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Cathren Page, *Unbelievable: How Narrative Can Help Vulnerable Narrators Overcome Perceived Unreliability in the Legal System*, 27 *Legal Writing* (2023).

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UNBELIEVABLE: HOW NARRATIVE CAN HELP VULNERABLE NARRATORS OVERCOME PERCEIVED UNRELIABILITY IN THE LEGAL SYSTEM

Cathren Page*

I. Introduction	36
II. Vulnerable Narrators Defined	42
III. Common Traits of Vulnerable Narrators.....	46
IV. Primary Examples Used in This Article.....	48
V. Vulnerable Narrators in Fiction and in Law.....	58
A. They have a greater underlying truth.	58
B. The dominant culture has implicit biases about a group to which the vulnerable narrator belongs and, thus, may perceive them as lacking credibility simply because of whom they are.	61
C. The dominant culture deems the vulnerable narrator’s body language, tone of voice, or manner of speaking as unreliable.	64

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D.	The vulnerable narrator’s story has gaps, inaccuracies, or contradictions.....	69
E.	Miscommunication, misunderstanding, or mistranslation connected to the vulnerable narrator may lead the audience astray.	77
F.	The vulnerable narrator’s perception or understanding may be altered in some way.	78
G.	Conditions may push the vulnerable narrator into passivity, retraction, confession, or retreating.	80
H.	The vulnerable narrator’s story or behavior patterns may contrast with pre-set expectations society has regarding people in the vulnerable narrator’s situation.	83
VI.	Narrative Solutions for Vulnerable Narrators.....	90
A.	Priming the Audience	90
B.	Reframing Body Language, Tone, Gaps, Inaccuracies, Altered Perceptions, Unassertiveness, and Odd Behavior	94
C.	Including Concrete Details	99
D.	Metacommunicating	101
VII.	Societal Solutions for Vulnerable Narrators.....	104
A.	Training.....	104
1.	Public Education	105
2.	Training Key Players and Decision-Makers	106
B.	Forming Allies	108
C.	Persisting.....	109
VIII.	Conclusion.....	109

I. Introduction

Trigger warning: This article contains traumatic information which could trigger a flight, fight, freeze, or fawn response in some people. It provides details of rape, sexual abuse, hate crimes, forced abortion, and torture targeting people for their race or political affiliation.

Eighteen-year-old Marie slept alone in her apartment on a Monday night when a stranger broke in, held a kitchen knife to her, tied her up with shoelaces, gagged her with underwear, blindfolded her, and raped her.¹ Marie was the first of the six women whom Marc Patrick O’Leary raped.² Before police apprehended O’Leary, Marie reported the rape, underwent a sexual assault nurse exam, and was grilled by the police.³ She then faced charges for false reporting.⁴ Her closest family connections questioned her motives and outed her previous trauma history to the police.⁵ The police and her former foster parents may have doubted Marie’s story in part because she had been abused before.⁶

Under threat, Marie recanted her story.⁷ She accepted a plea deal for false reporting, paid a \$500 fine, and performed community service.⁸ Her psychological support group turned on her, and her best friend from high school created a webpage calling her a liar.⁹

Subsequently, detectives identified O’Leary as the serial rapist who had been raping women in Washington and Colorado.¹⁰ They discovered a photo portraying a terrified Marie bound and gagged with her I.D. displayed on her chest.¹¹

The police department settled a lawsuit with Marie, and she received \$150,000.¹²

Sadly, one of the more unique aspects of her story is that her rapist was convicted and that the people who doubted her story ultimately acknowledged that they were wrong. Often society refuses to believe

¹ Ken Armstrong & T. Christian Miller, *An Unbelievable Story of Rape*, THE MARSHALL PROJECT (Mar. 12, 2009), <https://www.themarshallproject.org/2015/12/16/an-unbelievable-story-of-rape> [<https://perma.cc/V6SP-G7QV>].

² *See id.*; *see also* Complaint at 5, *D.M. v. O’Leary*, No. 13-00971, 2013 WL 3322001 (W.D. Wash. June 7, 2013).

³ *See* Armstrong & Miller, *supra* note 1.

⁴ *See id.*

⁵ *See id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See id.*

¹⁰ *See id.*

¹¹ *Id.*

¹² *See id.*

vulnerable narrators like Marie¹³ until multiple survivors come forward with their accounts.¹⁴ Indeed, throughout the history of trauma study, people have debated trauma survivor's credibility.¹⁵

Like Marie, some people face greater vulnerability to the perception that they are unreliable. Trauma, mental health challenges, youth, cognitive challenges, or cultural misunderstandings can collide with bias, discrimination, pre-set societal narratives and scripts, and button-pushing. When these

¹³ Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 29 (2017); Lisa R. Avalos, *Policing Rape Complainants: When Reporting Rape Becomes a Crime*, 20 J. GENDER RACE & JUST. 459, 464 (2017); Kimberly A. Lonsway & Joanne Archambault, *The "Justice Gap" for Sexual Assault Cases: Future Directions for Research and Reform*, 18 VIOLENCE AGAINST WOMEN 145 (2012); *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases: Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 111th Cong. 55 (Sept. 14, 2010) (statement of Carol E. Tracy, Executive Director, Women's Law Project); Rosemary C. Hunter, *Gender in Evidence: Masculine Norms vs. Feminist Reforms*, 19 HARV. WOMEN'S L.J. 127, 155 (1996).

¹⁴ See generally Megan Twohey, James C. McKinley Jr., Al Baker & William K. Rashbaum, *For Weinstein, a Brush with the Police, Then No Charges*, N.Y. TIMES (October 15, 2017), <https://www.nytimes.com/2017/10/15/nyregion/harvey-weinstein-new-york-sex-assault-investigation.html> [<https://perma.cc/RRD2-UBKS>]; Doha Madani, *60 Women Accused Bill Cosby, His Conviction Had Been Considered a Big Win for #MeToo*, NBC NEWS (July 1, 2021), <https://www.nbcnews.com/news/us-news/60-women-accused-bill-cosby-his-conviction-had-been-considered-n1272864> [<https://perma.cc/B3P3-GDW4>] (explaining that complaints from sixty women, some dating back as early as the 1960's, were made by the time Cosby was convicted); *UC to Pay \$243.6M in Sexual Misconduct Suits vs. Former UCLA Gynecologist*, SPECTRUM NEWS (Feb. 8, 2022), <https://spectrumnews1.com/ca/la-west/public-safety/2022/02/08/ucla-settles-gynecologist-abuse-suit-for-more-than-100m#:~:text=A%20federal%20judge%20in%20July,assaulted%20as%20patients%20of%20Heaps> [<https://perma.cc/VJ9D-NC5Y>] (explaining that more than 500 women filed lawsuits accusing Dr. James Heaps of sexual abuse).

¹⁵ JUDITH HERMAN, M.D., *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* 8–9 (1992).

factors collide, often society sees only its own pre-written script,¹⁶ as opposed to the vulnerable narrator's deeper, underlying truth. Traumatized clients or clients from outside cultures may display body language that society perceives as untruthful, may struggle to articulate events, or may become fearful and retract their stories. Meanwhile, society may hold implicit or explicit biases that leads investigators and fact-finders to discount credibility based on race, age, mental health status, foreign accent, or nationality. These phenomena render the clients vulnerable to perceived unreliability.

While vulnerable narrators could appear in any kind of case, they are likely to appear in asylum cases, abuse cases, guardianship cases, family cases, and criminal cases. These cases often involve some combination of the trauma that hurts credibility, race issues rendering the client vulnerable to bias, cultural differences that can lead to misinterpretation or mistranslation, and mental or cognitive state issues that evoke bias as well as causing confusion.

Vulnerable narrators might not ever file a legal claim or make a report at all.¹⁷ If they do, they often face doubt from investigators, witnesses, and fact-finders. This article proposes narrative solutions for these vulnerable narrators to help them overcome perceived unreliability.

Vulnerable narrators lack power. The more one group holds and abuses power over other groups, the more it can suppress other groups' narratives. In the most extreme societies, the group in power preserves its power by controlling fact-finding sources such as the

¹⁶ Cf. Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1, 3 (1984) (discussing how people interpret the world through stock stories); 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, 188 (2012) (discussing how humans view the world through stock stories); RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* 32 (2013); Cathren Page, *Astonishingly 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, 81 (2019).

¹⁷ See Jennifer C. Schingle, *A Disparate Impact on Female Veterans: The Unintended Consequences of Veterans Affairs Regulations Governing the Burdens of Proof for Post-Traumatic Stress Disorder Due to Combat and Military Sexual Trauma*, 16 WM. & MARY J. WOMEN & L. 155, 169 (2009).

press¹⁸ and the legal system;¹⁹ the group then uses those institutions to suppress truths that threaten the powerful.²⁰ For example, in the United States prior to the revolution, the law prohibited enslaved people from testifying against any Christian, white person.²¹ However, even as a society becomes somewhat more but not fully egalitarian, vulnerable persons' truths often still get lost and misunderstood as detailed in this article.

When a system suppresses fact-finding, creative fiction sometimes posits what could have been. Fiction can prove dangerous, marvelous, or liberating. Well-crafted fiction can seep into our cultural subconscious and program our beliefs regardless of whether the story's proponent presents it as fact or tale.²² Thus, well-crafted fiction often serves as post-truthism's vehicle; in a post-truth paradigm, fiction suppresses the truths that hurt the powerful and spreads the lies that preserve power.²³ However, fiction can also serve

¹⁸ See Simeon Djankov, Caralee Mcliesh, Tatianna Nenova & Andre Shleifer, *Who Owns the Media?*, 46 J.L. & ECON. 341, 365–73 (2003) (analyzing state-owned versus privately owned media and determining that societies with state-owned media exhibit greater traits of autocracy).

¹⁹ See Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545, 549–55 (2018) (describing how some autocrats come to power through elections but then capture different legal branches with party loyalists to maintain power).

²⁰ See Djankov, Mcliesh, Nenova & Shleifer, *supra* note 18; Scheppele, *supra* note 19.

²¹ See Thomas D. Morris, *Slaves and the Rules of Evidence in Criminal Trials - Symposium on the Law of Slavery: Criminal and Civil Law of Slavery*, 68 CHI.-KENT L. REV. 1209, 1210 n.6 (1992) (citing THE LAWS OF THE PROVINCE OF MARYLAND 199–200 (John D. Cushing & Michael Glazier eds., 1978) (repealed 1847)).

²² Ken Mulligan & Phillip Habel, *The Implications of Fictional Media for Political Beliefs*, Southern Illinois Carbondale Working Papers, Paper 8 1–6 (2012), https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1009&context=ps_wp [<https://perma.cc/WB7L-BJ4B>].

²³ See Karen Burgess, *Truth or Consequence: Protecting Justice and the Rule of Law Against a Crisis of Deception*, Dean's Address, International Academy of Trial Lawyers (2022), <https://vimeo.com/699864433> (detailing how post-truthism works); Cathren Page, *An "Astonishingly Excellent" Solution to Super-Fake Narratives*, 58 WASHBURN L.J. 673 (2019); Page, *supra* note 16.

as one of truth's most powerful allies.²⁴ Some paradigms may suppress or hinder fact-finding, whereas others may lack the features to unearth buried truths. In these paradigms, fiction may uncover thematic truths and real patterns before fact-finding systems uncover them. Thus, fiction can teach us to ask questions, investigate patterns, and even improve our fact-finding so that we may one day uncover vulnerable persons' lost truths.

The vulnerable narrator pattern has surfaced frequently in fiction and provided a model for championing vulnerable narrators' deeper underlying truths.²⁵ Though labeling the pattern with other names, literary criticism has long identified this pattern.²⁶ This article uses vulnerable narrator fiction as a map for advocates and also examines non-fiction legal narratives where advocates actually succeeded in applying these techniques.

Until we identify truths, we remain unable to solve society's problems and remain locked in unproductive scapegoating. By making vulnerable narrators' truths more accessible, we create a more just and functioning society for all.

This article ultimately shows how advocates can champion vulnerable narrators' truths. First, advocates must prime the audience by educating the audience about the ways the vulnerability manifests; this process helps to allay credibility questions. Second, advocates must reframe seemingly untrustworthy behavior by showing how the behavior is consistent with someone in the vulnerable narrator's situation. Third, advocates must create what fiction writers call verisimilitude—a sense of reality—by including concrete details that logically fit together in the legal narrative. Finally, advocates must label the tactics commonly used to discredit vulnerable narrators so that the audience can see those tactics for what they are.

²⁴ See Page, *supra* note 16.

²⁵ See Staff Writer, *What Is a Naive Narrator in Literature*, REFERENCE (March 25, 2020), <https://www.reference.com/world-view/naive-narrator-literature-1b8a5700baec188a> [<https://perma.cc/WB6J-6MT5>]; *The 9 Types of Unreliable Narrator*, WRITERS WRITE (Feb. 6, 2015), <https://www.writerswrite.co.za/nine-types-of-unreliable-narrator/> [<https://perma.cc/JU97-W58Z>].

²⁶ See, e.g., Staff Writer, *supra* note 25.

Part II of this article defines vulnerable narrators in fiction and law. Part III lists the traits of vulnerable narrators. Part IV briefly summarizes the fiction and legal stories used as the primary examples in this article. Part V examines vulnerable narrators in fiction and law. Part VI explores narrative solutions, and Part VII explores societal solutions. Part VIII concludes this article.

II. Vulnerable Narrators Defined

Literary criticism has unfairly categorized narrators like this as a type of “unreliable narrator.”²⁷ Within that label, literary criticism has subcategorized narrators like Marie as either “naïve narrators” or “crazy narrators.”²⁸

However, these terms’ insulting natures further exacerbate the credibility dilemma and stigma vulnerable narrators face. Since literary criticism can serve as a gatekeeper for the stories that shape our own cultural narrative, insulting categorizations might have contributed to the cultural narrative that hurts vulnerable narrators’ credibility.

Thus, this article substitutes the somewhat broader term of “vulnerable narrators”—people whose stories lack societal credibility despite their stories’ underlying truth. While vulnerable narrators may sometimes have gaps or inaccuracies in their narrative, they nonetheless have a deeper underlying truth, often one that would support a legal claim were it believed.

In both fiction and law, vulnerable narrators are often children, trauma survivors, elderly persons, discrimination survivors, mentally ill persons, persons with intellectual disabilities, oppressed minorities, persons from outsider groups or cultures, and more. In law, these narrators may frequently appear in domestic violence cases, child abuse or neglect cases, criminal prosecutions, asylum cases, elder abuse cases, discrimination or harassment cases, cases involving sexual misconduct, and more.

²⁷ WILLIAM HARMON, *A HANDBOOK TO LITERATURE* 492 (2012).

²⁸ Cathren Page, *An Unusual Suspect? Unreliable Narrators in Fiction and Law*, 9 *BERKELEY J. ENT. & SPORTS L.* 1, 3 (2020); Omri Ben-Zvi & Eden Sarid, *Legal Scholarship as Spectacular Failure*, 30 *YALE J.L. & HUMANITIES* 1, 13 (2018).

Society may disbelieve vulnerable narrators for a variety of reasons. In fact, predators may target victims whom society is less likely to believe.²⁹ Society then disbelieves these survivors for reasons such as implicit bias,³⁰ body language,³¹ manner of speaking,³² gaps or inaccuracies in the story,³³ passivity,³⁴ and disconnection between the narrators' stories and the audience's pre-programmed stock structure.³⁵ First, the societal narrative may have programmed previous implicit biases against these narrators simply based on whom the narrators are, such as women, children, or persons of color.³⁶

Second, the dominant culture may have perceived the vulnerable narrator's body language, word choice, or manner of speaking as lacking credibility.³⁷ That may be so for various reasons. For instance, sometimes the vulnerable narrator's culture of origin uses different body language, such as averting the eyes,³⁸ or the vulnerable narrator may stutter due to a stuttering condition, trauma history,³⁹ or the like.

²⁹ Katie Van Syckle, *The Tiny Police Department in Southern Oregon That Plans to End Campus Rape*, THE CUT (Nov. 9, 2014), <https://www.thecut.com/2014/11/can-this-police-department-help-end-campus-rape.html> [<https://perma.cc/R5W8-2QV5>].

³⁰ See Avalos, *supra* note 13, at 464; Hon. Bernice B. Donald, *Implicit Bias: The Science, Influence, and Impact on Justice*, 22 SEDONA CONF. J. 583 (Jan. 1, 2021).

³¹ Nicholas Narbutas, *The Ring of Truth: Demeanor and Due Process in U.S. Asylum Law*, 50 COLUM. HUM. RTS. L. REV. 348, 382–83 (2018).

³² See Avalos, *supra* note 13; See Narbutas, *supra* note 31, at 370–71; U.S. DEP'T OF JUST. C.R. DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 46–47 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf [<https://perma.cc/Zz2LT-Q6SU>].

³³ See Avalos, *supra* note 13; See Annie S. Lemoine, L.M.S.W., *Good Storytelling: A Trauma-Informed Approach to the Preparation of Domestic Violence-Related Asylum Claims*, 19 LOY. J. PUB. INT. L 27, 37–38 (2017); U.S. DEP'T OF JUST. C.R. DIV., *supra* note 32.

³⁴ Narbutas, *supra* note 31, at 374–75.

³⁵ See *id.*

³⁶ See Donald, *supra* note 30.

³⁷ See Narbutas, *supra* note 31, at 354, 376, 377.

³⁸ *Id.*

³⁹ See *id.* at 380.

Third, the vulnerable narrator's story may have gaps or inaccuracies stemming from physical or mental condition. Trauma,⁴⁰ injury,⁴¹ mental illness,⁴² intellectual disability,⁴³ or similar issues may interfere with the vulnerable narrator's memory. These same conditions may also alter the vulnerable narrator's original perception of the event.⁴⁴ Moreover, intimidation or even torture may cause the vulnerable narrator to shut down or change the story.⁴⁵ Finally, shame may cause the vulnerable narrator to hide portions of the story.⁴⁶

Fourth, certain conditions may push the vulnerable narrator into passivity, retraction, or retreating.⁴⁷ Due to shame,⁴⁸ trauma,

⁴⁰ Judith L. Alpert, Laura S. Brown & Christine A. Courtois, *Symptomatic Clients and Memories of Childhood Abuse: What the Trauma and Child Sexual Abuse Literature Tells Us*, 4 PSYCH., PUB. POL. & L. 941 (1998).

⁴¹ See *id.* at 945 (explaining the effect that physical and nonphysical injury can have on memory).

⁴² See generally Thomas L. Hafemeister, Sharon G. Garner & Veronica E. Bath, *Forging Links and Renewing Ties: Applying the Principles of Restorative and Procedural Justice to Better Respond to Criminal Offenders with a Mental Disorder*, 60 BUFF. L. REV. 147 (2012) (generally discussing society's inability to believe the truthfulness of individuals with mental illness).

⁴³ See Alpert, Brown & Courtois, *supra* note 40, at 959.

⁴⁴ See generally Deborah Davis & William C. Follette, *Foibles of Witness Memory for Traumatic/High Profile Events*, 66 J. AIR L. & COM. 1421 (2001) (generally discussing the effect traumatic events have on a witness's memory).

⁴⁵ For an example of confessions coerced by police torture, see Kim D. Chanbonpin, *Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission*, 45 LOY. U. CHI. L.J. 1085, 1088 (2014).

⁴⁶ Laura Niemi & Liane Young, *Who Blames the Victim?*, N. Y. TIMES, (June 24, 2016), <https://www.nytimes.com/2016/06/26/opinion/sunday/who-blames-the-victim.html> [<https://perma.cc/2B3V-F9QK>].

⁴⁷ See Anoosha Rouhanian, *A Call for Change: The Detrimental Impacts of Crawford v. Washington on Domestic Violence and Rape Prosecutions*, 37 B.C.J.L. & SOC. JUST. 1, 21 (2017).

⁴⁸ Kassandra Altantulkhuur, *A Second Rape: Testing Victim Credibility Through Prior False Accusations*, 2018 U. ILL. L. REV. 1091, 1094 (2018); Brett Erin Applegate, *Prior (False?) Accusations: Reforming Rape Shields to Reflect the Dynamics of Sexual Assault*, 17 LEWIS & CLARK L. REV. 899, 899, 911 (2013); Joanne Belknap, *Rape: Too Hard to Report and Too Easy*

intimidation,⁴⁹ cultural programming, lack of resources,⁵⁰ or similar issues, the vulnerable narrator may back down or even recant the story.⁵¹ In fact, at times, legitimate survival needs may necessitate dodging the conflict and backing down by retracting or changing their story.⁵²

Finally, the audience may have pre-programmed beliefs regarding how people will behave in any given situation, and the vulnerable narrator's behavior may mismatch the audience's expectation.⁵³ The audience's beliefs may spring from either their own experience or from societal narratives regarding how people do or should behave under various circumstances.⁵⁴ Professor Noah Benjamin Novogrodsky describes the legal version of these narratives as

to Discredit Victims, 16 VIOLENCE AGAINST WOMEN 1335, 1339 (2010) (finding that victims may “recant when they encounter skepticism, disbelief, or blame or because they find their disclosure makes matters worse or more dangerous for them”).

⁴⁹ See Avalos, *supra* note 13; HUMAN RIGHTS WATCH, CAPITOL OFFENSE: POLICE MISHANDLING OF SEXUAL ASSAULT CASES IN THE DISTRICT OF COLUMBIA 15–22 (2013), http://www.hrw.org/sites/default/files/reports/us0113ForUpload_2.pdf [<https://perma.cc/7KT9-X3P3>]; U.S. DEP'T OF JUST. C.R. DIV., *supra* note 32.

⁵⁰ See Rouhanian, *supra* note 47, at 21; Mark K. Cavins, J.D. Smith & Lori Smith, L.C.S.W., *Keeping Kids on Your Side: An Innovative Approach to Child Sex Abuse Victims*, 37 PROSECUTOR, Mar./Apr. 2003, at 20–21.

⁵¹ See *State v. D.D.*, 288 So. 3d. 808 (La. Ct. App. 2019) (discussing the frequency of victim recantation in child sexual abuse cases); *State v. Krum*, 903 P.2d 596, 602 (Ariz. 1995) (discussing courts' “historic suspicion” of recantation by victim in sexual abuse cases).

⁵² See Cavins & Smith, *supra* note 50; *Jones v. State*, 674 S.E.2d 130, 133 (Ga. Ct. App. 2009) (discussing admissibility of officer testimony concerning a child's reluctance to report abuse because of dependency on the defendant); *State v. McIntire*, No. H–13–018, slip op. ¶¶ 11–21 (Ohio Ct. App. 2015) (discussing how delayed reporting of sexual abuse by victim is “not uncommon”); Rouhanian, *supra* note 47, at 21.

⁵³ See Lopez, *supra* note 16; Sheppard, *supra* note 16, at 188 (discussing how humans view the world through stock stories); ROBBINS, JOHANSON & CHESTEK, *supra* note 16, at 31; Page, *supra* note 16, at 81.

⁵⁴ Cf. Noah Benjamin Novogrodsky, *Judging Stories*, 18 LEWIS & CLARK L. REV. 37 (2014).

“‘master stories,’ legally-supported narratives that are intimately connected to national myths and historical experience.”⁵⁵

III. Common Traits of Vulnerable Narrators

Vulnerable narrators share common traits, many of which cause untrained audiences to unfairly discount the vulnerable narrator’s credibility. While not every unreliable narrator will share all these traits, their greater underlying truth defines them as a group whom audiences have unfairly perceived as unreliable. Their traits are as follows:

- A. They have a greater underlying truth;
- B. The dominant culture may have implicit biases about a group to which the vulnerable narrator belongs;
- C. The vulnerable narrator’s story or behavior patterns may contrast with pre-set expectations society has regarding people in the vulnerable narrator’s situation.
- D. The dominant culture may deem the vulnerable narrator’s body language, tone of voice, or manner of speaking as unreliable;
- E. Miscommunication, misunderstanding, or mistranslation connected to the vulnerable narrator may lead the audience astray;
- F. The vulnerable narrator’s story may have gaps, inaccuracies, or contradictions;
- G. The vulnerable narrator’s perception or understanding may be altered in some way; and
- H. Conditions may push the vulnerable narrator into passivity, retraction, or retreating.

Both trauma and cultural dominance can play heavy roles in the audience’s mistaken impression of vulnerable narrators. This article refers to trauma in the same way a licensed psychologist might. “Trauma” means an event that a person perceives as life-threatening at the time;⁵⁶ note, for the event to psychologically impact the

⁵⁵ *Id.* at 41.

⁵⁶ BESSEL A. VAN DER KOLK, M.D., *THE BODY KEEPS SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* 63, 156 (2015); *see also* Stuart L. Lustig,

perceiver, it must only be perceived as life threatening.⁵⁷ For instance, a small child could perceive a parent's screams and insults as a life threatening attack and suffer from either post-traumatic stress or full blown post-traumatic stress disorder.⁵⁸ Post-traumatic stress changes the brain in a variety of ways that can cause a variety of symptoms, such as insomnia or startle reactions.⁵⁹ This article explores these reactions more in Section V, which provides more in-depth examples of the traits above.

While trauma plays a role in the vulnerable narrator's reactions, cultural dominance often plays a role in how an audience misinterprets or unfairly distrusts the vulnerable narrator. This article uses "dominant culture" to refer to the cultural group "whose values, language, and ways of behaving are imposed on a subordinate culture or cultures through economic or political power,"⁶⁰ or through social forces. The dominant culture may be the majority or may simply be the group that holds the majority of power. Religious, ethnic, political, or racial groups or the group with a dominant national origin can be a dominant culture within a society. Metrics such as pay scales, positions of power, statistics regarding dominant narratives, elections, statistics regarding abuse, and statistics regarding policing and sentencing may all indicate when one culture dominates. However, sometimes a culture may dominate so much over others that it has successfully suppressed even the gathering of such information.

M.D., M.P.H., *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 HASTINGS INT'L & COMP. L. REV. 725 (2008).

⁵⁷ Christina Graffagna, *Trauma and the Adolescent Brain*, 33 DCBA BRIEF 16 (2021).

⁵⁸ Cf. The National Child Traumatic Stress Network, Justice Consortium Attorney & Workgroup Subcommittee, *The Impact of Trauma on the Attorney-Client Relationship*, 36 CHILD. L. PRAC. 109, 111 (2017) (explaining that yelling at a child can trigger a trauma response); interview with Dr. Patrick Gannon, Ph.D. (on file with author); see also VAN DER KOLK, *supra* note 56, at 85 (explaining that yelling can compound the problem).

⁵⁹ VAN DER KOLK, *supra* note 56, at 156.

⁶⁰ *Dominant Culture*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095725838> [<https://perma.cc/F6EF-D4DK>] (last visited Dec. 23, 2022).

IV. Primary Examples Used in This Article

Vulnerable narrators are most typically inaccurate in either of the two following manners: 1) they paint inaccurately unflattering portrayals of themselves, either by accident or due to unreasonably negative self-perception;⁶¹ or 2) they are inaccurate owing to confusion or misunderstanding.⁶² These narrators often are either children, people with disabilities that affect their perception in some way, people with temporary perception incapacities,⁶³ or people with language or cultural barriers that inhibit understanding.⁶⁴ The vulnerable narrators primarily used as examples in this article are summarized below for context. Readers, be forewarned that this article contains spoilers.

Note that this article uses literary present tense to discuss events in novels and other fictionalized stories and past tense to discuss real life narratives.⁶⁵

⁶¹ Page, *supra* note 28, at 4.

⁶² *Id.*

⁶³ See, e.g., ADAM J. THAXTON, *SPIDER AND TURTLE* (2017); 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/> [<https://perma.cc/35U4-BDCZ>] (last visited Dec. 22, 2022); EMMA DONOGHUE, *ROOM* (2010); see also E. Ce Miller, *9 Unreliable Narrators Who Make Us Love Uncertainty*, BUSTLE (July 9, 2018), <https://www.bustle.com/p/9-unreliable-narrators-in-fiction-who-make-us-love-uncertainty-9693471> [<https://perma.cc/WGA3-N8AJ>]; but see Eiza Tahir, *Jack, the Not So Unreliable Narrator*, ENGL 201.08: THE STORIES WE TELL, <http://english20108.ucalgaryblogs.ca/2016/11/03/jack-the-not-so-unreliable-narrator/> (last visited Dec. 22, 2022).

⁶⁴ See Ben-Zvi & Sarid, *supra* note 28, at 13–16 (discussing unreliable narrators who are incapacitated in some way); cf. HARMON, *supra* note 27, 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).

⁶⁵ See *How (and Why) Do I Write in Literary Present Tense?*, VANDERBILT UNIV., <https://www.vanderbilt.edu/writing/resources/handouts/how-and-why-do-i-write-in-literary-present-tense/#:~:text=When%20discussing%20events%20in%20a,gift%20she%2>

A. Fiction Examples

Vulnerable narrator Fern Castle from The Good Sister at first appears to be an incapable woman with traits consistent with the autism spectrum.⁶⁶ Initially, Fern's sister, Rose, implies that when they were children, Fern may have murdered or accidentally killed their friend, Billy.⁶⁷ Fern also believes herself to be the wrongdoer.⁶⁸ She also believes Rose when Rose insists that Fern said she would feed Rose's dog while Rose was out of town.⁶⁹ The dog nearly died.⁷⁰ Initially, readers may distrust Fern due to her own self-doubt, her misunderstandings regarding social cues and situations, and her accounts that conflict with Rose's.⁷¹ However, ultimately, readers discover that Rose has lied to them and to Fern, both to get Fern to act as a surrogate and to cover up the homicides that Rose committed.⁷²

Like Fern, Lakshmi from Sold believes various people who lie to her.⁷³ She believes she is going to work as a maid when her step-father sells her into sexual-abuse slavery.⁷⁴ She understands little that happens around her, never having been out of her village in Nepal.⁷⁵ She has never viewed television nor had a snow cone.⁷⁶ On the way to India, she sees villagers beating a young girl who tried to leave her old husband.⁷⁷ She is confused when she first arrives at Happiness House brothel and is shocked when she learns what they expect her to do.⁷⁸ Her captor punishes her into submission.⁷⁹ Her fellow captives tell her

o has%20ever%20received [https://perma.cc/MML8-GKYW] (last visited Jan. 18, 2023).

⁶⁶ SALLY HEPWORTH, THE GOOD SISTER (Kindle Ed. 2020).

⁶⁷ *Id.* at 2–3.

⁶⁸ *Id.* at 16.

⁶⁹ *Id.* at 57–58.

⁷⁰ *Id.* at 59–63.

⁷¹ *See generally id.* at 4–7.

⁷² *Id.* at 302–06.

⁷³ PATRICIA MCCORMICK, SOLD (2006).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

that Americans will try to trick her to leave but that it's a trap.⁸⁰ One of her fellow captives does return home only to be outcast again.⁸¹ While others in Lakshmi's society may believe she's a willing participant, readers trust her story in part because of how it reveals her naivete.⁸²

Lakshmi provides an instructive model in that readers likely empathize with her despite the vulnerability that hurts her credibility within her own society. Because Lakshmi sometimes misunderstands events around her, literary criticism would likely categorize her as a "naïve narrator," a subcategory that literary criticism typically deems to belong to the larger category of "unreliable narrators." Moreover, it's true that some aspects of Lakshmi's story are unreliable, and within the world of the story, those aspects hurt her. For instance, Lakshmi wants to tell a village boy that she will be returning with a cash dowry and fails to understand that she is actually going to be sexually abused.⁸³ However, because Lakshmi has good intentions and a greater underlying truth, this article categorizes her as a vulnerable narrator. Because readers likely trust her greater underlying truth, Lakshmi's story as a whole provides an example of effective persuasive storytelling by a vulnerable narrator.

Likewise, readers trust Daunis Firekeeper in Firekeeper's Daughter in part because her story reveals her naivete. When Daunis's story opens, she's graduating and leaving for college soon.⁸⁴ She walks between two cultures, her mother's small-town, ruling class white world, and her father's Ojibwe culture.⁸⁵ Often people inside both cultures distrust Daunis, though she has more access to both circles than someone from outside.⁸⁶

Daunis's blind spots center around the people nearest to her. The novel starts like an intersectional young adult romance between mixed race Daunis and the cute new kid in school, Jamie, a Cherokee boy who grew up outside the tribe.⁸⁷ Daunis is frustrated with her best

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 36, 103

⁸⁴ ANGELINE BOULEY, *FIREKEEPER'S DAUGHTER* (2021).

⁸⁵ *See id.* at 6, 9-10, 16, 177.

⁸⁶ *Id.* at 13, 30, 78, 84, 102, 177, 218, 273, 376, 436.

⁸⁷ *Id.* at 21-23, 25, 51.

friend's ex-boyfriend, Travis, the sweet class clown who took a wrong turn.⁸⁸ Likewise, she's annoyed with her half-brother, Levi, who supports her but seems to devalue other young women.⁸⁹ Similarly, she's disappointed with her late uncle who fell off the wagon and overdosed.⁹⁰

Through the course of the novel, Daunis and readers both learn different truths. Class clown Travis has a more serious drug problem.⁹¹ He murders Lily, Daunis's best friend, and then kills himself in front of Daunis.⁹² Daunis's brother, Levi, shares responsibility for Travis's downfall since Levi gave him the drugs and had Travis take blame for Levi's mistake.⁹³ However, Daunis learns that her late uncle was actually a confidential informant who was murdered.⁹⁴ Finally, she learns that her new crush Jamie is an undercover BIA agent.⁹⁵ Eventually, as the crime investigation escalates, one of the white hockey fathers rapes Daunis.⁹⁶ Since Daunis initially provides incomplete or incorrect information about Travis, Jamie, Levi, and her uncle, traditional literary criticism would probably categorize her in the "naïve" subcategory or unreliable narrators. But like Lakshmi, Daunis has an underlying truth, and this article would categorize her as "vulnerable" instead.

Since readers learn this information at the same time as Daunis, they believe her story despite her vulnerabilities as a narrator.⁹⁷ People in town may cast her in certain roles—either as "one of the good Indians," "not really an Indian," or "a questionable person" due to her heritage.⁹⁸ Likewise, law enforcement initially considered her a person of interest in their drug ring investigation.⁹⁹ Moreover, the drug-dealing hockey team views her as a "slut" as opposed to a rape

⁸⁸ *Id.* at 26–27.

⁸⁹ *Id.* at 20, 82, 84–85.

⁹⁰ *Id.* at 108.

⁹¹ *Id.* at 70.

⁹² *Id.* at 1, 85–87.

⁹³ *Id.* at 106, 403, 432, 437, 445

⁹⁴ *Id.* at 109, 111.

⁹⁵ *Id.* at 102–04.

⁹⁶ *Id.* at 370, 429–30, 433, 473.

⁹⁷ *See id.*

⁹⁸ *Cf. id.* at 13, 30, 78, 84, 102, 177, 218, 273, 376, 436 (indicating complicated racial dynamics).

⁹⁹ *Id.* at 109.

survivor.¹⁰⁰ Yet the story holds lessons for advocates representing vulnerable narrators in or out of court because readers likely view Daunis differently.¹⁰¹

Vulnerable narrators like Fern, Daunis, and Lakshmi appear in legal narratives as well.¹⁰² Trauma survivors,¹⁰³ clients with psychological or cognitive disabilities, clients with cultural or language barriers,¹⁰⁴ 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.

B. Legal Examples

Marie's audience for the story in the introduction initially unfairly perceived her unfavorably. Marie provides a real-life legal example that later also became fictionalized in the television series, Unbelievable. Before the real Marie ever opened her mouth to report her story, Marie suffered from vulnerability because people had abused her in the past.¹⁰⁵ Her former foster mother provided officers with her abuse history, and both detectives and Marie's former foster parents distrusted her in part simply because she had been abused

¹⁰⁰ *Id.* at 370, 429–30, 433, 473.

¹⁰¹ *See id.*

¹⁰² 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).

¹⁰³ *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) (discussing the skepticism of the justice system toward trauma survivors as a “self-fulfilling phenomenon”).

¹⁰⁴ *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 asylum seekers may be wrongfully perceived as less credible when testifying about their story); Ilene Durst, *Lost in Translation: Why Due Process Demands Deference to the Refugee's Narrative*, 53 RUTGERS L. REV. 127, 160–68 (2000) (discussing factors that cause judges to become skeptical of asylum narratives).

¹⁰⁵ *See* Armstrong & Miller, *supra* note 1.

before.¹⁰⁶ Thus, some people face credibility hurdles before they even begin to tell their stories.

Marie's initial audience also had pre-set expectations for how someone behaves after a rape.¹⁰⁷ When Marie rolled around on the grass and seemed hyperactive, her foster mother thought that her behavior did not fit.¹⁰⁸ She thought Marie's tone was wrong.¹⁰⁹ She also thought it was odd that Marie wanted to buy the same pattern of bedding that Marie had before.¹¹⁰ Thus, one of her foster mothers told the detectives about her doubts.¹¹¹ Then when detectives grilled Marie and threatened her, she recanted her claim.¹¹²

Like Marie, the 6,000 survivors in a settlement against UCLA provide a further example of vulnerable narrators.¹¹³ According to the class action lawsuit allegations, between 1983 and 2018, UCLA gynecologist James Heaps groped women, used an ultrasound probe to simulate sex, or made improper comments during examinations.¹¹⁴ The number of survivors alone suggests that these women faced challenges in getting heard.¹¹⁵ Like Marie's rapist O'Leary, according to the allegations, Heaps also evaded liability long enough to abuse 6,000 women. At least one plaintiff, Jane Doe 2, stated in her complaint that UCLA kept Heaps employed at a salary of \$1,182,265 even after: (1) a California Medical Board investigation involving sexual misconduct during a patient examination; and (2) a posting on

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Judge Approves \$73M Payout to 6,000 Women Who Accused UCLA Gynecologist of Sex Abuse*, KTLA5 NEWS, (July 12, 2021), <https://ktla.com/news/local-news/judge-approves-73m-payout-to-6000-women-who-accused-ucla-gynecologist-of-sex-abuse/> [<https://perma.cc/RK5A-QAJF>] [hereinafter *Judge Approves \$73M Payout*].

¹¹⁴ *See id.*

¹¹⁵ *See generally id.*

the website Yelp, which gathers public reviews, claiming that Heaps sexually harassed and molested a UCLA student.¹¹⁶

One of those 6,000 women was Ellen Cater. Cater's account is as follows. Heaps told her that she had a genetic disorder that would cause fatal cancer unless he treated her.¹¹⁷ He inflicted pain on her while probing her genitals, examined her without gloves, and made sexual comments.¹¹⁸ A female chaperone remained present and created a sense of legitimacy.¹¹⁹ For eight years, she saw him every three months.¹²⁰ Thus, in part, Cater was vulnerable in that she remained unaware that the traumatic exams were improper at all. Various persons complained about Heaps over the years, and staff knew of problems with him.¹²¹ Yet the vulnerable patients went unheard long enough for Heaps to allegedly abuse 6,000 patients.¹²² Ultimately, Cater learned that the exams were unnecessary and that the diagnosis was false.¹²³ She filed suit.¹²⁴ Her attorneys overcame some key vulnerabilities in her narrative: 1) the fact that she waited to file suit; and 2) the fact that she was unaware that exams that hurt her physically and mentally were abusive and illegal.¹²⁵ Eventually, UCLA settled a claim regarding Heaps with 6,000 plaintiffs for 73 million dollars.¹²⁶

Like the plaintiffs in the Heaps case, political asylum applicants may also face vulnerabilities that prolong or prevent justice. These asylum suits often involve a different kind of trauma. For example, Dieu D. Bokole Umba fled his homeland, the Dominican Republic of

¹¹⁶ Complaint, Doe 2 v. Regents of the Univ. of Cal., Nos. 19-20759, 19-20594, 2019 WL 13118025 (Cal. Super. June 14, 2019).

¹¹⁷ Rose Minutaglio, *My Gynecologist Told Me I Had Cancer. He Lied*, ELLE (March 10, 2020), <https://www.elle.com/culture/a31226465/ucla-james-heaps-gyno/> [https://perma.cc/4F77-GE5E].

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Complaint, Doe 2 v. Regents of the Univ. of Cal., Nos. 19-20759, 19-20594, 2019 WL 13118025 (Cal. Super. June 14, 2019).

¹²² See *Judge Approves \$73M Payout*, *supra* note 113.

¹²³ Minutaglio, *supra* note 117.

¹²⁴ *Id.*

¹²⁵ Complaint, Doe 2 v. Regents of the Univ. of Cal., Nos. 19-20759, 19-20594, 2019 WL 13118025 (Cal. Super. June 14, 2019).

¹²⁶ See *Judge Approves \$73M Payout*, *supra* note 113.

Congo, in response to torture.¹²⁷ Umba participated in a political opposition party, the Union for Democracy and Social Progress.¹²⁸

When Umba participated in a protest over the president's lawbreaking, guards killed some protestors and arrested others.¹²⁹ Guards beat him with the backs of their guns, stepped on him, and then arrested him.¹³⁰ They deprived Umba of food and water and held him in a crowded, windowless cell for five days.¹³¹ The cell was so packed he was unable to even sit or move.¹³² Once a day, the guards removed him to beat him.¹³³

On his fifth day, a family acquaintance, a guard, helped him to escape.¹³⁴ When Umba arrived at his cousin's house, his injuries forced him to crawl rather than walk.¹³⁵ So that Umba could avoid detection, a friend performed surgery on him at his cousin's house.¹³⁶

Authorities later arrested him a second time.¹³⁷ He again witnessed the opposition killing his friends and torturing fellow prisoners.¹³⁸ They tortured him again as well.¹³⁹ The same guard warned him that he would die or remain imprisoned forever if he did not flee the country, and he helped Umba to escape again.¹⁴⁰ He fled to Brazil and then on to Costa Rica where he encountered Banduka Hermance, a woman he had previously been involved with.¹⁴¹ The two continued on to the United States border.¹⁴²

¹²⁷ Umba v. Garland, No. 19-9513, 2021 WL 3414104, at *1 (10th Cir. Aug. 5, 2021).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at *2.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

The immigration judge denied Umba's petition for asylum.¹⁴³ Language barriers and cultural misunderstandings seemed to have caused confusion.¹⁴⁴ The judge pointed to inconsistencies regarding his personal relationships with his significant other, Hermance, and with his sister.¹⁴⁵ For instance, Umba used a word that can mean "wife," "woman", or "girlfriend" to refer to Hermance, and the judge thought that Umba had misrepresented his relationship with Hermance.¹⁴⁶ Fortunately for Mr. Umba, the court of appeals remanded his case for further proceedings.¹⁴⁷

Cultural misunderstandings seem to have also played a role in the case of asylum applicant Jin Yun Xiao.¹⁴⁸ A Chinese citizen, Xiao underwent legally required gynecological exams beginning at age eighteen.¹⁴⁹ The government forced sterilization on one of her relatives, and another relative had to hide to have children.¹⁵⁰ Xiao became depressed, and a friend brought her to an underground church with rotating meeting locations.¹⁵¹ She eventually led a Bible study group and got baptized.¹⁵² The next year, the government came to the church and arrested her husband and several other church members.¹⁵³ The government interrogated Xiao's husband about his religious activities and beat him.¹⁵⁴ Six years later, the government arrested Xiao for her religious practices.¹⁵⁵ In detention, authorities slapped her, harassed her, and deprived her of food.¹⁵⁶ Wanting more children and fearing reprisal, she left for the United States and applied for asylum.¹⁵⁷ However, the immigration judge doubted her

¹⁴³ *Id.* at *1.

¹⁴⁴ *Id.* at *7.

¹⁴⁵ *Id.* at *3.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at *1.

¹⁴⁸ See *Jin Yun Xiao v. Att'y Gen. of U.S.*, 230 F. App'x 139 (3d Cir. 2007).

¹⁴⁹ *Id.* at 140.

¹⁵⁰ *Id.* at 140–41.

¹⁵¹ *Id.* at 141.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

credibility.¹⁵⁸ Some Asian cultures consider eye contact with authorities to be disrespectful.¹⁵⁹ Xiao did not make eye contact, and the immigration judge believed that meant she was being evasive and disbelieved that eye contact was an issue in Chinese culture.¹⁶⁰ Like the court in *Umba*, the court of appeals in *Xiao* reversed the immigration judge's finding.¹⁶¹

The outcome also ultimately changed in Mr. Eddie Joe Lloyd's case when DNA evidence exonerated him from a murder conviction.¹⁶² The Black, schizophrenic Mr. Lloyd believed that he had special crime-solving powers.¹⁶³ After someone murdered a young girl known as "MJ," Mr. Lloyd contacted the police offering to help solve the crime.¹⁶⁴ He later said that he heard "someone at a party store" mentioning a green bottle found at the scene of the crime.¹⁶⁵ This detail had not been released to the public, and the police focused on Mr. Lloyd as a suspect.¹⁶⁶ The police preyed on Lloyd's mental vulnerability, fed him details, and told him that if he confessed, they could "smoke out the real killer."¹⁶⁷ Mr. Lloyd confessed and was convicted.¹⁶⁸ One of his lawyers later said he was guilty and should die.¹⁶⁹ Thus, potential bias against Mr. Lloyd as a Black schizophrenic, Mr. Lloyd's confused belief about his crime solving abilities, and Mr. Lloyd's naivete about confessing all rendered his narrative vulnerable. After Lloyd served seventeen years in prison, DNA evidence exonerated him.¹⁷⁰

¹⁵⁸ *Id.* at 142.

¹⁵⁹ *Id.* at 147.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 140.

¹⁶² *Eddie Joe Lloyd: Time Served: 17 Years*, INNOCENCE PROJECT, <https://innocenceproject.org/cases/eddie-joe-lloyd/> [<https://perma.cc/8BF5-KUC5>] (last visited Dec. 16, 2022).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Brandon L. Garrett, *False Confessions*, LITIGATION, Summer 2011, at 54–55; Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1085 (2010).

¹⁶⁶ *Eddie Joe Lloyd: Time Served: 17 Years*, *supra* note 162.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

V. Vulnerable Narrators in Fiction and in Law

These vulnerable narrators often share the features described in greater detail below. According to this article's definition of vulnerable narrators, each has a greater underlying truth. Some may face unfair bias based on simply whom they are, such as a Black person or an abuse survivor. Due to cultural differences, disabilities, insecurity, or trauma, some may have body language, tone of voice, or a manner of speaking that the dominant culture incorrectly believes is unreliable. Due to memory gaps, confused perception, language barriers, difficulty communicating, or fear about revealing certain details, their stories may have gaps or contradictions. Moreover, miscommunication, misunderstanding, or mistranslation connected to the vulnerable narrator may lead the audience astray. Additionally, vulnerable narrators may struggle to report events because some of them may have an altered perception or understanding. Being in such a vulnerable position, some of them may remain passive, confess, recant, or retract, often under pressure or force, despite their truths. Finally, society may discount the vulnerable narrator's story because the story or the narrator's behavior fails to meet society's preset expectations for people in the vulnerable narrator's situation. Other than the first, any one of these conditions can harm the audience's perception of the vulnerable narrator's credibility; one or more of them taken together pose a high credibility hurdle to surmount.

A. They have a greater underlying truth.

Vulnerable narrators typically have a greater underlying truth, one that would likely support a legal claim in the real-life narratives. For example, fictional Marie from *Unbelievable* has some gaps and inaccuracies in her story and even changed her story when confronted.¹⁷¹ However, her greater underlying truth was that she was actually raped.¹⁷² So while some aspects of her story may be incomplete or inaccurate, the evidence ultimately supported one truth—she was raped.¹⁷³

¹⁷¹ See Armstrong & Miller, *supra* note 1.

¹⁷² *Id.*

¹⁷³ *Id.*

Similarly, in *The Good Sister*, Fern's greater truth is that she was capable of living independently and is innocent of murder.¹⁷⁴ Fern at first believes herself to be both a murderess and a dog neglecter.¹⁷⁵ Her story does have gaps, and she even lies to her boyfriend.¹⁷⁶ However, the greater truth is that her sister manipulated her, hid information from her, and actually murdered their mother.¹⁷⁷

Just as Fern has a greater truth, Daunis, in *Firekeeper's Daughter*, has a greater truth that she was an ordinary, studious achiever caught in the misfortune of bad circumstances. Daunis's story begins much like an intersectional young adult romance as she and her potential crush navigate varying degrees of discrimination within their mixed race community.¹⁷⁸ Other communities or characters in her story may be quick to label Daunis as one thing or another: "one of the good Indians," "a slut," "not a real Indian," or "a suspect."¹⁷⁹ While Daunis does hide some facts from others and even lies to protect herself and the investigation, her ultimate truth is that she is an ordinary, smart kid caught in an extraordinarily bad situation.¹⁸⁰

Just as Daunis was caught in bad circumstances, Lakshmi is also caught in a terrible situation. Her greater truth is that her captor, Mumtaz, forcibly sex trafficks her.¹⁸¹ Though she willingly leaves with her traffickers, she believes she is going to work as a ladies' maid.¹⁸² Although she meets her first offer to escape with silence, readers already know that she feared a trick.¹⁸³

In the real world, vulnerable narrators often have the same credibility issues accompanied by a greater truth. For instance, Mr. Umba's asylum story had gaps and inconsistencies regarding matters relating to his relationship with Hermance.¹⁸⁴ Nonetheless, Mr. Umba's greater underlying truth was that the opposition party had

¹⁷⁴ See HEPWORTH, *supra* note 66.

¹⁷⁵ *Id.* at 57–63, 140–43.

¹⁷⁶ *Id.* at 202.

¹⁷⁷ *Id.* at 302–06.

¹⁷⁸ BOULEY, *supra* note 84, at 20–26.

¹⁷⁹ *Id.* at 15, 109, 253, 430.

¹⁸⁰ *Id.*

¹⁸¹ MCCORMICK, *supra* note 73.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *3–6 (10th Cir. Aug. 5, 2021).

tortured him for his political activity; he likely faced death for the same if he returned to the Republic of the Congo.¹⁸⁵ So despite the gaps in Umba's and Hermance's knowledge regarding each other's experiences and the handful of discrepancies, relevant facts were: 1) the details of Umba's political activities, 2) the torture he endured, and 3) the threats against him.¹⁸⁶ Thus, like the other vulnerable narrators, despite credibility hurdles, Mr. Umba had a greater underlying truth that would support his claim.

Similar to the basis for Mr. Umba's truth, the most legally relevant fact in Eddie Joe Lloyd's case provided a greater underlying truth that supported his claim of innocence. His knowledge of the green bottle and his false confession were inconsistent facts.¹⁸⁷ However, ultimately, just as Marie's photograph proved her case, the DNA on the green bottle proved Lloyd's case.¹⁸⁸ It showed that someone else had murdered MJ; that proof supported Lloyd's greater underlying truth.¹⁸⁹

Like Lloyd and Umba, the real Marie presented some inconsistencies in her story; yet a greater underlying truth also supported Marie's claim. A stranger, Marc Patrick O'Leary, broke into Marie's home, tied her up, and raped her.¹⁹⁰ Her reports regarding whether her hands were still tied later when she called her friend were inconsistent.¹⁹¹ While investigators allowed this discrepancy to sway them, ultimately, her truth was that she was raped.¹⁹² Her inconsistency was consistent with trauma and with interrogative police questioning. The remaining evidence supported her ultimate truth.

¹⁸⁵ *See id.* at *1–9.

¹⁸⁶ *See id.* at *7–9.

¹⁸⁷ *Eddie Joe Lloyd: Time Served: 17 Years*, *supra* note 162; *supra* note 165.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *See Armstrong & Miller*, *supra* note 1.

¹⁹¹ *Id.*

¹⁹² *Id.*

B. The dominant culture has implicit biases about a group to which the vulnerable narrator belongs and, thus, may perceive them as lacking credibility simply because of whom they are.

Despite having an important underlying truth to tell, vulnerable narrators hit roadblocks when they try to get heard. Implicit bias often creates one such roadblock.

The audience may be biased against the credibility of various vulnerable narrators. For instance, they may expect that a child, an elderly person, or a trauma survivor might get something wrong.¹⁹³ The societal narrative may have conditioned even the well-meaning audience member to hold subconscious implicit biases against women,¹⁹⁴ people of another culture or religion, or people of another race.¹⁹⁵ These biases may sometimes mean that the audience perceives them as less credible, rendering their narrative vulnerable.

In fact, societies often so distrust women that one study shows that on average women receive a medical diagnosis four years later than men;¹⁹⁶ this notion suggests society might not even trust women

¹⁹³ See Lemoine, *supra* note 34; Priscilla Vargas Wrosch, *What More Can Congress Do About the Elder Abuse Epidemic? A Proposal for National Movement*, 23 TEMP. POL. & CIV. RTS. L. REV. 1, 8 (2013); John E. B. Myers, *New Era of Skepticism Regarding Children's Credibility*, 1 PSYCH. PUB. POL'Y & L. 387 (1995).

¹⁹⁴ See Avalos, *supra* note 13.

¹⁹⁵ Cf. Pamela A. Wilkins, *Confronting the Invisible Witness: The Use of Narrative to Neutralize Capital Jurors' Implicit Racial Biases*, 115 W. VA. L. REV. 305, 324 (2012).

¹⁹⁶ Mary Crossley, *Infected Judgement: Legal Responses to Physician Bias*, 48 VILL. L. REV. 195 (2003) (discussing sex-based bias in prescribed activity restrictions and cardiac care); *Women Are Diagnosed Years Later Than Men for Same Diseases, Study Finds*, MSNBC NEWS (March 25, 2019), <https://www.nbcnews.com/health/health-news/women-are-diagnosed-years-later-men-same-diseases-study-finds-n987216>

[<https://perma.cc/M49R-BHH2>] (explaining that, on average, women receive cancer diagnoses 2.5 years later than men and 4.5 years than men on metabolic disease diagnoses).

to report what they themselves are experiencing in their own bodies.¹⁹⁷

Similar evidence shows societal distrust of people of color. For instance, Black women are likely to receive a breast cancer diagnosis two months later than white women.¹⁹⁸ Moreover, one study indicates Black children are 5.1 times more likely to get misdiagnosed with conduct disorder before receiving an autism spectrum diagnosis.¹⁹⁹ Thus, again, society may distrust Black people to accurately report what is happening in their own bodies or with their own families; that renders the perceived credibility of their narratives vulnerable.

Similar biases manifested in both the fictionalized and actual versions of Marie's case; investigators and even Marie's foster family members held implicit biases that hurt Marie's case.²⁰⁰ Marie's previous abuse history led them to believe that she herself was a less credible person.²⁰¹ Her former foster mother Peggy called the police and told them, "that [Marie] had a past history of trying to get attention and [Peggy] was questioning whether the 'rape' had occurred."²⁰²

Bias can also play a role in discounting narratives from people of color. Discrimination protects itself by denying that discrimination exists at all,²⁰³ and people may be quick to assume that a person from

¹⁹⁷ See Jeannie Suk, *The Trajectory of Trauma: Bodies and Minds of Abortion Discourse*, 110 COLUM. L. REV. 1193 (2010) (addressing the discourse around women's relations to their own reproductive bodies).

¹⁹⁸ Prethibha George, PhD, Sheenu Chandwani, PhD, Molly Gabel, MD, Christine B. Ambrosone, PhD, George Rhoads, MD, MPH, Elisa V. Bandera, MD, PhD & Kitaw Demissie, MD, PhD, *Diagnosis and Surgical Delays in African American and White Women with Early-Stage Breast Cancer*, 24 J. WOMEN'S HEALTH, March 1, 2015, at 3.

¹⁹⁹ Casey Rentz, *Black and Latino Children Are Often Overlooked When It Comes to Autism*, NPR (March 19, 2018), <https://www.sideeffectspublicmedia.org/community-health/2018-03-19/black-and-latino-children-are-often-overlooked-when-it-comes-to-autism> [<https://perma.cc/6TSH-JMY5>].

²⁰⁰ See Armstrong & Miller, *supra* note 1.

²⁰¹ *See id.*

²⁰² *See id.*

²⁰³ See Jacqueline Yi, Yara Mekawi, Helen A. Nelville, Nathan R. Todd & Yara Mekawi, *Ignoring Race and Denying Racism: A Meta-Analysis of the Associations Between Colorblind Racial Ideology, Anti Blackness, and*

an oppressed group may have done something wrong.²⁰⁴ Thus, people may distrust narratives to the contrary, which renders their perceived credibility vulnerable.

A recent event highlights this phenomenon. Black FedEx driver D'Monterrio Gibson wore his uniform while he delivered packages in Brookhaven, Mississippi.²⁰⁵ While he was on the job, a white pickup truck approached him and honked.²⁰⁶ A white male stranger drove the truck.²⁰⁷ The stranger tried to cut him off, and he swerved.²⁰⁸ Another white male stranger stood in the road pointing a gun at him.²⁰⁹ Gibson swerved around that stranger as well, and the stranger opened fire on him.²¹⁰ The two strangers chased him for seven minutes and shot at him five times.²¹¹

When Gibson called the police, police dispatch said that they had received a suspicious person report.²¹² Later an officer asked whether he had “done anything suspicious.”²¹³ Gibson replied that he had merely done his job delivering packages.²¹⁴

Other Variables Antithetical to Racial Justice, 69 J. COUNSELING PSYCH., May 23, 2022, at 1.

²⁰⁴ See Clea Simon, *Facing the Denial of American Racism*, HARV. GAZETTE (June 5, 2020), <https://news.harvard.edu/gazette/story/2020/06/facing-the-denial-of-american-racism/> [<https://perma.cc/MCZ5-ZEJX>].

²⁰⁵ Timothy Bella, *White Father and Son Charged with Shooting at Black FedEx Driver in Case Echoing Armaud Arbery's Killing*, WASH. POST (Feb. 11, 2022).

²⁰⁶ See *id.*

²⁰⁷ See *id.*

²⁰⁸ See *id.*

²⁰⁹ See *id.*

²¹⁰ See *id.*

²¹¹ See *id.*

²¹² See *id.*

²¹³ Jennifer Henderson, Nick Valencia & Jake Gordon, *White Father and Son Charged for Chasing and Shooting at Black FedEx Driver*, CNN (Feb. 10, 2022), <https://www.cnn.com/2022/02/10/us/mississippi-men-charged-for-shooting-at-black-fedex-driver/index.html> [<https://perma.cc/L9M2-24YK>].

²¹⁴ See Bella, *supra* note 205.

Further downplaying the complaint, FedEx sent Gibson back out on the same route the next day.²¹⁵ After two days, Gibson panicked.²¹⁶ His heart raced, and he couldn't breathe.²¹⁷ So Gibson went on unpaid leave.²¹⁸ Thus, both FedEx and the police seemed to deny that Gibson experienced racial discrimination at all, and the police seemed to believe that Gibson, a Black man, himself must have done something wrong. Thus, others seem to have discounted Gibson's credibility due to racial bias.

In other instances, racial bias may prevent vulnerable narrators from even telling their stories at all. For instance, an American Immigration Council (AIC) disclosed that officials told unaccompanied child asylum-seekers that "the United States doesn't do asylum," "it is not doing asylum today," or that "the United States doesn't give Mexicans [sic] asylum."²¹⁹ The vulnerable narrator believes this information may then retreat from telling their story at all.

C. The dominant culture deems the vulnerable narrator's body language, tone of voice, or manner of speaking as unreliable.

Vulnerable narrators may sometimes face credibility hurdles not merely due to content but due to their presentation style. If the dominant culture deems the vulnerable narrator's body language or manner of speaking to be unreliable, the dominant culture may disbelieve their narrative, often for that reason alone. This process

²¹⁵ Christine Fernando, *Lawyers Say Black FedEx Driver Was Chased and Shot at in Mississippi, Drawing Comparisons to Ahmaud Arbery's Murder*, USA Today (Feb. 15, 2022), <https://www.usatoday.com/story/news/nation/2022/02/12/black-fedex-driver-accuses-two-white-men-chasing-shooting-at-him/6748990001/> [https://perma.cc/Z5WD-67B5].

²¹⁶ Janell Ross, *Case of Black FedEx Driver Who Says Two White Men Shot at Him Draws DOJ Attention*, TIME (Feb. 11, 2022), <https://time.com/6147596/black-fedex-driver-shooting-white-men-charged/> [https://perma.cc/BPF8-JAKA].

²¹⁷ See Fernando, *supra* note 215.

²¹⁸ See *id.*

²¹⁹ Daniela Ruiz Ferreyra, *Stolen Childhoods: A Chance at Survival Through Asylum in the United States*, 16 SEATTLE J. FOR SOC. JUST. 1029, 1047 (2018).

can hurt people who are afraid, insecure, disabled, or from a culture with different body language and speaking style expectations.

The audience may defer to non-verbal cues and tone over the content of the vulnerable narrator's speech. People typically make rapid judgments about a speaker, and those judgments can be based on the accent or the sound of someone's voice.²²⁰ Moreover, when body language and words conflict, audience members are likely to defer to the body language.²²¹ People will likely believe someone with confident, smooth body language, free-flowing speech in an authoritative tone, and relaxed pace.²²² In contrast, studies indicate that they may doubt someone with a retreating demeanor, a stutter,

²²⁰ William Y. Chin, *Linguistic Profiling in Education: How Accent Bias Denies Equal Educational Opportunities to Students of Color*, 12 SCHOLAR 355, 355–83 (2008) (finding that people evaluate others based on appearance and accent); Larry R. Nelson Jr., Margaret L. Signorella & Karin G. Botti, *Accent, Gender, and Perceived Competence*, 38 HISP. J. BEHAV. SCI. 166, 166–85 (2016) (study indicating that people judge Spanish accents negatively); Danielle Pop, Roxanne Angela Donovan, Mary Crawford, Kerry L. Marsh & Melanie Peele, *Gender, Race, and Speech Style Stereotypes*, 48 SEX ROLES 317, 317–25 (2003) (study indicating that people evaluate others negatively based on the speech patterns common in their race or gender); Heidi Lynne Kurter, *Yale Exposes New Bias That Judges Interviewees Within First Few Seconds Of Interview*, FORBES (Oct. 29, 2019), <https://www.forbes.com/sites/heidilynnekurter/2019/10/29/yale-exposes-new-bias-that-judges-interviewees-within-first-few-seconds-of-interview/?sh=137301dc16bc> [<https://perma.cc/HHU7-TN7E>] (study indicating that 60% of interviewers know in the first fifteen minutes whether a candidate is suitable for the role and that 30% have made up their mind within the first five minutes of meeting a candidate).

²²¹ See Albert Mehrabian & Morton Weiner, *Decoding of Inconsistent Communications*, 6 J. PERSONALITY SOC. PSYCH. 109 (1967); see also Albert Mehrabian & Susan R. Ferris, *Inference of Attitudes from Nonverbal Communication in Two Channels*, 31 J. CONSULTING PSYCH. 248 (1967). While scholars should avoid taking Mehrabian's findings too far, his studies found that when a word conflicts with body language, people more typically assigned greater weight to the body language.

²²² See Deborah A. Connolly, Heather L. Price, Jennifer A. A. Lavoie & Heidi M. Gordon, *Perceptions and Predictors of Children's Credibility of a Unique Event and an Instance of a Repeated Event*, 32 LAW & HUM. BEHAV. 92, 93 (2008) (indicating that a child's confidence can influence credibility).

or a shake.²²³ They may doubt someone who looks away or looks down.²²⁴ They may doubt someone whose cultural non-verbal cues differ from the dominant culture.²²⁵

This subconscious disbelief based on certain non-verbal cues poses a problem for vulnerable narrators. For instance, someone in the throes of the flight or fight response may likely stutter, shake, or retreat in fear.²²⁶ Even anxiety or simple insecurity can result in

²²³ See Pryor & Leone, *Behavioral Stereotypes of Deceptive Communication*, 17 TRIAL 14 (June 1981); Bert Pryor & Raymond W. Buchanan, *The Effects of a Defendant's Demeanor on Juror Perceptions of Credibility and Guilt*, 34 J. COMM., Sept. 1984, at 92; Peter David Blanch, Robert Rosenthal, Allen J. Hart & Frank Bernieri, *The Measure of the Judge: An Empirically-Based Framework for Exploring Trial Judges' Behavior*, 75 IOWA L. REV. 653, 667 (1990); Teneille R. Brown, *The Affective Blindness of Evidence Law*, 89 DENV. U. L. REV. 47, 89 (2011); see, e.g., Sherry M. Purdy, *Videotaped Testimony in Child Sexual Abuse Cases: United States v. Binder*, 23 WILLAMETTE L. REV. 193, 205 (1987) (indicating that the concurring and dissenting opinion in *United States v. Binder*, 769 F.2d 595, 604 (9th Cir. 1985) (Wallace, J., concurring in part and dissenting in part) considered stuttering in child abuse cases to reflect on credibility); Narbutas, *supra* note 31, at 380 (indicating that an immigration judge found a stuttering demeanor to indicate a lack of credibility in *Cham v. Attorney Gen. of U.S.*, 445 F.3d 683, 686–88, 691, 691 n.7 (3d Cir. 2006)).

²²⁴ Cf. Thomas A. D'Agostino & Carma L. Bylund, *Nonverbal Accommodation in Health Care Communication*, 29 HEALTH COMM. 563 (2019); Katherine Noel, *A Body-Language Expert Reveals the No. 1 Indicator of Confidence and How You Can Cultivate It*, BUSINESS INSIDER (Apr. 21, 2016), <https://www.businessinsider.com/body-language-indicator-of-confidence-2016-4> [https://perma.cc/BG45-LXQN] (indicating that people view eye contact as one of the biggest indicators of confidence and that confident people do not look down); Anna Leach, *Not Feeling Confident, Here Are Six Ways to Fake It*, THE GUARDIAN (May 18, 2016), <https://www.theguardian.com/education/2016/may/18/not-feeling-confident-here-are-six-ways-to-fake-it> [https://perma.cc/PWW6-FKSB].

²²⁵ See, e.g., Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 394 (2002) (discussing how eye contact has been used to negatively assess demeanor in *Jin Yun Xiao v. Att'y Gen. of U.S.*, 230 F. App'x 139, 147 (3d Cir. 2007)).

²²⁶ Compare Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan New Knowledge from Neuroscience*, JUDGES' J., Summer 2014, at 32, 34 (stating that even babies may mentally retreat when in flight

similar non-verbal cues.²²⁷ Some people from traditionally oppressed groups may even feel more insecure sometimes because they have grown used to being distrusted.²²⁸ Thus, the narration and the reaction can be in a chicken and egg cycle fueling one-another.

At the same time, trauma survivors may sometimes display a flat affect when relaying the story or seem disconnected.²²⁹ That is perhaps in part because they are mentally disconnecting from the

or fight), *with* D. Caroline Blanchard, April L. Hynd, Karl A. Minke, Tiffanie Minemoto & Robert J. Blanchard, *Human Defensive Behaviors to Threat Scenarios Show Parallels to Fear- and Anxiety-Related Defense Patterns of Non-Human Mammals*, 25 NEUROSCIENCE & BIOBEHAVIORAL L. REV. 761, 761–70 (2001) (identifying the flee response), and Steven Baicker-McKee, *The Excited Utterance Paradox*, 41 SEATTLE U. L. REV. 111, 146 (2017) (mentioning the flee response and hiding), and Bob Bodenhammer, *The Stress Fight/Flight/Freeze Pattern*, SPEECH LANGUAGE PATHOLOGIST, <https://www.stuttering-specialist.com/post/the-stress-fight-flight-freeze-pattern> [<https://perma.cc/U7JP-JEVD>] (last visited Jan. 18, 2023).

²²⁷ See E. Lea Johnston, *An Administrative “Death Sentence” for Asylum Seekers: Deprivation of Due Process Under 8 U.S.C. § 1158(d)(6)’s Frivolousness Standard*, 82 WASH. L. REV. 831, 892 (2007); Guy Coffey, *The Credibility of Credibility Evidence at the Refugee Review Tribunal*, 15 INT’L J. REFUGEE L. 377, 387–88 (2003).

²²⁸ See Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613, 614 (1997); Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 797 (1995); cf. Devon W. Carbado & L. Song Richardson, *The Black Police: Policing Our Own Locking Up Our Own: Crime and Punishment in Black America*, by James Forman Jr. New York, N.Y.: Farrar, Straus and Giroux. 2017. Pp. 306. \$27.00, 131 HARV. L. REV. 1979, 2000 (2018); Nedim Novakovic, *Access to Justice: Reducing the Implicit Pushback Burden on Working-Class Pro Se Plaintiffs in Employment Law Cases*, 104 CAL. L. REV. 545, 549 (2016) (discussing how stereotype threat can affect performance).

²²⁹ See U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816.pdf> [<https://perma.cc/R2KW-XFSC>]; see also Thanos Karatzias, Sally Jowett, Amelie Begley & Suzanne Deas, *Early Maladaptive Schemas in Adult Survivors of Interpersonal Trauma: Foundations for a Cognitive Theory of Psychopathology*, 7 EUR. J. PSYCH. 1 (2016); VAN DER KOLK, *supra* note 56, at 71.

traumatic event.²³⁰ The audience may expect the vulnerable narrator to perform the trauma for them and, thus, may distrust that flat affect, which then renders the narrative more vulnerable.

This disconnected phenomenon seems to have hurt Marie's case even with the people closest to her. Detective Ritgarn's report stated that her answers and body language showed that she was lying about the rape.²³¹ According to her medical report, in her exam, Marie was "alert and oriented, and in no acute distress."²³² Likewise, when she told one of her former foster mothers, Shannon, about the rape, Shannon said, "There was just no emotion. It was like she was telling me that she'd made a sandwich."²³³ This reaction made Shannon wonder whether Marie was being truthful.²³⁴ This doubt grew the next day when Marie failed to meet her gaze and acted casually.²³⁵ Later Marie rolled around on the grass outside, "giggling and laughing."²³⁶

Her other former foster mother, Peggy, also doubted her due to her demeanor.²³⁷ She reported that when Marie phoned her, "She was crying and I could barely hear her . . . Her voice was like this little tiny voice, and I couldn't really tell. It didn't sound real to me. . . . It sounded like a lot of drama, too, in some ways. . . . She seemed so detached and removed emotionally."²³⁸ Thus, Marie's demeanor rendered her narrative vulnerable to perceived unreliability.

Trauma demeanor like Marie's can be further complicated when cultural differences exist. Some cultures' non-verbal cues may differ from the dominant culture's and may be misinterpreted.²³⁹ For instance, while Western society often expects truth-tellers to make eye contact, in many Eastern cultures eye contact can be

²³⁰ See Susan J. Hall, *Adult Repression of Childhood Sexual Assault: From Psychology to the Media and into the Courtroom*, 22 N.C. CENT. L.J. 31, 49–50 (1996); *Nicolette v. Carey*, 751 F. Supp. 695, 698 (W.D. Mich. 1990).

²³¹ See Armstrong & Miller, *supra* note 1; Complaint at 9, *D.M. v. O'Leary*, No. 13-00971, 2013 WL 3322001 (W.D. Wash. June 7, 2013).

²³² See Armstrong & Miller, *supra* note 1.

²³³ *Id.* at 15.

²³⁴ *Id.*

²³⁵ *Id.* at 16.

²³⁶ *Id.* at 16.

²³⁷ See Armstrong & Miller, *supra* note 1.

²³⁸ *Id.*

²³⁹ Narbutas, *supra* note 31, at 371.

disrespectful.²⁴⁰ Even a nod of the head may mean something different in some cultures.²⁴¹

This phenomenon can pose an even bigger hurdle in asylum cases where the REAL ID Act includes demeanor as one of the factors judges must assess in determining the applicant's credibility.²⁴² The judge can discount credibility based on rapid speech or agitation, "halting and hesitating manner of testifying," or flat affect while testifying about traumatic events.²⁴³ Courts have also upheld adverse credibility determinations based on "perceived anxiousness, delays in responses to questions, and verbal and nonverbal cues of deception."²⁴⁴

For instance, in Jin Yun Xiao's case, eye contact played a role in the immigration judge's adverse credibility finding. In Japanese and Chinese cultures, people often show respect by avoiding eye contact.²⁴⁵ However, the immigration judge found that Xiao's manner showed that she "does not really want to be here, [and] does not want to answer questions," because she failed to make eye contact with the judge.²⁴⁶ The judge took her aversion to mean that she felt "ashamed" about lying.²⁴⁷ Thus, the confusion about body language played a significant role in rendering the narrative vulnerable to perceived unreliability.

D. The vulnerable narrator's story has gaps, inaccuracies, or contradictions.

Non-verbal cues aside, vulnerable narrators also often have gaps, inaccuracies, or contradictions in their stories for a variety of reasons. First, nearly everyone's story has gaps, inaccuracies, or

²⁴⁰ *Id.*; Tremblay, *supra* note 225, at 394; Lustig, *supra* note 56, at 730; Jin Yun Xiao v. Att'y Gen. of U.S., 230 F. App'x 139, 147 (3d Cir. 2007).

²⁴¹ Elena Andonova & Holly A. Taylor, *Nodding in Dis/agreement: A Tale of Two Cultures*, 13 COGN. PROC. 79 (2012).

²⁴² Immigration and Nationality Act § 208(b)(1)(B)(iii) (AILA 2018), 8 U.S.C. § 1158(b)(1)(B)(iii) (West 2018).

²⁴³ Narbutas, *supra* note 31, at 368–69.

²⁴⁴ Narbutas, *supra* note 31, at 354, 368–69.

²⁴⁵ Tremblay, *supra* note 225, at 394. *Yun Xiao*, 230 F. App'x at 147.

²⁴⁶ *Yun Xiao*, 230 F. App'x at 147.

²⁴⁷ *Id.*

contradictions.²⁴⁸ Studies show that the ordinary person's cognitive processes can lead to unreliability.²⁴⁹ In fact, the Innocence Project, which takes only capital convictions, indicated that inaccurate eyewitness identification was involved in at least approximately 350 of its DNA exonerations.²⁵⁰ However, when a vulnerable narrator manifests the same recall challenges, the audience can then interpret the gaps, inaccuracies, or contradictions through the lens of bias.²⁵¹ Thus, that can lead audiences to further discount the vulnerable narrator's credibility.

This lens of bias may have hurt Mr. Umba. He initially lost his asylum case due to explainable gaps, inaccuracies, and contradictions. Umba explained that unmarried men and women in his culture refrain from sharing private details.²⁵² Thus, he and his partner Hermance were ignorant of certain details regarding one another's experience.²⁵³ Mr. Umba also used a word "mwasi" that could mean "wife," "woman," or "girlfriend."²⁵⁴ Therefore, the immigration judge believed that he misrepresented Hermance as his wife; for these reasons, the judge determined that Mr. Umba lacked credibility, which defeated his claim before that tribunal.²⁵⁵

²⁴⁸ See Taylor Beck, *Making Sense of Memory*, HARV. GAZETTE (Aug. 16, 2012), <https://news.harvard.edu/gazette/story/2012/08/making-sense-of-memory/> [<https://perma.cc/EB4E-7WRF>].

²⁴⁹ See COMMITTEE ON SCIENTIFIC APPROACHES TO UNDERSTANDING AND MAXIMIZING THE VALIDITY AND RELIABILITY OF EYEWITNESS IDENTIFICATION IN LAW ENFORCEMENT AND THE COURT, COMMITTEE ON SCIENCE, TECHNOLOGY, AND LAW POLICY AND GLOBAL AFFAIRS, COMMITTEE ON LAW AND JUSTICE DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, IDENTIFYING THE CULPRIT: ASSESSING EYEWITNESS IDENTIFICATION 45–70 (2014) (detailing the cognitive processes that can interfere with eyewitness accounts).

²⁵⁰ *Eyewitness Misidentification*, INNOCENCE PROJECT https://innocenceproject.org/causes/eyewitness-misidentification/?gclid=CjoKCQIA_P6dBhD1ARIsAAGI7HCPOJ8jdwPmByD1ZEc3as-Cw9ngrLKB1r76xJCTAqIROlKFmEnbEdQaAgyEEALw_wcB [<https://perma.cc/MX9F-PBX5>] (last visited Jan. 18, 2023).

²⁵¹ *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *4 (10th Cir. Aug. 5, 2021).

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

Marie's story provides another example of contradictions mistaken for fraud. In her statement to the police, Marie wrote:

After he left I grabbed my phone (which was right next to my head) with my mouth and I tried to call Jordan back. He didn't answer so I called my foster mom. . . . She came right away. I got off the phone with her and tried to untie myself.²⁵⁶

However, Marie had previously told the detective that it was after she cut the laces that she tried calling Jordan rather than before.²⁵⁷ Though this kind of inconsistency may give the audience pause,²⁵⁸ such common inconsistencies in vulnerable narrators' tales often have an explanation that supports their greater underlying truth.²⁵⁹

Even Eddie Joe Lloyd's contradictory confession rested on an explanation. The schizophrenic Lloyd believed that he had special crime-solving powers.²⁶⁰ The police told him that if he confessed, they could smoke out the real killer.²⁶¹

Explanations for inconsistencies abound. Various factors may sometimes also alter vulnerable narrators' perception in some way.²⁶² Due to youth, trauma, or cultural misunderstanding, they may misinterpret some of what they witness.²⁶³

Faulty memory may play a further role in gaps and inaccuracies. As mentioned before regarding eyewitness testimony, human memory suffers more faults than most of us believe.²⁶⁴ Trauma survivors, mental health patients, and elderly clients may suffer some memory issues brought on by trauma,²⁶⁵ senility, and other mental

²⁵⁶ See Armstrong & Miller, *supra* note 1.

²⁵⁷ See *id.*

²⁵⁸ See Deryn Strange & Melanie K.T. Takarangi, *Memory Distortion for Traumatic Events: The Role of Mental Imagery*, 6 FRONT PSYCHIATRY 27 (2015).

²⁵⁹ *Id.*

²⁶⁰ *Eddie Joe Lloyd: Time Served: 17 Years*, *supra* note 162.

²⁶¹ *Id.*

²⁶² See Elizabeth Loftus, *Memory Faults and Fixes*, 18 ISSUES IN SCI. & TECH. 4 (2002).

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ See Avalos, *supra* note 13; James Hopper & David Lisak, *Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories*, TIME

health or cognitive function issues.²⁶⁶ Unfortunately, the societal belief that they suffer these issues may exacerbate doubt.²⁶⁷ A lapse here and a gap there can leave the audience believing that the vulnerable narrator's memory is made of Swiss cheese. Thus, the audience may discount credibility leaving the narrative vulnerable. In actuality, while the vulnerable narrator may suffer from memory gaps—where the most significant and relevant details are concerned, their memory might at times be largely intact.²⁶⁸ Unfortunately, audiences like the immigration judge in Mr. Umba's case may often make credibility determinations based on less relevant and less significant details.

While society may believe that people are either honest or dishonest, even dishonest people sometimes tell the truth.²⁶⁹ Likewise, even honest people have lied about something at some point in their lives.²⁷⁰ Vulnerable narrators provide no exception to this rule, and they may sometimes lie about or hide some facts to protect themselves.²⁷¹ For instance, victims often fear that authorities will disbelieve them if they know how much they have been drinking, so they lie about drinking.²⁷² Any number of motives could lead vulnerable narrators to lie out of fear for being in the wrong place, being out at the wrong time, being with the wrong people, and so on. In fact, in some countries, victims have motive to lie about even being

MAG.: IDEAS (Dec. 9, 2014), <http://time.com/3625414/rape-trauma-brain-memory/> [<https://perma.cc/9KDP-PKBZ>].

²⁶⁶ See Davis & Follette, *supra* note 44.

²⁶⁷ See Avalos, *supra* note 13.

²⁶⁸ See Hopper & Lisak, *supra* note 265; see also Avalos, *supra* note 14; Cynthia V. Ward, *Trauma and Memory in the Prosecution of Sexual Assault Cases*, 45 LAW & PSYCHOL REV. 87, 2020.

²⁶⁹ See Aden v. Holder, 589 F.3d 1040 (9th Cir. 2009).

²⁷⁰ Alice Gregory, *Why Do Humans Lie?*, BBC SCIENCE FOCUS, <https://www.sciencefocus.com/the-human-body/why-do-humans-lie/> [<https://perma.cc/45ZK-67EG>] (last visited Jan. 18, 2023).

²⁷¹ Jan Jordan, *Beyond Belief? Police, Rape, and Women's Credibility*, 4 CRIM. JUST. 29, 38 (2004); see also Van Syckle, *supra* note 29.

²⁷² Tamara Larsen, *Sexual Violence Is Unique: Why Evidence of Other Crimes Should Be Admissible in Sexual Assault and Child Molestation Cases*, 29 HAMLINE L. REV. 177, 196 (2006).

harmed at all—for example, in some places people punish rape survivors with death, stoning, violence, divorce, or ostracization.²⁷³

Finally, at times, the vulnerable narrator may change their story under pressure.²⁷⁴ The vulnerable narrator may at times perceive and remember events quite well. However, in the face of gaslighting and pressure, they may cave and change their story, possibly even doubting themselves.²⁷⁵ Someone who has lived a life of privilege may have difficulty understanding this concept. If the survivor knows what happened, why would they change their story? Perhaps they do so because vulnerable narrators may be used to having family, society, and authority figures doubt them and discount them. As a result, they themselves may vault society's narrative over what they themselves have experienced.²⁷⁶ Thus, the vulnerable narrator may cave to society's expectations and render their narrative less credible.

With respect to sexual abuse, an additional injury is this overwriting of the survivor's perception.²⁷⁷ The abuser has replaced the survivor's non-consent or inability to consent with the abuser's own desires.²⁷⁸ Essentially, the abuser mentally and emotionally

²⁷³ Katherine E. Melloy, *Telling Truths: How the Real ID Act's Credibility Provisions Affect Women Asylum Seekers*, 92 IOWA L. REV. 637, 659 (2007); Irena Lieberman, *Women and Girls Facing Gender-Based Violence, and Asylum Jurisprudence*, HUM. RTS. MAG. (Summer 2002), <http://www.abanet.org/irr/hr/summer02/lieberman.html> [<https://perma.cc/DN5P-5P2H>].

²⁷⁴ See Loftus, *supra* note 262.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ See Avalos, *supra* note 13; Hopper & Lisak, *supra* note 265; Ward, *supra* note 268.

²⁷⁸ See Cathren Page, *How the Boogeyman Saved Brett Kavanaugh*, 33 J. CIV. RTS. & ECON. DEV. 51, 54 (2019); see generally Michael Papendick & Gerd Bohner, "Passive Victim – Strong Survivor"? *Perceived Meaning of Labels Applied to Women Who Were Raped*, 12 PLOS ONE 1, 9 (2017) (finding that participants who rated high for accepting rape myths were more motivated to exonerate the perpetrator and used more passive voice and nominalizations to describe the perpetrator's actions (e.g., "and then she was raped"; "the rape occurred"), thus shifting the focus of attention on the victim or at least away from the perpetrator); see also Kathryn A. O'Leary, Case Comment, *Evidence—Defendants' Sixth Amendment Right to Confrontation Becomes Discretionary Under Sexual Assault Counselor-Victim Privilege—Commonwealth v. Two Juveniles*, 397 Mass. 261, 491

erases the survivor by substituting the abuser's wishes for the survivor's consent.²⁷⁹

Thus, Marie, when she recanted, initially said that the rape had been a dream.²⁸⁰ When officers then confronted her, she said that she was pretty positive on first reporting the rape.²⁸¹ Survivors in this situation remain caught between two paths. First, they can believe a truth that's too horrible to seem real. In so doing, they can live with the reality of the world's cruelty, while simultaneously facing all the social and financial repercussions associated with telling a horrific truth.²⁸²

If they take the second path, they can shove trauma to their subconscious and embrace dissociative fiction as defined and explained in this paragraph.²⁸³ Trauma survivors quite typically dissociate as a subconscious psychological coping mechanism.²⁸⁴

N.E.2d 234 (1986), 21 SUFFOLK U. L. REV. 1222, 1229 (1987) (describing a trauma reaction where rape survivors come to believe that they deserved the rape).

²⁷⁹ See *supra* note 278.

²⁸⁰ See Armstrong & Miller, *supra* note 1.

²⁸¹ See *id.*

²⁸² See Julia Devanthery, *Early Lease Termination Under G.L. C. 186, S 24: An Essential Escape Route for Tenants Who Are Facing Domestic Violence, Sexual Assault, or Stalking*, BOSTON B.J., Summer 2017, at 27; Rachel J. Gallagher, *Welfare Reform's Inadequate Implementation of the Family Violence Option: Exploring the Dual Oppression of Poor Domestic Violence Victims*, 19 AM. U. J. GENDER SOC. POL'Y & L. 987, 996 (2011); Timothy Casey, Soraya Fata, Leslye Orloff & Maya Raghu, *TANF Reauthorization Round II—An Opportunity to Improve the Safety Net for Women and Children*, 14 DOMESTIC VIOLENCE REP. 65 (2009); Katherine Lusby, *Hearing the Invisible Women of Political Rape: Using Oppositional Narrative to Tell a New War Story*, 25 U. TOL. L. REV. 911, 938 (1995); AMNESTY INTERNATIONAL, WOMEN IN THE FRONT LINE 18 (1991).

²⁸³ See Aaron Lawson, *Straight Outta Compton: Witness the Strength of Disability Rights Taking One Last Stand for Education Reform*, 67 SYRACUSE L. REV. 551, 577 (2017); Bruce D. Perry, Ronnie A. Pollard, Toi L. Blaicley, William L. Baker & Domenico Vigilante, *Childhood Trauma, the Neurobiology of Adaptation, and "Use-Dependent" Development of the Brain: How "States" Become "Traits,"* 16 INFANT MENTAL HEALTH J. 271, 279–80 (1995).

²⁸⁴ Robyn E. Brickel, *Dissociation: How People Cope with Trauma They Want to Forget*, BRICKEL & ASSOCIATES LLC (Mar. 6, 2020),

Rather than face the horror of a current or past trauma, the mind checks out and fades in and out.²⁸⁵ Survivors' minds visit a fantasy place, a vacation, a daydream.²⁸⁶ Yet, trauma will still run through them as a current of fear and shame,²⁸⁷ and they will come to doubt themselves.²⁸⁸ Nonetheless, denial and dissociation can keep social and financial threats at bay.²⁸⁹ When vulnerable trauma survivors

<https://brickelandassociates.com/dissociation-from-trauma> [https://perma.cc/A7VZ-98F6]; Ed Finkel, *The Traumatized Client*, 108 ILL. B.J., Mar. 2020, at 24, 26; PHILIP GREVEN, SPARE THE CHILD: THE RELIGIOUS ROOTS OF PUNISHMENT AND THE PSYCHOLOGICAL IMPACT OF PHYSICAL ABUSE 148–68 (1991); Jill K. Harker, *The Case for Allowing Civil Tort Suits for Adult Victims of Physical Abuse*, 30 FAM. L.Q. 217, 221 (1996); Rachel A. Klink, *The Most Difficult Conviction: The Challenges of Prosecuting Sexual Assault in North Carolina*, 11 WAKE FOREST J.L. & POL'Y: SUA SPONTE 40, 55 (2020).

²⁸⁵ GREVEN, *supra* note 284.

²⁸⁶ Cf. CLEVELAND CLINIC, *Maladaptive Daydreaming*, <https://my.clevelandclinic.org/health/diseases/23336-maladaptive-daydreaming> [https://perma.cc/DJ6N-KKU9] (last visited Aug. 29, 2022); Mental Health America, *Dissociation and Dissociative Disorders*, <https://mhanational.org/conditions/dissociation-and-dissociative-disorders> [https://perma.cc/Q44E-CETT] (last visited Aug. 29, 2022); DISSOCIATION AND THE DISSOCIATIVE DISORDERS: PAST, PRESENT, FUTURE (Martin J. Dorahy, Steven N. Gold & John A. O'Neil, eds., 2d ed. 2021); cf. *State v. Sullivan*, 596 So. 2d 177, 191 (La. 1992), *rev'd*, 508 U.S. 275 (1993) (discussing a schizophrenic who visits a fantasy world).

²⁸⁷ See generally Harker, *supra* note 284; see, e.g., *United States v. Frost*, 79 M.J. 104, 112 (C.A.A.F. 2019); *Hockbein v. Pine Cnty.*, No. CV 17-5224 (DWF/LIB), 2019 WL 135697, at *2 (D. Minn. Jan. 8, 2019); *Fargione v. Sweeney*, No. CV 16-5878, 2017 WL 4283955, at *6 (E.D. Pa. Sept. 27, 2017); JAMIA JASPER JACOBSEN, PSYCHIATRIC SEQUELAE OF CHILD ABUSE 181–86 (1986).

²⁸⁸ See *United States v. Boyle*, 28 F.4th 798, 801 (7th Cir. 2022).

²⁸⁹ See Christian Diesen, *The Importance of Reporting Rape*, 6 PHOENIX L. REV. 933, 953 (2013); Amy Grubb & Emily Turner, *Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming*, 17 AGGRESSION & VIOLENT BEHAV. 443, 443–49 (2012) Katrina Anderson, *Turning Reconciliation on Its Head: Responding to Sexual Violence Under the Khmer Rouge*, 3 SEATTLE J. FOR SOC. JUST. 785, 801 (2005); AMNESTY INTERNATIONAL, LIVES BLOWN APART: CRIMES AGAINST WOMEN IN TIMES OF CONFLICT (Dec. 8 2004), at 23,

deny and dissociate, then not only does the audience often perceive their narrative as less credible, the audience sometimes never hears the story at all.

Marie did what many survivors do before it ever comes to the point of reporting.²⁹⁰ She chose the latter path. She “flipped the switch”; she suppressed all the troublesome, conflict-provoking feelings and found relief and escape from confrontation.²⁹¹ When Marie “flipped the switch,” she was able to recant and avoid the conflict. That harmed her narrative so much in her audience’s eyes that they charged her with false reporting.

Some of us choose that path before we become old enough or self-aware enough to know we are choosing. I myself used to beg my mother not to take me to the pediatrician.²⁹² His penetrative exams were too invasive. My friend said that her doctor did not examine those parts of her body. My mother eventually relented when I hit my teens and took me to a female gynecologist instead. But she still always said that Dr. Invasive “was just a very thorough doctor.”

It wasn’t until my late thirties that a professional informed me that Dr. Invasive’s repeat, penetrative exams fell outside of the norms for a regular well-child exam. Yet still to this day, I sometimes wonder, “Did I imagine it? Was he maybe just hypervigilant? If unnecessary

<https://www.amnesty.org/en/documents/act77/075/2004/en/>
[<https://perma.cc/47T7-G5LS>]; Patricia A. Frazier & Lisa M. Seales, *Acquaintance Rape Is Real Rape*, in RESEARCHING SEXUAL VIOLENCE AGAINST WOMEN: METHODOLOGICAL AND PERSONAL PERSPECTIVES, 54, 62–64 (Martin D. Schwartz ed., 1997); Lieutenant Commander Peter A. Dutton, JAGC, USN, *Spousal Battering As Aggravated Assault: A Proposal to Modify the UCMJ*, 43 NAVAL L. REV. 111, 114 (1996); Joan Zorza, *Must We Stop Arresting Batters?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929 (1994); see also JUDITH HERMAN, M.D., *TRAUMA AND RECOVERY* 7–8 (1992) (explaining that it is also easier to side with the perpetrator since the perpetrator asks that we do nothing).

²⁹⁰ See generally Armstrong & Miller, *supra* note 1.

²⁹¹ *Id.*

²⁹² See generally Cathren Page, *Brett Kavanaugh and Christine Blasey Ford Could Both Be “Right:” A War of Gender Narratives*, SALON (Oct. 3, 2018), <https://www.salon.com/2018/10/03/brett-kavanaugh-and-christine-blasey-ford-could-both-be-right-a-war-of-gender-narratives/> [<https://perma.cc/2HRX-VTSY>].

hypervigilance causes trauma, does it even matter what he intended?” My own point of view and experience remains forever in doubt in my own mind. My mother’s perspective and perhaps my doctor’s perspective still get airtime in my mind. The dominant cultural narrative then tells me to trust in a doctor’s authority. Once these conditions forced me to accept their narrative over my own, I experienced repeat trauma with this pediatrician. The pattern followed me to other sexual boundary violations and to other inadequate, unhearing, or occasionally inappropriate doctors. My own narrative became so vulnerable that it barely received airtime in my own mind. Now that I have better processed it, the questions still remain; I still get stuck in all the doubt and insecurity that hinders self-advocacy in a variety of situations.

This process is how cultural narrative frequently reinforces the abuser’s perspective. Narrative holds such power over us that the dominant cultural narrative can supplant even our own experience, reinterpreting it for us. Those living on the wrong side of that narrative may sometimes accept the dominant narrative just to make it through another day.

E. Miscommunication, misunderstanding, or mistranslation connected to the vulnerable narrator may lead the audience astray.

The audience may form mistaken impressions regarding the vulnerable narrator due to miscommunication, misunderstanding, or mistranslation. That happens because some vulnerable narrators can belong to non-dominant cultures or because some vulnerable narratives may face communication issues due to age or ability.

For instance, in fiction, Fern in *The Good Sister* gives off a mistaken impression to a library patron who is waiting impatiently for Fern’s help.²⁹³ Fern’s condition causes her to misunderstand body language and social conventions.²⁹⁴ So when a patron tries to get her attention by standing in front of the desk, Fern fails to realize that she needs something.²⁹⁵ She expects people to be more literal and

²⁹³ HEPWORTH, *supra* note 66.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

direct.²⁹⁶ Both Fern's audience within the world of the story and her readers may initially discount Fern's credibility due to her misunderstandings.

In law, such misunderstandings can kill a case. For instance, in *Umba v. Garland*, Mr. Umba used the word "mwasi" to describe his relationship with his romantic partner, Hermance.²⁹⁷ "Mwasi" can mean "woman," "girlfriend," or "wife."²⁹⁸ In this instance, Hermance was a girlfriend rather than Mr. Umba's legal wife.²⁹⁹ However, the asylum officer believed that Hermance was Umba's wife.³⁰⁰ Thus, his response seemed inconsistent to the immigration judge.³⁰¹ Later, when the asylum officer asked Umba about his wife, Umba believed the officer was asking about the mother of his children.³⁰² Thus, Umba testified that he had been married for years in the Democratic Republic of the Congo.³⁰³ These likely miscommunicated responses read as an inconsistency to the immigration judge who found that Mr. Umba was not credible and, thus, reinforced his status as a vulnerable narrator.³⁰⁴

F. The vulnerable narrator's perception or understanding may be altered in some way.

Miscommunications aside, vulnerable narrators include people whose very condition can alter their perception, thereby impacting both their perceived credibility and their accuracy. Children,³⁰⁵

²⁹⁶ *Id.*

²⁹⁷ *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *3 (10th Cir. Aug. 5, 2021).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Cf.* Lauren E. Goldman, *Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse*, 45 CASE W. RES. L. REV. 185, 249, n.60 (1994) (mentioning altered perceptions caused by battered child syndrome).

cognitively impaired persons,³⁰⁶ the elderly,³⁰⁷ trauma survivors,³⁰⁸ people from non-dominant cultures,³⁰⁹ and the mentally ill³¹⁰ may all have an altered perception. Some of these people may misperceive events due to an incomplete understanding either due to impaired cognition, lack of cultural literacy, language barriers, or incomplete knowledge. For example, when the asylum officer asked Mr. Umba about his wife, he mistakenly thought the officer was asking about the mother of his children.³¹¹

Trauma survivors, elderly individuals with neurological, visual, or auditory challenges, and the mentally ill also may also misperceive events. For example, schizophrenics and people with Parkinson's may hallucinate or experience delusions.³¹²

Likewise, the same dissociation that protects trauma survivors may cloud events. Those who have experienced previous trauma may

³⁰⁶ Kate Weisburd, *Prosecutors Hide, Defendants Seek: The Erosion of Brady Through the Defendant Due Diligence Rule*, 60 UCLA L. REV. 138, 168 (2012); James W. Ellis & Ruth A. Luckasson, *Mentally Retarded Criminal Defendants*, 53 GEO. WASH. L. REV. 414, 430 (1985).

³⁰⁷ Deborah A. King, Scott Y.H. Kim & Yeates Conwell, *Family Matters: A Social System Perspective on Physician-Assisted Suicide and the Older Adult*, 6 PSYCHOL. PUB. POL'Y & L. 434, 440 (2000).

³⁰⁸ See JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* 121 (1997); Charlene Smith, Nan Palmer & Ramon Guillen, Jr., *Women Enslaving Women*, 21 S. CAL. REV. L. & SOC. JUST. 319, 335 (2012).

³⁰⁹ Erik J. Girvan, *On Using the Psychological Science of Implicit Bias to Advance Anti-Discrimination Law*, 26 GEO. MASON U. CIV. RTS. L.J. 1, 39 (2015).

³¹⁰ Michelle Parikh, *Burning the Candle at Both Ends, and There is Nothing Left for Proof: The Americans with Disabilities Act's Disservice to Persons with Mental Illness*, 89 CORNELL L. REV. 721, 750 (2004) (noting that many "mentally ill individuals have an altered perception of reality"); Stella L. Smetanka, *Who Will Protect the "Disruptive" Dialysis Patient?*, 32 AM. J.L. & MED. 53, 90 (2006).

³¹¹ *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *3 (10th Cir. Aug. 5, 2021).

³¹² Paige Fowler, *Hallucinations*, WEBMD (July 26, 2021), <https://www.webmd.com/schizophrenia/what-are-hallucinations> [<https://perma.cc/QE94-KSMA>].

also become “triggered” by events that smell, sound, or look similar.³¹³ Thus, a veteran may hear a bomb when actually fireworks exploded.³¹⁴ A shooting survivor may hear a gunshot when a car backfires.³¹⁵ A sexual abuse survivor may see an imminent rape when held too firmly.³¹⁶ These sometimes later misinterpretations may lead the audience to believe that the vulnerable narrator’s other or previous traumas happened only in the vulnerable narrator’s head. Thus, the audience may discount the vulnerable narrator’s credibility and contribute to the vulnerability.

G. Conditions may push the vulnerable narrator into passivity, retraction, confession, or retreating.

Not only may vulnerable narrators’ perceived credibility suffer as a result of misunderstandings, but the perception may also falter due to the vulnerable narrators’ passivity, retraction, confession, or retreat. For instance, Marie’s case presents a classic example of both lack of assertiveness and retreating. In the fictionalized version of her case, the two male investigators grow sharp and authoritative and ask her questions in an accusatory way.³¹⁷ That hits the trauma trigger for Marie.³¹⁸

Acting in an accusatory way or simply exerting authority can often trigger abuse survivors like Marie. Once triggered, like Marie, they go

³¹³ Hannah Murray, Nick Grey, Jennifer Wild, Emma Warnock-Parkes, Alice Kerr, David M. Clark & Anke Ehlers, *Cognitive Therapy for Post-Traumatic Stress Disorder Following Critical Illness and Intensive Care Unit Admission*, 13 COGNITIVE BEHAV. THERAPIST 1, 3 (2020).

³¹⁴ See generally Melanie Wegerer, Jens Blechert, Hubert Kerschbaum & Frank H. Wilhelm, *Relationship Between Fear Conditionability and Aversive Memories: Evidence from a Novel Conditioned-Intrusion Paradigm*, 8 PLOS ONE 1 (Nov. 2013).

³¹⁵ See generally Lustig, *supra* note 56, at 731.

³¹⁶ See generally Leah M. Leonard & Victoria M. Follette, *Sexual Functioning in Women Reporting a History of Child Sexual Abuse: Review of the Empirical Literature and Clinical Implications*, 13 ANN. REV. SEX. RES. 346, 346–88 (2012).

³¹⁷ See generally *Unbelievable: Episode 1:1* (Timberman-Beverly Productions, Sept. 13, 2019).

³¹⁸ See generally *id.*

into a fight or flight tailspin.³¹⁹ Adrenaline floods the body.³²⁰ The heart rate accelerates and pulse and blood pressure increase.³²¹ Blood sugar and fats flood the bloodstream.³²² If the brain continues to perceive a threat, the body then releases the stress hormone, cortisol, to maintain continued high-alert.³²³ The lower brain prevails over the frontal cortex, the area of the brain that engages in “abstract thinking, problem-solving, planning, and impulse control.”³²⁴

Though the survivor may be sitting in an office, the survivor’s brain faces life or death. During this struggle, the brain can get stuck between fight, freeze, and flee.³²⁵ Experience may have conditioned smaller and more physically vulnerable survivors to flee.³²⁶

³¹⁹ See Elena Deeley, *6 Unexpected Triggers That Can Send You Into an Emotional Tailspin*, PSYCHREG. (Jan. 15, 2021), <https://www.psychreg.org/triggers-emotional/> [<https://perma.cc/5AJV-FB8F>].

³²⁰ *Understanding the Stress Response*, HARV. HEALTH PUB. (July 6, 2020), [https://www.health.harvard.edu/staying-healthy/understanding-the-](https://www.health.harvard.edu/staying-healthy/understanding-the-stress-)

[response#:~:text=These%20glands%20respond%20by%20pumping,as%20adrenaline\)%20into%20the%20bloodstream](https://www.health.harvard.edu/staying-healthy/understanding-the-stress-response#:~:text=These%20glands%20respond%20by%20pumping,as%20adrenaline)%20into%20the%20bloodstream) [<https://perma.cc/22YV-MZFK>]; BESSEL VAN DER KOLK & JOSE SAPORTA, BIOLOGICAL RESPONSE TO PSYCHIC TRAUMA, in 2 INTERNATIONAL HANDBOOK OF TRAUMATIC STRESS SYNDROMES 25 (John P. Wilson & Beverley Raphael eds., 1993).

³²¹ *Understanding the Stress Response*, *supra* note 320.

³²² *Id.*

³²³ *Id.*

³²⁴ Elizabeth Hopper, Ph.D. & José Hidalgo, M.D., *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 INTERCULTURAL HUM. RTS. L. REV. 185, 203 (2006); see VAN DER KOLK & SAPORTA, *supra* note 320.

³²⁵ UNIVERSITY OF TOLEDO COUNSELING CENTER, *Flight/Fight/Freeze Response*, <https://www.utoledo.edu/studentaffairs/counseling/anxietytoolbox/fightflightfreeze.html> [<https://perma.cc/2FMT-L5G9>] (last visited Dec. 12, 2022); cf. Sonia D. Ferencik & Rachel Ramirez-Hammond, TRAUMA-INFORMED APPROACHES PROMISING PRACTICES AND PROTOCOLS FOR OHIO’S DOMESTIC VIOLENCE PROGRAMS, 42–47 (4th ed. 2019), https://www.odvn.org/wp-content/uploads/2020/05/ODVN_Trauma-Informed_Care_Manual_2020.pdf [<https://perma.cc/T8GK-ZWNG>].

³²⁶ Cf. Hopper & Hidalgo, *supra* note 324, at 203 (indicating that when fleeing or resisting leads to more violence, the sole option may be to freeze)

Thus, questioning alone may trigger flight or fight for those with PTSD.³²⁷ The survivor then could either become agitated and hostile or freeze in response to questioning.³²⁸ The audience can then misinterpret these responses, believing either that the nothing happened or that the fighting vulnerable narrator caused the problem. If the vulnerable narrator freezes, fawns, or flees, the audience might never hear the story at all.

So how did Marie “flee” the situation? She retracted her story.³²⁹ As a result, her audience—the officers, her family, her community, and the public reading about her in the papers—perceived her as untruthful.

While sometimes the pressure to change the story is subtle and complex as described above, sometimes the powerful overtly pressure the vulnerable into confessions. Once a vulnerable person confesses, their subsequent innocence narratives become even more vulnerable. For instance, from 1972 to 1991, Chicago police tortured at least 117 individuals of color.³³⁰ At times, they suffocated them, shocked them

(citing Robert C. Scaer, *The Neurophysiology of Dissociation & Chronic Disease*, in APPLIED PHYSIOLOGY & BIOFEEDBACK 73–91 (2001)).

³²⁷ Carol M. Suzuki, *Unpacking Pandora’s Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 HASTINGS RACE & POVERTY L.J. 235, 271 (2007); Frank E. Vandervort, *A Search for the Truth or Trial by Ordeal: When Prosecutors Cross-Examine Adolescents How Should Courts Respond?*, 16 WIDENER L. REV. 335, 356 (2010).

³²⁸ Angela A. Jones, *Post-Traumatic Stress Disorder and Victims of Human Sex Trafficking: A Perpetuation of Chronic Indignity*, 4 INTERCULTURAL HUM. RTS. L. REV. 317, 331 (2009).

³²⁹ See Armstrong & Miller, *supra* note 1.

³³⁰ Chanbonpin, *supra* note 45, at 1091 (2014); Flint Taylor, *Racism, Torture and Impunity in Chicago*, THE NATION (Feb. 20, 2013), <http://www.thenation.com/article/173027/racism-torture-and-impunity-chicago> [<https://perma.cc/65CK-5JJ3>] (describing the police use of racial slurs during torture); Known Burge Area 2 and 3 Torture Victims 1972-1991, People’s L. Off., <https://peopleslawoffice.com/wp-content/uploads/2014/01/1.6.14.-Documented-TortureSurvivorsunderBurge.pdf> [<https://perma.cc/L4HY-MGEY>] (last visited Dec. 12, 2022). The People’s Law Office and Northwestern University School of Law’s Clinic class action complaint lists 117 victims of police torture. Class Action Petition for Relief Under the Illinois Post-Conviction Hearing Act at 8–11, *People v. Plummer*, No. 91 CR 21451 (Cir. Ct. Cook Cnty.

with electricity, tortured their genitals, or threatened them with a noose.³³¹ They regularly used this process to extract confessions, which confessions may have seemed inconsistent with the prisoners' later claims of innocence.³³² Thus, by forcing an already vulnerable population to confess, Chicago police rendered their innocence narratives all the less credible.

However, pressure to confess can be more subtle when manipulating someone like the schizophrenic Eddie Joe Lloyd. Police only had to feed him some details, play on his belief that he had special crime solving powers, and tell him a confession would smoke out the real killer.³³³ Once the already vulnerable Lloyd confessed to a crime that someone else committed, that rendered his narrative all the more vulnerable to credibility attacks.

H. The vulnerable narrator's story or behavior patterns may contrast with pre-set expectations society has regarding people in the vulnerable narrator's situation.

Not only do vulnerable narrators like Lloyd face credibility hurdles for confessing, retracting, or retreating, but also their behavior in general may contrast with society's pre-set expectations. Cultures tell repeat stories with repeat patterns and characters.³³⁴

Oct. 16, 2012), <https://news.wttw.com/sites/default/files/Class%20Action%20Petition.pdf> [https://perma.cc/T24A-35S9] (last visited Dec. 12, 2022).

³³¹ Taylor, *supra* note 330.

³³² See United States ex rel. Maxwell v. Gilmore, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999); Chanbonpin, *supra* note 45, at 1087.

³³³ *Eddie Joe Lloyd: Time Served: 17 Years*, *supra* note 162.

³³⁴ See Page, *supra* note 28, at 24 (2020); CHRISTOPHER VOGLER, THE WRITER'S JOURNEY: MYTHIC STRUCTURE FOR WRITERS 23 (2007); see also 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); 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); 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

These create stock structures that establish expectations regarding how people would behave in a situation.³³⁵ In other instances, people project how they behaved in a similar situation onto others.³³⁶ That can be problematic because, first, the cultural narrative often misses the mark.³³⁷ Second, individuals and traumas can all differ from one another in key respects.³³⁸

In this regard, once again, the vulnerable narrator pitfalls hurt Marie's story because both investigators and her foster mothers believed that she should have behaved a certain way in response to

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).

³³⁵ ROBBINS, JOHANSON & CHESTEK, *supra* note 16, at 32–33; *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); ; *see also* Michael R. Smith, *Linguistic Hooks: Overcoming Adverse Cognitive Stock Structures in Statutory Interpretation*, 8 LEGAL COMM. & RHETORIC: JALWD 1, 5–13 (2011) (discussing how certain words trigger certain associations in people).

³³⁶ *See, e.g.*, Armstrong & Miller, *supra* note 1 (foster mother mentioning how she reacted differently than Marie).

³³⁷ *See, e.g.*, Freddy Funes, *Beyond the Plenary Power Doctrine: How Critical Race Theory Can Help Move Us Past the Chinese Exclusion Case*, 11 SCHOLAR 341, 345 n.18 (2009) (discussing the myth that hard work can overcome all adversity); Robin Kundis Craig, *Learning to Live with the Trickster: Narrating Climate Change and the Value of Resilience Thinking*, 33 PACE ENVTL. L. REV. 351, 358 (2016) (stating that existing statutory law embraces the wrong cultural narrative about climate change); A.C. Pustilnik, *Imaging Brains, Changing Minds: How Pain Neuroimaging Can Inform the Law*, 66 ALA. L. REV. 1099, 1135 (2015) (explaining that cultural narrative often mislabels chronic pain as hysteria).

³³⁸ *See* Devon E. Hinton & Siddharth K. Joshi, *Khyâl Attack as a Cultural Concept in the DSM-V Manual (2013)*, KHYÂL ATTACK, <https://khyalattack.com/khyal-attack-as-a-cultural-concept-in-the-dsm-v-manual-2013> [<https://perma.cc/8VYN-DJA8>]; Janna Oswald, *Autism in the Courtroom Prosecutors Use Knowledge of Disorder to Help Young Victims and Juries*, 85 TEX. B.J. 404, 405 (2022); Claudia Peña, *Trauma Abounds: A Case for Trauma-Informed Lawyering*, 26 UCLA WOMEN'S L.J. 7, 8 (2019); Elizabeth Topolosky, *The Horror in Our Heads: Cultural Trauma Expert Testimony in U.S. Courts*, 52 AKRON L. REV. 91, 96–103 (2018).

the trauma.³³⁹ Often people expect survivors to perform their trauma by dissolving into a shaking puddle of tears.³⁴⁰ However, the brain carves out various paths to try to protect us from the horror of trauma.³⁴¹

Thus, trauma survivors may dissociate and do so at times and in ways that appear to others to be inappropriate to the situation.³⁴² Dissociation means mentally checking out from events and going somewhere else inside the mind.³⁴³ Many people may have known someone who has daydreamed or experienced narrative transportation. An audience or reader experiences narrative transportation when they mentally enter a story and experience it in their minds almost as though they are living the story themselves.³⁴⁴ When we daydream or experience narrative transportation, we dissociate; dissociation serves an everyday role in the human condition.³⁴⁵ However, trauma survivors may more frequently dissociate.³⁴⁶

As a trauma survivor, Marie dissociated and seemed hyperactive rather than crying hysterically.³⁴⁷ Marie's foster mother noted Marie's lack of emotion in relaying that she had been raped.³⁴⁸ "It was like she

³³⁹ Armstrong & Miller, *supra* note 1.

³⁴⁰ See Narbutas, *supra* note 31, at 368 (stating that immigration judges may expect trauma survivors to be more emotional).

³⁴¹ Arthur H. Garrison, *Rape Trauma Syndrome: A Review of a Behavioral Science Theory and Its Admissibility in Criminal Trials*, 23 AM. J. TRIAL ADVOC. 591, 620 (2000).

³⁴² See Narbutas, *supra* note 31, at 368 (stating that immigration judges may expect trauma survivors to be more emotional).

³⁴³ See Brickel, *supra* note 284; Finkel, *supra* note 284; GREVEN, *supra* note 284; Harker, *supra* note 284, at 221; Klink, *supra* note 284.

³⁴⁴ Susan M. Chesler & Karen J. Sneddon, *From Clause A to Clause Z: Narrative Transportation and the Transactional Reader*, 71 S.C. L. REV. 247, 249–65 (2019); Ruth Anne Robbins, *Fiction 102 Create A Portal for Story Immersion*, 18 LEGAL COMM. & RHETORIC: JALWD 27, 30 (2021); see Michael Murray, *Narrative Psychology and Narrative Analysis*, in QUALITATIVE RESEARCH IN PSYCHOLOGY: EXPANDING PERSPECTIVES IN METHODOLOGY AND DESIGN 95–112 (Paul M. Camic, Jean E. Rhodes & Lucy Yardley eds., 2003).

³⁴⁵ See *supra* note 286.

³⁴⁶ See Peña, *supra* note 338.

³⁴⁷ See Armstrong & Miller, *supra* note 1.

³⁴⁸ *Id.*

was telling me that she'd made a sandwich."³⁴⁹ Later, Marie was hyper and rolling around on the grass.³⁵⁰ This trauma reaction caused Marie's former foster mother and the police to doubt her story and rendered her narrative more vulnerable.³⁵¹

The fictionalized version of Marie's story shows how dissociation looks inside the trauma survivor's mind. In Marie's fictionalized story, the dissociation manifests as an ocean swim.³⁵² When life becomes too scary, her mind revisits a happy day diving into the ocean.³⁵³ However, for onlookers, this happy swim clashes with the rape story they have heard.

Moreover, Marie's onlookers held biases regarding how trauma survivors were supposed to behave; these biases rendered her narrative less credible in their eyes and, thus, increased its vulnerability. For example, Marie went shopping for replacement items with her former foster mother after the rape and became upset when the sheets she had before were unavailable.³⁵⁴ In the fictionalized account, her former foster mother said, "After what happened on them? If I were you, I'd never want to see those sheets again."³⁵⁵ Likewise, in real life she said, "Why would you want to have the same sheets and bedspread to look at every day when you'd been raped on this bed set?"³⁵⁶ Because Marie's trauma reactions conflicted with preconceived biases regarding trauma survivors' behavior that rendered her narrative less credible in their eyes and more vulnerable to discounting.

Hyperactivity, odd cheerfulness, flat affect, detachment—these surprising reactions then lead audiences to distrust the story.

Culture can further complicate a vulnerable narrator's optics. For example, in Mr. Umba's asylum case, when asked whether he told Hermance about his torture, he indicated that he did not remember.³⁵⁷ He also said that he did not know specifics about what

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *See Unbelievable: Episode 1:1, supra* note 317.

³⁵³ *See id.*

³⁵⁴ *See id.*

³⁵⁵ *See* Armstrong & Miller, *supra* note 1.

³⁵⁶ *See id.*

³⁵⁷ *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *4 (10th Cir. Aug. 5, 2021).

Hermance faced.³⁵⁸ This response seemed to contradict the immigration judge's preset notion regarding how a couple should behave.³⁵⁹ The judge found it unbelievable that Mr. Umba did not know more about his paramour Hermance.³⁶⁰ Thus, this perceived unreliability rendered Mr. Umba's narrative vulnerable.

However, trauma and culture each provide an explanation for Umba's ignorance.³⁶¹ Umba mentioned his head injuries and testified that he forgot "because of all the torture [he] received."³⁶² Returning to the details of his torture "left him feeling emotional, hurt, and fearful."³⁶³ So he avoided talking about it, even with Hermance.³⁶⁴ While the court opinion includes no expert analysis of trauma, Mr. Umba's response seems consistent with the dissociative response Marie experienced.³⁶⁵ Therefore, like Marie, Mr. Umba's trauma vulnerability may have rendered his narrative vulnerable to perceived unreliability.

The opinion in Umba's case does include a cultural explanation for this response.³⁶⁶ He explained that in his country, unmarried men and women avoid discussing private issues, particularly those that could make the man seem weak.³⁶⁷ So this cultural difference created a vulnerability; it created a misunderstanding that led to a perception that his narrative was unreliable.

Not only can culture change reactions generally, but also psychological trauma can manifest in wholly different ways in different cultures. That difference can create further misunderstanding regarding vulnerable narrators' reactions and, thus, can lead to falsely perceived unreliability. For instance, over 1.5 million Cambodians experienced mass trauma at the hands of Pol Pot.³⁶⁸ Yet rather than exhibiting all the markers for PTSD, the

³⁵⁸ *Id.*

³⁵⁹ *See generally id.*

³⁶⁰ *Id.*

³⁶¹ *See generally id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *See id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ Ingrid Olivia Norrmén-Smith, *Unbroken Courage*, MEKONG REV. (Aug. 14, 2020), *reprinted in* THE PULITZER CENTER,

majority instead exhibit markers for *baksbat*, meaning “broken courage,” the Cambodian trauma disorder.³⁶⁹ *Baksbat* sufferers experience “loss of togetherness” and muteness.³⁷⁰ A person could reach an improper conclusion regarding the *baksbat* survivor’s experience if they noted that the survivor failed to exhibit all of the PTSD behavioral markers.³⁷¹

Not only does a vulnerable narrator’s behavior sometimes defy expectations, but sometimes a vulnerable narrator’s story may also contradict stock stories. These stock stories indoctrinate audiences so that they believe similarly situated narrators will all behave a certain way. Such a stock story permeated the Illinois Torture and Relief Commission.³⁷²

The commission’s dominant narrative acknowledged a widespread torture program in Area Two police headquarters led by Jon Burge, the commanding officer.³⁷³ Over 100 victims—all Black males—suffered torture in this regime.³⁷⁴ Official reports catalogue various torture instruments and methods that Burge and his allies employed.³⁷⁵ Professor Kim Chanbonpin notes that the victim statements share striking similarities.³⁷⁶ She explains that these similarities increase credibility while also creating “insurmountable barriers for victims whose stories depart from the accepted narrative.”³⁷⁷ That narrative revolves around the idea that Burge and his confederates were merely “a few ‘bad apples’ that spoiled the barrel.”³⁷⁸ According to this narrative, eliminating the few bad apples solved the problem.³⁷⁹

<https://pulitzercenter.org/stories/unbroken-courage>
[<https://perma.cc/PME9-JEMQ>].

³⁶⁹ *See id.*

³⁷⁰ Sotheara Chimm, *Baksbat (Broken Courage): A Trauma-Based Cultural Syndrome in Cambodia*, 32 *MEDICAL ANTHROPOLOGY* 160–73 (March 2013).

³⁷¹ *See* Norrmén-Smith, *supra* note 368.

³⁷² Chanbonpin, *supra* note 45, at 1092–94 (2014).

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 1093.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

However, even after the Burge era, data indicate a significant number of sustained complaints and an enormous number of complaints made. In 2010-2012, the Independent Police Review Authority (IPRA) retained for further investigation 5,613 of 17,108 complaints regarding police conduct and referred 138 to the States' Attorney's Office.³⁸⁰ The IPRA chart reports that 2,578 complained of excessive force, and 203 complained of officer-involved shootings.³⁸¹ Even more concerning, there were at least ninety-three deaths or injuries "to a person while in police custody or other extraordinary or unusual occurrence in a lockup facility."³⁸² These included situations where investigators found that the video monitors were off in cells during hanging deaths.³⁸³ The "bad apples" narrative seems inconsistent with the sheer number of complaints, the severity of outcomes of the unexplained situations, and the IPRA's complaint that inadequate funding and staffing impede its transparency.³⁸⁴ However, more importantly, the IPRA sustained 170 complaints,³⁸⁵ a number which by itself belies the idea that eliminating "a few bad apples" solves the problem. Unfortunately, a vulnerable complainant who has survived the trauma of police abuse must compete with this "few bad apples" narrative and overcome this stock story to tell their own.

³⁸⁰ *Id.* at 1098–100; see Ilana B.R. Rosenzweig, Indep. Police Review Auth., Annual Report 2010-2012, at 31 (2012), https://chicagopatf.org/wp-content/uploads/2016/01/IPRA_AnnualReport2010-2012.pdf [https://perma.cc/JDE8_XSZE] [hereinafter IPRA, Annual Report 2010-2012].

³⁸¹ Chanbonpin, *supra* note 45, at 1098–99; see IPRA, Annual Report 2010-2012, *supra* note 380, at 30–31.

³⁸² Chanbonpin, *supra* note 45, at 1099; see IPRA, Annual Report 2010-2012, *supra* note 380, at 30–31 & n.3.

³⁸³ Chanbonpin, *supra* note 45, at 1098–100; Kim Janssen, *U.S. Rep. Davis Calls for Federal Probe into Lockup Hangings*, CHI. SUN-TIMES (Dec. 28, 2011); see Becky Schlikerman & Peter Nickeas, *Second Man Commits Suicide at South Side Jail*, CHI. TRIB. (Nov. 21, 2011), http://articles.chicagotribune.com/2011-11-21/news/ct-met-chicago-police-lockup-suicides-20111121_1_lockup-second-man-suicide [<https://perma.cc/8L2D-FWQT>].

³⁸⁴ See IPRA, Annual Report 2010-2012, *supra* note 380, at 19, 27.

³⁸⁵ It seems to have dismissed another 1674 for lack of affidavit, and disposed in other ways or did not complete investigation of the remaining complaints. See IPRA, Annual Report 2010-2012, *supra* note 380, at 30–31.

VI. Narrative Solutions for Vulnerable Narrators

Regarding pre-set narratives and other credibility challenges, past narratives offer advocates tools for overcoming all of these vulnerabilities. Successful narrative solutions for vulnerable narrators in fiction and law often do one or more of the following:

- A. They prime the audience by leading with information that helps the vulnerable narrator;
- B. They reframe body language, tone, gaps, inaccuracies, altered perceptions, unassertiveness, and odd behavior as being consistent with the narrator's particular vulnerability;
- C. They provide concrete details and hard evidence that supports the vulnerable narrator's ultimate truth;
- D. They metacommunicate by labeling the tactics and strategies often used against vulnerable narrators.

A. Priming the Audience

Vulnerable narrators' stories have often succeeded with priming. Priming means leading with helpful information.³⁸⁶ The information

³⁸⁶ Cathren Page, *Not So Very Bad Beginnings: What Fiction Can Teach Lawyers About Beginning A Persuasive Legal Narrative Before A Court*, 86 MISS. L.J. 315, 328–33 (2017); Maureen Johnson, *You Had Me at Hello: Examining the Impact of Powerful Introductory Emotional Hooks Set Forth in Appellate Briefs Filed in Recent Hotly Contested U.S. Supreme Court Decisions*, 49 IND. L. REV. 397, 397 (2016); Steven J. Johansen, *Coming Attractions: An Essay on Movie Trailers & Preliminary Statements*, 10 LEGAL COMM. & RHETORIC: JALWD 41, 42, 46 (2013) (stating that a movie trailer should intrigue the viewer into seeing the movie); 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, 306 (2010) (discussing how first impressions prime the audience); Michael J. Higdon, *Something Judicious This Way Comes ... the Use of Foreshadowing as a Persuasive Device in Judicial Narrative*, 44 U. RICH. L. REV. 1213, 1214–15 (2010) (discussing how foreshadowing earlier in the story can help the reader to believe events that happen later in the story); cf. DANIEL KAHNEMAN, THINKING, FAST AND SLOW 82–83 (2011) (explaining how last impressions are filtered through first impressions).

an audience receives first shapes their view on later information.³⁸⁷ In this respect, vulnerable narrators face an uphill battle against the dominant cultural narrative and must overcome implicit bias³⁸⁸ and preconceived notions seeded deep in the societal subconscious.³⁸⁹

In fiction narratives and in successful legal challenges, vulnerable narrators have often succeeded by leading with helpful information. For instance, in *Sold*, Lakshmi's story begins before her family sold her.³⁹⁰ For forty-eight pages, readers experience her family's starvation and her infant brother's near death followed by the destruction of their only means of survival, their crop.³⁹¹

Throughout this portion of the story, Lakshmi hopes to save her family like her friend Gita who went to become a maid in the city.³⁹² When Lakshmi's step-father sells her, her mother instructs her on how to succeed as a maid.³⁹³ From there, readers witness Lakshmi's misunderstandings and extreme ignorance regarding what has happened.³⁹⁴ She does not even know that there is more than one big city.³⁹⁵

As the story moves forward, Lakshmi witnesses people beating a girl who fled marriage.³⁹⁶ Then Lakshmi's captor punishes her until she capitulates to prostitution.³⁹⁷ Later, Lakshmi's escapee friend returns to the brothel to explain that her own family banished her upon her return home.³⁹⁸

Yet unlike the villagers or locals who would blame Lakshmi or mistake her for a willing participant, primed readers more likely empathize with Lakshmi and with her desire to escape. They see how starvation, poverty, community-wide naivete, and Lakshmi's step-father's alcoholism conspired to force her into sexual captivity and

³⁸⁷ See *supra* note 386.

³⁸⁸ See Donald, *supra* note 30.

³⁸⁹ See *id.*

³⁹⁰ McCORMICK, *supra* note 73, at 1–48.

³⁹¹ *Id.*

³⁹² *Id.* at 1–4, 5, 34, 48–49.

³⁹³ *Id.* at 50–51.

³⁹⁴ *Id.* at 56–59, 64, 70–77, 90–91.

³⁹⁵ *Id.* at 61–63, 67–71.

³⁹⁶ *Id.* at 85–86.

³⁹⁷ *Id.* at 102–04, 109–10.

³⁹⁸ *Id.* at 180–81, 186, 193–94.

understand that her captors bear the blame.³⁹⁹ While a “sex positive” view regarding Lakshmi’s actions might be less shaming, such a view would erase Lakshmi’s true will and keep her captive. Instead, the storytelling in Lakshmi’s case reveals her true wishes—first to provide for her family as a maid and later to escape her traffickers.⁴⁰⁰ Unlike the villagers and locals in the world of Lakshmi’s story, her readers receive the explanation for Lakshmi’s sex trafficking situation before seeing her being sex trafficked. Thus, readers empathize. Often by beginning a vulnerable narrator’s story chronologically from the vulnerable narrator’s perspective, storytellers can prime readers to understand and accept later events.

Daunis’s story also leads with information supporting her true wishes. Her story seems like a garden-variety, multicultural young adult romance when it begins. She is graduating from high school and embracing a science career while trying to help her friend avoid ex-boyfriend drama.⁴⁰¹ She flashes back to tell the cute, funny stories regarding her friend’s ex, Travis, when he was a kid.⁴⁰² Then she meets a cute new boy.⁴⁰³ Readers follow along, perhaps imagining themselves back in high school.

However, next, Daunis witnesses a few clues indicating that methamphetamine has impacted her social circle.⁴⁰⁴ She narrowly escapes death when methamphetamine-addicted Travis kills her friend, then himself.⁴⁰⁵

Although the FBI initially considers Daunis a person of interest in their investigation into the methamphetamine scheme involving murders and missing persons, and townspeople urge her to be “one of the good Indians,”⁴⁰⁶ readers likely see Daunis as an innocent, someone like themselves. The story first introduces her as someone successful in school who is undergoing much of the ordinary high school drama in a small town—crushes, popularity conflicts, and

³⁹⁹ *See id.* at 1–244.

⁴⁰⁰ *See id.* at 1–263.

⁴⁰¹ BOULEY, *supra* note 84, at 1, 9, 26–28, 40, 72–73.

⁴⁰² *Id.* at 6, 26–28, 107.

⁴⁰³ *Id.* at 21–26, 31–34, 41–74.

⁴⁰⁴ *Id.* at 72–74.

⁴⁰⁵ *Id.* at 85–87.

⁴⁰⁶ *Id.* at 102–19, 253.

small-town gossip. As a reader, I saw her as being myself if circumstances had thrust me into a plot in which I did not belong.

Some of our legal examples illustrate how using the priming approach utilized in both Sold and Firekeeper's Daughter might change the outcome. In a few of the legal examples, decision-makers first received stories that lacked effective priming. Thus, their decisions aligned more with those of the condemning villagers in Sold; they made decisions adverse to the vulnerable narrators. In these same narratives, other decision-makers later received stories with effective priming, and they ultimately decided in favor of the vulnerable narrators.

For example, in Marie's story, Marie's family and the detectives initially disbelieved Marie.⁴⁰⁷ They witnessed her non-verbal cues and her minor inconsistency first, and early on, Marie's foster family shared harmful information with detectives.⁴⁰⁸ The detectives then not only failed to investigate the rape, but they charged Marie with false reporting.⁴⁰⁹

Later, in Marie's legal documents, in the non-fiction podcast, and in the fiction version of Marie's story, new audience members received a primed version of the story. Marie's civil complaint against the city led with Marc O'Leary's convictions for rape.⁴¹⁰ Likewise, the non-fiction podcast led by contrasting the shoddy police investigation to the stellar investigation,⁴¹¹ and the fiction version actually portrayed the rape.⁴¹²

These approaches succeeded. Rather than even try to defend against this complaint at trial, the city settled with Marie.⁴¹³ The case then caught the podcaster's attention, and that portrayal succeeded well enough to catch the television show creators' attention. Ultimately, the show drew over 32 million viewers and scored a rare ninety-eight percent of positive reviews from critics on Rotten

⁴⁰⁷ *Unbelievable: Episode 1:1*, *supra* note 317.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*; This American Life, *Anatomy of a Doubt*, NPR (February 26, 2016), <https://www.thisamericanlife.org/581/anatomy-of-doubt> [<https://perma.cc/5NBK-UGD2>]; Armstrong & Miller, *supra* note 1.

⁴¹¹ This American Life, *supra* note 410.

⁴¹² *Unbelievable: Episode 1:1*, *supra* note 317.

⁴¹³ This American Life, *supra* note 410; Armstrong & Miller, *supra* note 1.

Tomatoes.⁴¹⁴ The audience likely empathized with Marie. On watching the show, I myself felt so angry on Marie's behalf that I wanted to bash the television with a baseball bat.

While this priming advice seems helpful to appellate attorneys, Innocence Project Advocates, and various other late-stage advocates, the vulnerable narrators in these cases suffered unnecessarily before receiving justice. At the same time, vulnerable narrators themselves will likely still be too ill-equipped to lead with priming. Thus, Section VII discusses priming decisionmakers before decisionmakers even encounter vulnerable narrators.

B. Reframing Body Language, Tone, Gaps, Inaccuracies, Altered Perceptions, Unassertiveness, and Odd Behavior

Within an individual narrative, all of the factors that make vulnerable narrators seem less credible also frequently comprise the same traits belonging to narrators with the claimed vulnerability. For example, staring off into space, becoming hyper-active, having memory gaps, recanting in the face of pressure—all of these behaviors often manifest in response to sexual trauma.⁴¹⁵ In other instances, vulnerable narrators may lie or hide facts out of fear for their own safety.⁴¹⁶ Advocates can reframe these behaviors by presenting them

⁴¹⁴ *Unbelievable*, ROTTEN TOMATOES, <https://www.rottentomatoes.com/tv/unbelievable> [https://perma.cc/3SWB-7LZN] (last visited Dec. 12, 2022); John Koblin, *Netflix Top Ten Original Movies and TV Shows: According to Netflix*, N. Y. TIMES (Oct. 21, 2019), <https://www.nytimes.com/2019/10/17/business/media/netflix-top-ten-movies-tv-shows.html> [https://perma.cc/PSU3-QQ6A].

⁴¹⁵ See Hopper & Lisak, *supra* note 265; see also Avalos, *supra* note 13; see also Ward, *supra* note 268, at 87.

⁴¹⁶ See International Association of Chiefs of Police, *Successful Trauma Informed Victim Interview*, available at <https://www.theiacp.org/sites/default/files/2020-06/Final%20Design%20Successful%20Trauma%20Informed%20Victim%20Interviewing.pdf> [https://perma.cc/GHN2-NMP7] (last visited Dec. 12, 2022); Rebecca Ruiz, *Training Aims to Improve How Military Sexual Assault Investigated*, NBC NEWS (Mar. 21, 2013), <https://www.nbcnews.com/news/us-news/training-aims-improve-how->

as part of the exact vulnerable condition that comprises the narrator's greater legal truth.

For example, in the fiction version of Marie's story, the filmmakers go inside Marie's mind to show what Marie's dissociation and her rape flashbacks look like internally.⁴¹⁷ As she is being raped, she focuses on a photo of herself from a day at the beach and drifts off into her imagination back onto the beach to escape the trauma.⁴¹⁸ After the rape, often when she becomes anxious she does the same.⁴¹⁹ Nonetheless, sometimes she sees flashes of the rape as well.⁴²⁰ Thus, viewers likely understand why Marie exhibits the checked-out behavior that so concerned her former foster mothers and detectives.⁴²¹ Rather than undermining her credibility as it did with the detectives, Marie's mental trip to the beach underscores her trauma for viewers.

Similarly, by immersing readers in her story, Lakshmi shows readers why she goes silent when her first potential rescuer offers her escape.⁴²² Lakshmi and readers see firsthand what happens to women who try to escape.⁴²³ Before the American even visited her, Lakshmi's fellow captives tell her that Americans will just try to trick her and make her walk naked in the street.⁴²⁴ When an American first offers to help, Lakshmi recalls her friends' warnings about Americans.⁴²⁵ Due to this positive priming, rather than believing Lakshmi wanted to be trafficked, readers understand why Lakshmi went silent the first time someone offers her escape.

Unlike Lakshmi's readers, Fern's readers initially receive negative priming. Thus, Fern's story may provide greater guidance to

military-sexual-assaults-are-investigated-flna1c8995794
[<https://perma.cc/LD6J-AFLE>]; Sara F. Dudley, *Paved with Good Intentions: Title IX Campus Sexual Assault Proceedings and the Creation of Admissible Victim Statements*, 46 GOLDEN GATE U. L. REV. 117, 131 (2016); Van Syckle, *supra* note 29.

⁴¹⁷ *Unbelievable: Episode 1:1*, *supra* note 317.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *See id.*

⁴²² MCCORMICK, *supra* note 73, at 142.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.* at 174.

advocates whose clients have already stepped into a pile of discrediting facts. Fern's sister, Rose, initially shows readers a story that makes it appear that Fern willfully drowned Billy.⁴²⁶ Fern also later confesses the drowning to her love interest, Rocco.⁴²⁷ Then Fern herself shows a story making herself look neglectful—Fern's story indicates that she forgot to feed and water Rose's dog for days on end.⁴²⁸ As a reader, I connected Fern to two of my own family members who are on the autism spectrum; they often either forget or were never listening to important facts I tell them. Thus, I believed that Fern neglected the dog and might neglect an infant.

Fern's readers also likely further distrust her account in the beginning due to the negative priming Rose provides about their mother. Rose reports that their mother left them in the library instead of taking them to school, that they were homeless, and that their mother called Rose "stupid."⁴²⁹

Nonetheless, all along both Fern and Rose have told a story regarding Fern relying on Rose to explain the world to her.⁴³⁰ For example, Rose explains to Fern that it's best to thank her colleague Gayle for bringing her lemons from her tree, as opposed to saying that she does not want the lemons.⁴³¹

Moreover, both Fern and Rose have shown Rose controlling even Fern's micro-actions and reactions by tapping Fern's bracelet to silence her.⁴³² From there, readers witness Rose's control extending out-of-bounds when she refuses to let Fern return home, sticks her in a dollhouse-like in-law unit, and even convinces Fern to lie to Rocco to break up with him.⁴³³

Readers probably begin to like and trust Rose less and to understand that Fern will doubt herself and instead follow Rose's direction. Thus, once readers see more hard evidence, they more readily reject Fern's own self-undermining. Readers already know that Rose had a motive to kill their mother.⁴³⁴ Then readers learn that,

⁴²⁶ HEPWORTH, *supra* note 66, at 2–3.

⁴²⁷ *Id.* at 140–41.

⁴²⁸ *Id.* at 57–63.

⁴²⁹ *Id.* at 17–18, 20.

⁴³⁰ *Id.* at 6.

⁴³¹ *Id.*

⁴³² *Id.* at 15–16.

⁴³³ *Id.* at 190–94, 200–01.

⁴³⁴ *Id.* at 155–57, 166–67, 222–25.

for the first time in years, diabetic Rose visited their mother on the day of her death; her death was consistent with insulin injection.⁴³⁵ Fern finally tells the full version regarding what happened the day of the drowning, and, ultimately, Rose confesses to readers regarding how she misled Fern about the dog and tricked Fern into getting pregnant so that she could relinquish her child to Rose for adoption.⁴³⁶

Readers also finally receive the full story about Billy. When they were children, they played a breath holding contest underwater, and Rose told Fern that Billy would never win unless Fern held him down.⁴³⁷ Thus, Rose tricked Fern into killing Billy.⁴³⁸

As a reader, while I still disbelieve Fern's perspective regarding their mother's parenting skills, I ultimately believe that Rose manipulated Fern into accidentally drowning Billy and that Fern never neglected the dog. Rose's confession, Fern's self-doubting and deference to Rose, Rose's manipulative actions all led me to that belief. As a result, I believe Fern's greater underlying truth, that she will never accidentally kill or physically neglect her own child. Moreover, she would make a much better mother to her child than Rose would.

Advocates can follow a similar pattern. In Fern's story, readers initially received negative information tied to Fern's vulnerable traits along with information regarding Rose's control that would later exculpate Fern. Likewise, in the real world, the traumatized or unguided client will likely remain in the throes of raw processing when first telling their story. Thus, the client could likely initially prime decisionmakers with negative information. Once primed, an untrained audience is more likely to unfairly discount the vulnerable person's credibility.

However, like Fern, these clients can recover from the bad priming in their stories. Some early parts of their story may provide exculpatory information. The client's vulnerable traits may explain problematic aspects of the client's narrative the same way that Fern's willingness to defer to her sister's account over her own explained her negative priming.

⁴³⁵ *Id.* at 233–36, 260–62, 280, 302–06.

⁴³⁶ *Id.* at 302–06.

⁴³⁷ *Id.*

⁴³⁸ *Id.*

This approach seems to be what attorneys did in both Mr. Umba's case and in a Heaps's plaintiff's case. Although Heaps's exam traumatized Jane Doe 2, like Fern, she doubted herself due to her inexperience. Having only Dr. Heaps to rely upon regarding gynecological norms, she was unaware his exams were abnormal. She trusted his superior expertise and authority regarding the supposed medical necessity.

Later, however, despite Jane's initial inability to seek help, her attorneys reclaimed the narrative to prime the readers with the harmful information first in Jane Doe 2's complaint in her case against Dr. Heaps. Her attorneys began their narrative by summarizing the abusiveness of the exam. They explained that during both a transvaginal ultrasound a pelvic exam, Dr. Heaps touched her sexually and that his touch was medically unnecessary.⁴³⁹ Moreover, during the procedure, he made "grossly inappropriate and humiliating comments" about Jane's anatomy.⁴⁴⁰ He also asked her "embarrassing, non-medical questions about her personal life and sex life."⁴⁴¹

The attorneys then used Jane's naivete and trauma to frame her initial inaction. Their narrative explains: Dr. Heaps' assault traumatized her, and his comments humiliated and confused her.⁴⁴² The narrative further explains that, however, due to her age and ignorance regarding appropriate gynecological care, she only fully understood the wrongness of his approach after obtaining treatment from another doctor.⁴⁴³

Thus, her attorneys cut off objections that Jane was not really traumatized or that if she was so bothered, she should have done something sooner. In so doing, they rehabilitated her credibility.

In the next part of the complaint, just as the author in The Good Sister illustrated Rose's superior power and manipulation, Jane's attorneys showed the extreme power disparity between Dr. Heaps and eighteen-year-old Jane. Heaps made the list of UCLA's highest paid

⁴³⁹ Complaint at 2, Doe 2 v. Regents of the Univ. of Cal., Nos. 19-20759, 19-20594, 2019 WL 13118025 (Cal. Super. June 14, 2019).

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.* at 2-3.

employees at a salary of \$1,182,265, and Hollywood Reporter listed him in its *Best Doctors of Los Angeles* in 2016.⁴⁴⁴

These details all paint a picture of trauma, confusion, youthful naivete, and power disparity. It seems that these details helped to overcome concerns about why she did not report sooner. In the end, UCLA did not even try the case. They settled with over 6,000 plaintiffs for 73 million dollars.⁴⁴⁵

Advocates representing vulnerable narrators can similarly reframe quizzical actions and behaviors. When the vulnerable narrators' behavior fits their vulnerability, advocates can educate their audience the way that Jane's attorneys did. They can explain upfront why vulnerable narrators acted as they did and how that is consistent with the narrator's particular vulnerability.

C. Including Concrete Details

To reframe the disparities in the stories above, the storytellers used concrete details. Concrete details create a sense of reality that push these stories further over the credibility hurdle; literary critics call this sense of reality "verisimilitude."⁴⁴⁶ Specific sensory information helps the audience to visualize events so that they seem real, and concrete names, facts, and figures lend a sense of believability.⁴⁴⁷ For instance, in Fern's story, physical evidence corroborated her tale. Her diabetic sister went to see her mother for the first time in ten years just before her mother died.⁴⁴⁸ Later, investigators found needle marks on her mother consistent with insulin injection; her death itself was also consistent with insulin

⁴⁴⁴ *Id.* at 3.

⁴⁴⁵ UCLA HEAPS SETTLEMENT, [https://www.uclaheapssettlement.com/\[https://perma.cc/AX25-TWBM\]](https://www.uclaheapssettlement.com/[https://perma.cc/AX25-TWBM]) (last visited Dec. 12, 2022).

⁴⁴⁶ Cathren Page, *Stranger than Fiction: How Lawyers Can Use Fiction Techniques to Create a Sense of Reality in Legal Narratives*, 78 LA L. REV. 907, 912 (2018); J.A. CUDDON, *DICTIONARY OF LITERARY TERMS AND LITERARY THEORY* 755 (5th ed. 2013).

⁴⁴⁷ See Page, *supra* note 446, at 909–10; ORHAN PAMUK, *THE NAÏVE AND SENTIMENTAL NOVELIST: UNDERSTANDING WHAT HAPPENS WHEN WE WRITE AND READ NOVELS* 44–48, 89–94 (2010).

⁴⁴⁸ HEPWORTH, *supra* note 66, at 233, 242.

overdose.⁴⁴⁹ These details seem to fit with each other and to fit the explanation, which helps some to rehabilitate Fern's believability.

However, their specificity also makes them seem more real. Imagine the story had simply said that a daughter went to see her mother after a long time, that the daughter had access to something that could kill the mother, and that the mother's death seemed consistent with that. Readers would likely have a harder time picturing the scene, and its believability would be less compelling. The specificity itself lends Fern's story a sense of reality that helps to rehabilitate her vulnerability.

Likewise, in Marie's actual case, the concrete details in her complaint lend it a greater sense of reality. In the investigation, detectives initially noted red marks on her wrists where O'Leary tied them, and a Sexual Assault Nurse Examiner (SANE) exam report noted abrasions on Marie's labia.⁴⁵⁰ They cataloged the laces used to tie her wrists, the underwear used to gag her, and the knife used to threaten her.⁴⁵¹

While this evidence provided some proof, two different detectives later found DNA evidence connecting O'Leary to other rapes. They also found photographs, including a photograph of a terrified Marie, bound and gagged, with her learner's permit on her chest.⁴⁵² With such specific sensory information, readers can picture moments of the rape and its physical impact on Marie. Picturing an event makes it seem more believable.⁴⁵³ This evidence all led to the settlement in Marie's case.⁴⁵⁴

Advocates can incorporate this technique into their writing. A few concrete details that fit well together can increase a legal narrative's believability. Sensory details in particular can also help readers to imagine the narrative unfolding.

⁴⁴⁹ *Id.* at 281.

⁴⁵⁰ Complaint at 6–7, *D.M. v. O'Leary*, No. 13-00971, 2013 WL 3322001 (W.D. Wash. June 7, 2013).

⁴⁵¹ *Id.*

⁴⁵² *Id.* at 8.

⁴⁵³ See Page, *supra* note 446, at 909–10; PAMUK, *supra* note 447, at 44–48, 89–94.

⁴⁵⁴ This American Life, *supra* note 410.

D. Metacommunicating

Even with these storytelling strategies in place, vulnerable narrators must overcome prejudicial framing and can do so with a labeling technique known as metacommunication. Perpetrators often attack the victim's credibility.⁴⁵⁵ The dominant cultural narrative in our society often follows a playbook with set strategies. It gaslights,⁴⁵⁶ victim-blames,⁴⁵⁷ uses fear tactics to trigger trauma,⁴⁵⁸ slut-shames,⁴⁵⁹ dog whistles,⁴⁶⁰ and misdirects.⁴⁶¹

⁴⁵⁵ See HERMAN, *supra* note 308, at 8.

⁴⁵⁶ See, e.g., Ciji Dodds, *In Fear of Black Revolutionary Contagion and Insurrection: Foucault, Galtung, and the Genesis of Racialized Structural Violence in American Foreign Policy and Immigration Law*, 26 MICH. J. RACE & L. 371, 388 (2021); Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. PEACE & RSCH. 167 (1969). For an extreme example of gaslighting, see Regina Rini & Leah Cohen, *Deepfakes, Deep Harms*, 22 J. ETHICS & SOC. PHIL. 143, 153 (2022).

⁴⁵⁷ See Gillian R. Chadwick, *Reorienting the Rules of Evidence*, 39 CARDOZO L. REV. 2115, 2135 (2018); Roger C. Park & Michael J. Saks, *Evidence Scholarship Reconsidered: Results of the Interdisciplinary Turn*, 47 B.C. L. REV. 949, 1005 (2006); Kim Lane Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 N.Y.L. SCH. L. REV. 123, 126 (1992).

⁴⁵⁸ Cf. Michelle J. Anderson, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1428 (1993) (showing that the abuser uses the legal system as a weapon against the victim, threatening to use the legal system against them); Page, *supra* note 278, at 63.

⁴⁵⁹ See generally Margot Goblet & Fabienne Glowacz, *Slut Shaming in Adolescence: A Violence Against Girls and Its Impact on Their Health*, 18(12) INT. J. ENVIRON. RES. PUBLIC HEALTH 6657, 6657 (2021); see Blanche Bong Cook, *Johnny Appleseed: Citizenship Transmission Laws and A White Heteropatriarchal Property Right in Philandering, Sexual Exploitation, and Rape (the "WHP") or Johnny and the WHP*, 31 YALE J.L. & FEMINISM 57, 89 (2019); Page, *supra* note 278, at 55.

⁴⁶⁰ See generally WOLF WHISTLE POLITICS: THE NEW MISOGYNY IN AMERICA TODAY (Diane Wachtell ed., 2017).

⁴⁶¹ See generally Veronica E. Johnson, Kevin L. Nadal, Gina Diagou Sissoko & Rukiya King, "It's Not in Your Head": Gaslighting, 'Splaining, Victim Blaming, and Other Harmful Reactions to Microaggressions, 16(5) PERSPECTIVES IN PHYS. SCI. 1024, 1024–36, (2021).

Society used some of these tactics on Marie in her actual case. Her rapist himself victim-blamed when he told Marie that she should have locked the door.⁴⁶² Then detectives gaslit her by saying that ex-boyfriend doubted that she was raped; he says he never doubted her.⁴⁶³ They grilled her and threatened her with jail time.⁴⁶⁴ She would lose her housing.⁴⁶⁵ Years later, an outside review of the investigation reported that the way the detectives treated Marie “can only be labeled as bullying and coercive.”⁴⁶⁶

Metacommunication holds the key to defeating these kinds of tactics and pushing back on the dominant narrative. In this context, “metacommunication” means communicating about the communication.⁴⁶⁷ More explicitly, “metacommunication” means labeling communication tactics and strategies.⁴⁶⁸

Some data suggests that this technique can effectively persuade. For instance, Berkeley Professor Ian Haney Lopez’s race-class project tested various political messages in surveys and focus groups.⁴⁶⁹ The project found that two groups on opposite ends of the political spectrum rarely changed their minds based on messaging.⁴⁷⁰ However, they labeled another group as “persuadables.”⁴⁷¹ Persuadables did often respond to dog-whistled racism, and colorblind messages reached them at a lower rate.⁴⁷² However, messages that labeled dog-whistling as a strategy meant to divide often resonated with voters.⁴⁷³ For example, the following labeling tactic convinced individuals in a focus group:

⁴⁶² This American Life, *supra* note 410.

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ See Colwyn Trevarthen, *Contracts of Mutual Understanding: Negotiating Meanings and Moral Sentiments with Infants*, 6 J. CONTEMP. LEGAL ISSUES 373, 385 (1995).

⁴⁶⁸ *Cf. id.*

⁴⁶⁹ IAN HANEY LOPEZ, MERGE LEFT xx, 1, 6, 8, 10, 12, 16, 30 56, 77–78, 88, 110–11, 115 (2019).

⁴⁷⁰ *Id.* at 76–78.

⁴⁷¹ *Id.* at 15, 78.

⁴⁷² *Id.* at xix, 8–12.

⁴⁷³ *See id.* at 6–9.

Conservative politicians in this country go to great lengths to paint government services as handouts to Black and brown people. They have positioned government as a force that takes taxes from supposedly hardworking whites and gives them to supposedly lazy Black and brown people. This is how Republicans get whites of every income level to vote for them, even as their policies rig the economy for the very rich, hurting regular people regardless of their race or ethnicity.⁴⁷⁴

Advocates can learn from this technique and flip prejudicing frames by labeling them for the audience. Within the legal context, history provides us with a stellar example. In the Nuremberg trials against the major Nazi war criminals, Justice Jackson stated the following in his closing:

In the final analysis, the only question is whether the defendants' own testimony is to be credited as against the documents and other evidence of their guilt. What, then, is their testimony worth? The fact is that the Nazi habit of economizing in the use of truth pulls the foundations out from under their own defenses. Lying has always been a highly approved Nazi technique. Hitler, in "MEIN KAMPF," advocated mendacity as a policy. . . .

Nor is the lie direct the only means of falsehood. They all speak with a Nazi doubletalk with which to deceive the unwary. In the Nazi dictionary of sardonic euphemisms "Final solution" of the Jewish problem was a phrase which meant extermination; "Special treatment" of prisoners of war meant killing; "Protective custody" meant concentration camp; "Duty labor" meant slave labor; and an order to "take a firm attitude" or "take positive measures" meant to act with unrestrained savagery. Before we accept their word at what seems to be its face, we must always look for hidden meanings. . . .⁴⁷⁵

⁴⁷⁴ *Id.* at 7.

⁴⁷⁵ *The Nuremberg Trials: An Account*, FAMOUS TRIALS BY PROFESSOR DOUGLAS O. LINDER, <https://famous-trials.com/nuremberg/1901-home> [<https://perma.cc/M23W-M29N>] (last visited Dec. 12, 2022).

In this excerpt, Justice Jackson labels a tactic; he names the Nazi tactic “double-talk” and provides examples of the technique.⁴⁷⁶ In so doing, he avoids getting mired in details that could sound defensive. If he had gone on a long diatribe trying to prove that “final solution” really did mean extermination, he would have come across as protesting too much. Instead, having already provided evidence of Nazi wrongdoing, he then cut through their one defense. While he paints a pathetic picture, the Nazi double-talk strategy worked to control a whole nation.⁴⁷⁷ By stepping outside of the debate to reveal their strategy, Justice Jackson finally brought them down.⁴⁷⁸ The Nuremberg tribunal found eighteen of the twenty-one defendants guilty.⁴⁷⁹

Advocates wishing to rehabilitate vulnerable narrators can use these same techniques to overcome unfair strategies directed at them. When the opposition uses strategies such as dog-whistling racism, gaslighting, or slut-shaming, advocates can point out the strategy, dissect it as Justice Jackson did, and rob it of its power.

VII. Societal Solutions for Vulnerable Narrators

Due to the priming challenges noted previously, vulnerable narrators sometimes have to wait unnecessarily long for justice. Some never achieve it at all. Advocacy groups can also engage in several measures to:

- A. use training to change cultural scripts;
- B. connect vulnerable allies with one another; and
- C. persist.

A. Training

By training the public as well as key players and decision-makers, advocates can begin overcoming the negative priming audiences have

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

received about vulnerable narrators. In some instances, training may eventually even positively prime audiences.

1. Public Education

Given societal narratives and implicit bias, advocates can achieve the most far-reaching impact if we push back on the larger societal narrative to create greater awareness. As mentioned in section III, fiction, media, social media, and various communities all tell society repeat stories regarding both how people should behave in certain situations and how certain types of people are.⁴⁸⁰ Thus, the vulnerable narrator enters the scene having to overcome this pre-written script in the audience's mind.

Advocates can serve vulnerable narrators well if we begin to rewrite that cultural script. Advocacy organizations as well as individual advocates can run social media campaigns pushing back on the cultural script. They can also push back on the script in the press, in podcasts, and in documentaries.

Advocates can also accomplish goals by interacting with fiction writers. A culture can take many of its cues from fiction. Due to movies and television, people widely believe that chloroform knocks out victims immediately,⁴⁸¹ that a person must wait twenty-four hours to report a missing person,⁴⁸² and that a padlock can be busted open by shooting it with any hand gun.⁴⁸³ However, it can take up to five minutes to knock someone out with chloroform.⁴⁸⁴ People should

⁴⁸⁰ Darren Lenard Hutchinson, *Continually Reminded of Their Inferior Position: Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23 (2014).

⁴⁸¹ Cf. *Very Old Hollywood Myth—Can a Piece of Cloth with Chloroform Knock Out an Adult Man*, TECHNOLOGY.ORG: TECHNOLOGY AND SCIENCE NEWS (Aug. 29, 2018), <https://www.technology.org/2018/08/29/very-old-hollywood-myth-can-a-piece-of-cloth-with-chloroform-knock-out-an-adult-man/> [<https://perma.cc/C533-Q8DR>].

⁴⁸² See, e.g., CHANGELING (Imagine Entertainment 2008).

⁴⁸³ Cf. *Shoot Out the Lock*, TV TROPES, <https://tvtropes.org/pmwiki/pmwiki.php/Main/ShootOutTheLock> [<https://perma.cc/4B2S-QGE9>] (last visited Dec. 12, 2022).

⁴⁸⁴ See *Very Old Hollywood Myth*, *supra* note 481.

report missing persons immediately.⁴⁸⁵ Finally, a handgun is unlikely to open a padlock.⁴⁸⁶ By sharing information with those who help write the cultural script, advocates may ultimately help to prime the public at large with more helpful and accurate information for vulnerable narrators. That may decrease their vulnerability and increase their credibility.

2. Training Key Players and Decision-Makers

In re-writing the cultural script, advocates can train key players and decision-makers frequently involved in vulnerable narrators' cases. Advocates can train these decision-makers and key players in cultural competency, trauma-informed responses,⁴⁸⁷ race dynamics,⁴⁸⁸ elder issues, and the various other issues that vulnerable narrators frequently face. Advocates can give this training to judges, particularly special masters and associate judges appointed to hear cases where these issues reoccur.⁴⁸⁹ However, advocacy organizations

⁴⁸⁵ See, e.g., *File a Missing Person Report*, METROPOLITAN POLICE DEPARTMENT, WASHINGTON D.C., <https://missing.dc.gov/page/file-missing-person-report> [<https://perma.cc/V5QT-DJWK>] (last visited Dec. 12, 2022).

⁴⁸⁶ Sarah Griffiths, *Can You Really Unlock a Door with a GUN? Video Reveals Handguns Won't Unlock a Padlock - But a Shotgun Can Open It in Two*, DAILY MAIL (Sept. 22, 2015), <https://www.dailymail.co.uk/sciencetech/article-3244664/Can-really-unlock-door-GUN-Video-reveals-handguns-won-t-unlock-padlock-shotgun-open-two.html> [<https://perma.cc/7826-HLUC>].

⁴⁸⁷ See Katharine Czinke, *Statistically Speaking: Developing Stronger Support: The Impact of Trauma-Informed Advocacy*, 39 CHILD. LEGAL RTS. J. 315, 317 (2019) (indicating that a wide range of trauma informed services leads to improved outcomes in children's cases); cf. *Successful Trauma Informed Victim Interviewing*, *supra* note 416 (listing strategies officers can use in an investigation); Ruiz, *supra* note 416 (indicating that the right interview protocols can produce a more accurate narrative); Van Syckle, *supra* note 29.

⁴⁸⁸ See Akila Shenoy, *Negotiations in Juvenile Dependency: Addressing Power, Race, and Class Inequities*, 12 UC IRVINE L. REV. 719, 728 (2022).

⁴⁸⁹ See SUSAN WELLS & JENIFER URFF, ESSENTIAL COMPONENTS OF TRAUMA-INFORMED JUDICIAL PRACTICE: WHAT EVERY JUDGE NEEDS TO KNOW ABOUT TRAUMA 1, 9 (2013), https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

must also train the advocates themselves—the attorneys, particularly attorneys such as district attorneys, public defenders, child protection attorneys, immigration attorneys, and elder law attorneys.⁴⁹⁰ Organizations must train the fact-gatherers—officers and investigators,⁴⁹¹ healthcare providers,⁴⁹² social workers,⁴⁹³ teachers,⁴⁹⁴ and others who are frequently witnesses and fact-gatherers in these cases.⁴⁹⁵ Even adapting intake forms is likely to improve the narrative.⁴⁹⁶ This training will aid proper fact-development of these narratives.

[<https://perma.cc/8F2R-8PHH>]; Anthony J. Ferraro, Karen Oehme, Ian Waldick & Nat Stern, *Improving Court-Mandated Divorce Education by Recognizing the Effects of Parents' Childhood Trauma*, 40 PACE L. REV. 271, 288 (2020); Marci A. Hamilton, Andrew J. Ortiz & Carter E. Timon, *Roman Catholic Dioceses in Bankruptcy: An Exploratory Study of Victims' Experiences*, 30 J. BANKR. L. & PRAC. 2 (Dec. 2021).

⁴⁹⁰ See generally, Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363 (2015) (discussing trauma-informed legal training); Hon. George F. Phelan, Donald G. Tye, Tannaz N. Saponaro & Eva A. Millona, *Culture and the Immigrant Experience: Navigating Family Courts*, 32 J. AM. ACAD. MATRIM. LAW. 89, 116 (2019).

⁴⁹¹ See Ruiz, *supra* note 416 (indicating that the right interview protocols can produce a more accurate narrative); Van Syckle, *supra* note 29.

⁴⁹² See Monique Tello, *Trauma-Informed Care: What It Is, and Why It's Important*, HARVARD HEALTH PUBLISHING (Oct. 7, 2020), <https://www.health.harvard.edu/blog/trauma-informed-care-what-it-is-and-why-its-important-201804042706> [<https://perma.cc/4ZWH-RPQS>].

⁴⁹³ Josh Gupta-Kagan, *Rethinking Family-Court Prosecutors: Elected and Agency Prosecutors and Prosecutorial Discretion in Juvenile Delinquency and Child Protection Cases*, 85 U. CHI. L. REV. 743, 807 (2018).

⁴⁹⁴ Cf. Jessica Dym Bartlett, Jessica L. Griffin, Joseph Spinazzola, Jennifer Goldman Fraser, Carmen Rosa Norona, Ruth A. Bodian, Marybeth Todd, Crystallina Montagna & Beth L. Barto, *The Impact of a Statewide Trauma-Informed Care Initiative in Child Welfare on the Well-Being of Children and Youth with Complex Trauma*, 84 CHILD AND YOUTH SERV. REV. 110 (2018) (indicating that trauma-informed training in the schools helped to improve trauma outcomes for children who had experience trauma).

⁴⁹⁵ Cf. *Stripped Away: Stories of Immigrant Children*, 25 TEX. HISP. J.L. & POL'Y 127, 129 (2019) (noting that immigration officials may lack appropriate trauma training).

⁴⁹⁶ See Dudley, *supra* note 416, at 132.

B. Forming Allies

In various famous vulnerable narratives, it's when multiple survivors came forward that the story began to gain more credibility. For instance, it's when Detectives Hendershot and Galbraith came together to find O'Leary, that they cracked not only the other cases but Marie's as well.⁴⁹⁷

Like Marie, many of James Heaps's victims waited a long time for justice.⁴⁹⁸ Various patients complained to UCLA personnel over the years, and various staff persons seemed aware that Heaps had engaged in abusive conduct.⁴⁹⁹ Ultimately, over 6,000 plaintiffs came together in a class action and achieved an over \$700 million dollar judgment against UCLA.⁵⁰⁰

This particular solution poses a challenge for survivors because they have to wait until they create alliances with others to get justice. Moreover, due to statutes of limitations, some will never achieve justice in court.⁵⁰¹ This is one argument in favor of eliminating statutes of limitations in cases that typically involve vulnerable narration, such as sexual offenses.⁵⁰² However, the solution remains imperfect given that both individual and institutional offenders can continue to harm others unchecked while survivors wait for justice. Nonetheless, the more vulnerable narrators can create alliances with one another, the more they can rewrite the incomplete societal scripts, improving the chances for all in the long run.

⁴⁹⁷ See Armstrong & Miller, *supra* note 1.

⁴⁹⁸ See Complaint for Damages, Doe 1 v. Regents of the Univ. of Cal., No. 21-08543 (Cal. Super. Mar. 3, 2021), <https://www.tlo-law.com/dr-james-heaps-sexual-exploitation-lawyers-complaint> [https://perma.cc/448R-K959] (last visited Dec. 20, 2022).

⁴⁹⁹ See *id.*

⁵⁰⁰ Nick Anderson & Susan Svrluga, *Settlements in UCLA Sex Abuse Cases Reach Nearly \$700 Million*, WASH. POST (May 24, 2022).

⁵⁰¹ Symone Shinton, *Pedophiles Don't Retire: Why the Statute of Limitations on Sex Crimes Against Children Must Be Abolished*, 92 CHI.-KENT L. REV. 317 (2017).

⁵⁰² See *id.*

C. Persisting

Marie,⁵⁰³ Fern,⁵⁰⁴ Lakshmi,⁵⁰⁵ Mr. Umba,⁵⁰⁶ Eddie Joe Lloyd,⁵⁰⁷ and Ellen Cater were all met with initial rejection and still persisted. Lloyd served seventeen years in prison,⁵⁰⁸ and many of the vulnerable narrators discussed in this piece did not achieve justice until multiple others came forward with evidence.⁵⁰⁹ As advocates, attorneys owe it to vulnerable narrators to examine failed claims and defenses and consider representing vulnerable narrators who have already lost once or more times. Sometimes they do eventually achieve justice. That can mean freedom for someone like Mr. Lloyd,⁵¹⁰ a safe place to live for asylees or abuse victims, and even healing for many.⁵¹¹

Advocates must educate the public regarding societal misconceptions regarding vulnerable narrators and their situations. Moreover, they must train fact-finders, collaterals, and other repeat-players for trauma-informed and culturally competent fact-gathering.

VIII. Conclusion

Narrative wields so much power that we often believe or disbelieve facts based on the narrative quality itself. The dominant culture tells the story that shapes our world, and, in so doing, it frequently suppresses vulnerable narrators from non-dominant backgrounds. A wide variety of factors can then contribute to vulnerable narrators' perceived unreliability.

Yet narrative's power remains good news for vulnerable narrators. When truth supports their claims, their advocates can use narrative techniques themselves to win the day. These advocates can: (1) prime the audience by leading with helpful information, (2) reframe unreliability cues as being consistent with the narrator's particular

⁵⁰³ See generally Armstrong & Miller, *supra* note 1.

⁵⁰⁴ See HEPWORTH, *supra* note 66.

⁵⁰⁵ See MCCORMICK, *supra* note 73.

⁵⁰⁶ See *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *1 (10th Cir. Aug. 5, 2021).

⁵⁰⁷ See *Eddie Joe Lloyd: Time Served: 17 Years*, *supra* note 162.

⁵⁰⁸ See *id.*

⁵⁰⁹ See *id.*

⁵¹⁰ See *id.*

⁵¹¹ See *id.*

vulnerability, (3) provide concrete details and hard evidence that supports their ultimate truth, and (4) metacommunicate by labeling the tactics and strategies often used against vulnerable narrators.