still like beer."²⁴⁹ That's a statement Americans can cheer.

Likely many of his supporters know that "boof" does not mean "fart," and that "the devil's triangle" is not a drinking game.²⁵⁰ Rather, they are elbowing each other and laughing at the clever trickster from all their favorite teenage comedies. After fighting for his right to party²⁵¹ throughout college and high school,²⁵² he's put one over on prudish nuns once more. Like the fraternity boy who fooled the headmaster, Kavanaugh has stuck it to "the establishment,"²⁵³ never mind the fact that some commentators indicate that "the establishment" in

241. According to some sources, individuals who identify as Incels, involuntarily celibate men who exhibit hostility towards woman, view Ted Bundy as a sort of hero. Jessica Wildfire, *Ted Bundy: The First Incel*, PULPMAG (Jan. 25, 2019), <https://medium.com/pulpmag/ted-bundy-the-first-incele-a59000052981>.

242. Michael Mello, *On Metaphors*, *supra* note 91, at 915.

243. Mark Landler and Maggie Haberman, *Brett Kavanaugh Is Trump's Pick for Supreme Court*, NEW YORK TIMES (July 9, 2018), <https://www.nytimes.com/2018/07/09/us/politics/brett-kavanaugh-supreme-court.html>.

244. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

245. Chauncey Devega, *The Brett Kavanaugh case: This is How White Male Privilege is Destroying America*, SALON (Oct. 4, 2018), <https://www.salon.com/2018/10/04/brett-kavanaugh-this-is-how-white-male-privilege-is-destroying-america/4>, 2018).

246. Libby Berry, *Brett Kavanaugh's Religious Credentials are Not Enough for Some Catholics*, BOSTON GLOBE (Oct. 6, 2018), <https://www.bostonglobe.com/news/politics/2018/10/06/brett-kavanaugh-allegations-roil-catholic-faithful-still-grappling-with-clergy-abuse/PoimxWFIPzvwJqGPA5ZGnN/story.html>, 6, 2018).

247. See Landler, *supra* note 244 (stating that Kavanaugh graduated from Yale).

248. Compare TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58; Christine Hauser, *The Women Who Have Accused Brett Kavanaugh*, New York Times (Sept. 26, 2018); *with* THE BREAKFAST CLUB (A&M Films, Channel Productions 1985); SIXTEEN CANDLES (Universal Pictures 1984); PORKY'S (Astral Films, 20th Century Fox 1981); NATIONAL LAMPOON'S ANIMAL HOUSE (Universal Pictures 1978); REVENGE OF THE NERDS (20th Century Fox 1984).

249. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

250. Alex Abad-Santos, *Brett Kavanaugh's Questionable Definitions of "Boof" and "Devil's Triangle" Explained*, VOX (Oct. 3, 2018).

251. A popular song in the eighties had this refrain, Beastie Boys, *Fight for Your Right to Party* (1986).

252. See TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

253. Danielle Kurtzleben, *People Keep Talking About 'The Establishment.' What Is It, Anyway*, NPR (Feb. 11, 2016).

the Senate desired a Kavanaugh appointment.²⁵⁴

C. Narrators and Perspective

Both the trickster tropes and the misdirection are filtered through the narrator's perspective; thus, perhaps unreliable narrators succeed in part because they are narrators.²⁵⁵ Since the narrator is telling the story, the audience receives the story through the narrator's point of view.²⁵⁶ Point of view typically establishes empathy, and effective narrators enjoy several phenomena that allow them to shape the audience's point of view and win their empathy.²⁵⁷ These include narrators' chronology, narrators' air-time, narrators' omissions, narrators' "camera angle," and narrators' phrasing.

1. Chronology

The order in which the audience receives the story shapes their perspective.²⁵⁸ For instance, as discussed above, when a character is first introduced as a suspect, that primes the audience to view the character as such.²⁵⁹ All other events are filtered through that lens. Likewise, the small-scale chronology can shape events as well. We can examine two different such small-scale chronologies in the excerpt below.

Erica entered the room. Fred shoved the papers in his bag and pushed the bag under his chair.

"Hey Fred, I can't find my notebook. Have you seen it?"

254. Ron Elving, *Kavanaugh Pick Shows Trump Bowing Again to The GOP Legal Establishment*, NPR (July 10, 2018).

255. Cf. Karen J. Sneddon, *The Will As Personal Narrative*, 20 ELDER L.J. 355, 366 (2013) (discussing how narrators, particularly first person narrators put audiences in narrator's perspective).

256. Cf. Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 S.D. L. REV. 239, 257 (2012) (discussing how a more intimate point of view can lead jurors to identify with a party); see generally Mary Ann Becker, *What Is Your Favorite Book?: Using Narrative to Teach Theme Development in Persuasive Writing*, 46 GONZ. L. REV. 575, 586 (2011) (discussing how point of view leads an audience to care about the story). For more insights on point of view, see generally Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Legal Rhetoric*, 68 U. KAN. L. REV. 101, 141-50 (2019). See also SOURCES ON POINT OF VIEW IN VISUAL MEDIA: STEVEN AGUILERA, A NEW PERSPECTIVE: PHOTOGRAPHY & FILMMAKING EDITION 3-7, 81-86 (2008); BARRY ANDERSSON, THE DSLR FILMMAKER'S HANDBOOK: REAL-WORLD PRODUCTION TECHNIQUES 114-20 (2d Ed. 2015) (discussing the various camera positions to capture different perspectives); Elspeth Kydd, THE CRITICAL PRACTICE OF FILM: AN INTRODUCTION 119-25 (2011).

257. For a discussion of the role of empathy in judging, see Andrea McArdle, *Using A Narrative Lens to Understand Empathy and How It Matters in Judging*, 9 LEGAL COMM. & RHETORIC: JALWD 173 (2012).

258. Cathren Koehlert-Page, *Come A Little Closer So I Can See You My Pretty: The Use and Limits of Fiction Techniques for Establishing an Empathetic Point of View in Appellate Briefs*, 80 UMKC L. REV. 399, 416 (2011); see also Judith D. Moran, *Families, Law, and Literature: The Story of A Course on Storytelling*, 49 U.S.F. L. Rev. 1, 40 (2015) (discussing how point of view techniques can impact a story); ANNE LAMOTT, BIRD BY BIRD 54-7 (1994) (discussing how plot grows out of character).

259. Cf. Stanchi, *supra* note 219 (discussing the role of priming in persuasion).

Fred pushed the bag further away. “Nope, maybe you should check downstairs.”

Erica glanced around the room. She stopped and stared at the bag. “Do you think maybe you accidentally put it in your bag?”

“No, I just cleaned it out.”

After reading this paragraph, most readers would believe that Fred is hiding something from Erica. [However], in the paragraph below, the chronology is destroyed.

Erica asked about her notebook. Fred said that he had cleaned out his bag and told her to look downstairs. Fred had shoved some papers in his bag and pushed it under his desk when Erica walked in.

The reader likely views this paragraph as insignificant and likely makes no conclusion.²⁶⁰

If the narrator presents chronology from the narrator’s perspective, then that increases the chances of audience forgiveness. This technique applies particularly to legal narratives where facts on the record must be reported as is, but the order in which the legal storyteller tells them can vary.

2. *Air Time*

The amount of time or space on a page devoted to various themes, plot points, and details also shapes an audience’s perspective.²⁶¹ For example, as discussed previously, media often gave more air-time to stranger rape narratives and that shaped the societal point of view.

In *The Catcher in the Rye*, Holden Caulfield gives ample air-time to others’ phoniness. Thus, however much Caulfield lies to others and himself, many readers cannot help but feel that others have let him down and that it is fortunate that he is not more of a liar than he is.

Likewise, Brett Kavanaugh gave air-time to ideas and details that helped his story as well. He seeded the idea that the hearing was vengeance when he discussed old political grievances regarding the Clintons, the Democratic party, and Donald Trump.²⁶² He discussed his academic record, his churchgoing, and his high school sports activities.²⁶³

260. Koehlert-Page, *Come A Little Closer*, *supra* note 275, at 420-23.

261. Cf. LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* 271 (5th ed. 2010) (“Just as listeners remember best the songs that get the most airtime, readers remember best the facts that get the most words. Consequently, favorable facts should be given considerable ‘air time,’ while unfavorable ones should be given little or no ‘play.’”); LAUREL CURRIE OATES, ANNE ENQUIST, AND CONNIE KRONTZ, *JUST BRIEFS* 15 (discussing how details create a more vivid picture); Cathren Koehlert-Page, *A Look Inside the Butler’s Cupboard: How the External World Reveals Internal State of Mind in Legal Narratives*, 69 *N.Y.U. Ann. Surv. Am. L.* 441, 456 (2014);

262. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

263. *Id.*

3. Omissions

Unreliable narrators often exclude plot lines, themes, and details that contradict or otherwise harm their perspective.²⁶⁴ For example, Keir Sarafian reports Gigi's immediate reaction but omits her personal feelings as their interaction continues and ignores the long-term psychological consequences she may have faced later on.²⁶⁵ Likewise, the trickster party comedies referenced in the previous subsection erase all of the survivors' pain and trauma and replace them with romance and comedy.²⁶⁶

Similarly, Brett Kavanaugh erased Christine Blasey Ford. According to his testimony, the gathering where he allegedly sexually assaulted her never even happened—even though his own calendar contradicts this story.²⁶⁷ He stops short of erasing Blasey Ford's trauma entirely,²⁶⁸ instead inserting a stranger as the scapegoat, saying that he was sure “someone” had assaulted her.²⁶⁹ Thus, the omission and denial pushes Ford's trauma into the background. Then rather than leaving the trauma there to haunt the audience, the narrative supplies one of the usual suspects, the stranger, as the perpetrator.²⁷⁰ This suspect likely appeals to audience members with deep frame beliefs favorable to Kavanaugh's story.

4. Camera Angle

In addition to using omissions, unreliable narrators can distort their stories by varying the “camera angle” through which their audience receives the story. The pictures below²⁷¹ illustrate the different perspectives from which an

264. Cf. MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* 158-9 (2006) (discussing how it can be beneficial to distance clients from harmful facts).

265. See LYNCH, *supra* note 27.

266. Hauser, *supra* note 249; with *THE BREAKFAST CLUB* (A&M Films, Channel Productions 1985); *SIXTEEN CANDLES* (Universal Pictures 1984); *PORKY'S* (Astral Films, 20th Century Fox 1981); *NATIONAL LAMPOON'S ANIMAL HOUSE* (Universal Pictures 1978); *REVENGE OF THE NERDS* (20th Century Fox 1984).

267. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

268. Given the recent #metoo movement, denying Ford's claim outright might have been less persuasive at this juncture in history. For more insights on historical timing of arguments see Scott Fraley, *A Primer on Essential Classical Rhetoric for Practicing Attorneys*, 14 *LEGAL COMM. & RHETORIC: JALWD* 99, 107 (2017) (discussing “kairos,” opportune moments for stories); Ruth Anne Robbins, *Three 3ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 *MICH. ST. L. REV.* 1359, 1360 (2015) (discussing kairos); Linda L. Berger, *Creating Kairos at the Supreme Court: Shelby County, Citizens United, Hobby Lobby, and the Judicial Construction of Right Moments*, 16 *J. APP. PRAC. & PROCESS* 147, 148 (2015); see also Mary N. Bowman, *Making and Breaking Connections: Valuable Perspectives on Persuasion Legal Persuasion: A Rhetorical Approach to the Science* Linda L. Berger & Kathryn M. Stanchi (Routledge Publishers 2018), 170 *Pages*, 15 *LEGAL COMM. & RHETORIC: JALWD* 279, 280 (2018) (citing Linda Berger and Kathryn M. Stanchi, *LEGAL PERSUASION: A RHETORICAL APPROACH TO THE SCIENCE* (2018)) (discussing timing).

269. TRANSCRIPT COURTESY OF BLOOMBERG GOVERNMENT, *supra* note 58.

270. See generally Berger, *supra* note 208 (discussing how a short reference to previous, well-known tales can lead audiences to plug the new tale into the old one).

271. Tom Barrance, *Introduction to Shot Size in Filmmaking*, Learn About Film, available at <https://learnaboutfilm.com/film-language/picture/shotsize/> (featuring the above photos); see also Jordan Delk, *How's the View*, W.W.J.D.: What Would Jordan Do?, available at

audience may see a story.



In the final picture below, the audience is in the filmmaker's first-person point of view.



Writer John Gardner explains how writers can create similar varying perspectives, which he labels as degrees of distance. Using these distances, writers can ultimately craft a story that reproduces an experience as opposed to merely describing the experience.²⁷²

<https://jordandelk.wordpress.com/2012/11/08/hows-the-view-2/>

272. See GARDNER, *SUPRA* NOTE 101, AT 111-12 (explaining how the distance the reader feels from the story is similar to wide, medium, and close camera shots); Cathren Koehlert-Page, *Come A Little Closer*, *supra* note 275, at 436; cf. Adam G. Todd, *An Exaggerated Demise: The Endurance of Formalism in Legal Rhetoric in the Face of Neuroscience*, 23 *LEGAL WRITING: J.*

When a narrator effectively reproduces an experience through the first-person point of view, the audience will see the story through the narrator's eyes and be more likely to empathize. For example, in the Printz Award winner, *A Step From Heaven*, writer An Na places readers inside Young Ju as her father is beating her mother:

. . . “Nine one one.”

I'm shaking so badly I have to hold the receiver with both hands. The sound of the lady's voice on the other end asking “How may I help you?” almost makes me hang up. What am I doing? Do I really believe the police can help? That they care about me? They would not help people like us. I start to breathe too quickly and my vision blurs. For [sic] second I forget I am still holding the phone against my ear.

“Hello?” the voice on the other end asks.

Do it, I tell myself. Speak. Save her. I can't. I start to cry.

“Hello? Hello?”

What am I doing? I look at the phone in my hand and let it drop to the ground. I hug my knees and rock, back and forth, back and forth. Halmoni's voice returns, Only God can. Only God can.

The sound of breaking and Uhmma's deep wail haunt the room. I pound my fist into my thigh and bite my lower lip. But I am not a child anymore. I do not have time to wait for God. There is only me. Stop it. Stop it. This is enough.

I pick up the phone and raise it to my ear. “Please,” I whisper and take a gulp of air. “Send help.”

“Tell me what is going on, Miss.”

“My father is killing my mother.”²⁷³

In the above passage, readers live as Young Ju as each millisecond passes; they experience her physical sensations, internal thoughts, and confusion.²⁷⁴

5. *Phrasing*

Finally, unreliable narrators can choose – and vary – their wording and phrasing to tell the story they want to tell. A simple shift to passive voice can change perspective.²⁷⁵ For instance, consider the following two paragraphs.

The first example uses action verbs in active voice with short, punchy sentences:

LEGAL WRITING INST. 84, 109 (2019); Susan M. Chesler & Karen J. Sneddon, *Once Upon A Transaction: Narrative Techniques and Drafting*, 68 Okla. L. Rev. 263, 284 (2016); Moran, *supra* note 259, at 5; Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 YALE J.L. & HUMAN. 1, 32 (2014).

273. AN NA, *A STEP FROM HEAVEN*, at 140-1 (2001).

274. Koehlert-Page, *Come A Little Closer*, *supra* note 275, at 413-14.

275. Koehlert-Page, *Come A Little Closer*, *supra* note 275, at 428; *cf.* STEPHEN KING, *ON WRITING* 103-07, 122-28, 133, 178 (Pocket Books 2000).

When Sheriff Grantham arrived for work, Magwood got out of his car and confronted Sheriff Grantham. Magwood shot the sheriff three times, once each in the head, face, and chest. He then fled. As Magwood sped away. . .²⁷⁶

It is as though readers are standing in the parking lot watching the crime.²⁷⁷

In contrast, the following example from the opposing brief paints a more muted picture:

Petitioner was released from jail at the end of his sentence. On March 1, 1979, as petitioner's hallucinations grew more vivid, petitioner approached Sheriff Grantham in front of the jail. After exchanging greetings and in plain view of the sheriff's deputies, petitioner shot and killed the sheriff. Petitioner then exchanged fire with a deputy, got into his car, and drove home. Upon arriving there, petitioner sat unarmed on his front porch until arresting officers arrived.²⁷⁸

The attorney's word choices slow the scene down.²⁷⁹ "[W]as released," "exchanging greetings," and "arriving" are all slow molasses word choices.²⁸⁰ "While the attorney does use some action verbs, the more benign 'approached' replaces 'confronted' and 'drove home' replaces 'sped.'"²⁸¹ The attorney replaces "shot. . . in the head" with "exchanged fire."²⁸²

VI. DEFEATING THE SELF-SERVING UNRELIABLE NARRATOR

Given how much unreliable narrators control their narratives, truth-telling opponents face an uphill battle in debunking their claims. But the cases of Bundy and Traficant reveal that it is possible. Truth-telling opponents can: 1) tell the true story using the same point-of-view techniques as the unreliable narrator;²⁸³ 2) plug the true story into a relatable trope just as the unreliable narrator has done; and 3) meta-communicate (*i.e.*, communicate about the communication),²⁸⁴ calling out the unreliable narrator's misdirection techniques.

276. See Brief for Respondents, *Magwood v. Patterson*, 130 S. Ct. 2788 (2010) (No. 09-158), 2010 WL 565216.

277. Cathren Koehlert-Page, *Come A Little Closer*, *supra* note 275, at 430.

278. Brief for Petitioner at 4, *Magwood v. Patterson*, 130 S. Ct. 2788 (2010) (No. 09-158), 2010 WL 37747 (case referred to as *Magwood v. Culliver* in brief).

279. Cathren Koehlert-Page, *Come A Little Closer*, *supra* note 275, at 430.

280. *Id.*

281. *Id.*

282. *Id.*

283. See generally Linda H. Edwards, *supra* note 208 (discussing the role of outsider stories in law); Levit, *supra* note 208 (indicating that as much as the powerful have used stories to shape our world, the oppressed have succeeded when they too have told stories); Brian J. Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 17, 21 (2008) (also discussing outsider stories); Margaret Moore Jackson, *Confronting "Unwelcomeness" from the Outside: Using Case Theory to Tell the Stories of Sexually-Harassed Women*, 14 CARDOZO J.L. & GENDER 61, 77 (2007) (discussing counter-stories to aid sexually harassed women).

284. Colwyn Trevarthen, *Contracts of Mutual Understanding: Negotiating Meanings and Moral Sentiments with Infants*, 6 J. CONTEMP. LEGAL ISSUES 373, 388 (1995).

Still, audience members' pre-held beliefs may shape their decisions regarding which story to believe. As linguistics scholar George Lakoff discusses, people tend to make such decisions based on whom they personally identify with regarding deeper core values.²⁸⁵

A. *Point of View Techniques and Relatable Tropes*

To defeat an unreliable narrator, truth-telling opponents can use the same point-of-view techniques as the unreliable narrator and plug themselves into a trope or stock story just as the unreliable narrator has done. Since priming plays a role in perspective, opponents will be more successful if they can get their important points in front of the audience first.²⁸⁶ However, in the legal system, procedural rules often govern who gets to tell their story first. Moreover, the unreliable narrator can also misdirect with smoke and mirrors to deflect attention away from the opponent's story.

B. *Meta-communicating*

When unreliable narrators misdirect, truth-telling opponents may be able to clear the smoke and shatter the mirrors by meta-communicating.²⁸⁷ Meta-communication is communicating about the communication.²⁸⁸ Truth-telling opponents can negate the narrator's misdirection by calling attention to it.

The prosecution in Traficant's second trial employed meta-communication in its closing statement to call the jury's attention to Traficant's misdirection:

Congressman Traficant spent an hour and a half, and he talked about everything under the sun except one thing, the actual evidence and documents and testimony in this case. . . .

You know, you go to a carnival and they have something called cotton candy where they take a little sugar and spin it around real fast, and suddenly it becomes a big mound of fluff that looks like something. You buy it and take a bite. The minute you take a bite, it disappears because there is nothing there. That's what that testimony was. . . .

Rather than address the massive amount of physical actual evidence that there is in this case, Congressman Traficant wants you to shift your focus to all of these side issues he's talked about. . . .

Cleverly analogizing to carnival workers spinning cotton candy, the prosecution pointed out that cotton candy purveyors and Traficant alike had spun an illusion, filling the air with tales that seemed like something but were actually nothing.

285. See also LAKOFF, *supra* note 171, at 1-29 (discussing the two overarching frames, the strict father worldview versus the nurturant parent worldview).

286. Cf. Stanchi, *supra* note 214 (discussing the role of priming in persuasion).

287. Cathren Page, *An "Astonishingly Excellent" Solution to Super-Fake Narratives*, 58 WASHBURN L.J. 673, 714 (2019); cf. Ellen Ostrow, *Effectively Managing Criticism*, 74 Wis Law 23, 23-24 (2001); Hon. Dorothy Harbeck (NAIJ) & Lisa e. Bernstein, Ph.D., *Telling the Story: Theme and Rhetoric in Asylum Cases*, 46 RUTGERS L. REC. 196, 207 (2019).

288. Trevarthen, *supra* note 285, at 388.

The prosecution successfully labeled Trafficant's misdirection technique and gave the jury a sensory metaphor to help them understand that technique. That the metaphor involved a carnival likely also evoked subconscious suggestions regarding carnival tricksters.²⁸⁹

CONCLUSION

I remember the first time I learned of unreliable narrators. I was in an old library in Oxford, full of ancient books, some of them embossed in gold and locked behind a protective case, others so ancient and yellowed it is a wonder they had not turned into piles of dust. I fell in love with that library, and it is part of the enchantment that led me to obtain my doctorate from Oxford. At Oxford, I learned to beware of scholars who do not believe my explanation about unreliable narrators. Those people are likely unreliable narrators themselves, trying to guard the legal academy against literary scholars like me. I mean, come on, are they going to come after me every time I cite to literature instead of case law? This conspiracy against creative writers in the legal academy outrages me. But perhaps I can help change it. Perhaps people will trust me since I am the most studious of scholars who is in the library all day, every day even through meals—reading twenty books a day.

Are you tempted by any part of the last paragraph? I used all of the unreliable narrator techniques described in this article: babbling, including concrete detail, shifting blame, appealing to prejudice, battling strawmen, expressing indignation, and making an over-the-top claim. I have never visited Oxford, and I have an MFA, not a PhD. I spend plenty of time outside of libraries, and I have never read twenty books in a single day.

Truth-telling opponents usually will not be armed with a confession like the one I just provided, but they will have some sort of crumbling facts that they can pair with meta-communication. While truth-telling opponents must use effective techniques to place the audience in their point of view, in the battle of competing viewpoints, they must also label untruthful opponents' unreliable tactics. That is likely one of the best chances opponents have of undoing the self-serving unreliable narrator's credibility.

289. See generally Linda L. Berger, *Metaphor and Analogy: The Sun and Moon of Legal Persuasion*, 22 *J.L. & Pol'y* 147, 152-4 (2013) (discussing how metaphors can open minds to new connections); David T. Ritchie, *The Centrality of Metaphor in Legal Analysis and Communication: An Introduction*, 58 *MERCER L. REV.* 839 (2007) (discussing the power of metaphor).