



SPECIAL ISSUE:
CONSIDERING POLITICAL COUNTER-NARRATIVES

“Well, now, you asked them. Does that mean that they were expected to go?”: Master Narratives and Counter-Narratives in the Trial of Adnan Syed

Andrea Miruna Mihut
University of Edinburgh
Andrea.mihut@ed.ac.uk

A criminal trial in a traditional Western adversarial justice system is performed as a discursive battle of competing narratives between prosecution and defence. In the end, decisions by the judge and jury, while ostensibly premised on the strength of the evidence, rely in large part on the relative persuasive strength of the two stories – which one is more plausible? Commonsensical? Familiar? After exploring the positioning of narrative studies within the field of Criminology, this article will draw on ethnomethodology, talk-in-interaction, and narrative analysis to examine a trial that took place in the United States in 2000 – that of Adnan Syed. In order to appeal to cultural understandings shared by the American jury, trope stories were deployed by both sides. Prosecution told the story of Adnan Syed, a Jilted Muslim Lover, defending his honour after the victim broke up with him. Meanwhile, defence countered with a Star-Crossed-Lovers narrative, in which there was no motive for violence. I will argue that defence failed to deploy their story effectively and, in their attempts to counter the prosecution’s narrative, rather ended up reinforcing its terms. The triumph of the prosecution’s case may be found in the details of how the defence’s counter-narrative failed.

Keywords:

narrative criminology, criminal trials, conversation analysis, tropes

INTRODUCTION

Narratives are ubiquitous in court. The cases of prosecution and defence constitute competing narratives (Felton Rosulek, 2014; Offit, 2019), proposed in opening and closing statements as a cohesive sequence of events with a clear beginning, middle, and end as well as a moral evaluation, leading inexorably to a court outcome of guilty or not guilty. But storytelling in court goes beyond that: a cornerstone of common law procedure, the orality principle, dictates that presentation of evidence is done narratively as well, through the privileging of first-hand accounts by witnesses (Jackson, 2023). Beyond that still, the moral character of participants is constructed narratively, mitigating and aggravating factors in sentencing are presented through storytelling, and even presentation of forensic evidence is done woven by chronology and logic.

Furthermore, the concept of counter-narratives is of particular salience in court, due to a combination of the organization of talk along with the social role the courts play. A tradition of conversation analysis in courtroom settings has extensively documented how courtroom talk differs from everyday talk (e.g. Atkinson & Drew, 1979; Matoesian, 1993, 2001; Pomerantz & Atkinson, 1984). However, it is in stepping back even further from the nature of verbal interaction in the court to the very structure and ordering of speakers that we may see the central role “countering” plays in trials. In traditional Western adversarial systems and the American in particular, as is in discussion in this article cases in court are told by two opposing sides: prosecution, which represents the State, and defence, which represents the offender. Furthermore, talk is organized such that the prosecution has primacy, with defence acting as rebuttal this order holds throughout the whole trial, from opening statements, through to examination-in-chief and cross-examination, to closing statements.

Because of this organisation of talk, trials function on a logic of a primary narrative (prosecution) and a rebutting narrative (defence), two proposals vying for the right to be chose as “what really happened.” In addition to this, if a trial is a space where cultural and moral decisions are debated, the narratives are necessarily political in nature thus, the more traditional terms of master- and counter-narrative become essential to analysis. There is a vested interest and tendency for the narrative of the prosecution to map itself onto commonly understood and accepted stories, as strategy to appeal to the worldviews of the jury, and, as such, often take on the characteristics of master narratives; the defence, in return, often mark their stories as counter-narratives, complicating the story and infusing it with subaltern perspectives.

The question this article seeks to address is how participants in court mark their stories as master- or counter-narratives, how they attempt to delegitimize these presentations, and, ultimately, how one or the other is selected as earning the honour of truth-hood in the eyes of a judge and jury. To that end, this article will explore focus on a case study. The trial of Adnan Syed was selected for this research because it was unusual from most everyday trials in one crucial aspect: there was no concrete forensic evidence to link Adnan Syed to the crime of which he was accused and no eyewitnesses to the alleged crime. A jury, however, must convict only if persuaded “beyond a reasonable doubt.” So the question may be posed how did a jury become so convinced of Adnan’s guilt without this concrete evidence? It is in this sense that Adnan’s Syed’s trial lends itself particularly well to the study of competing narratives; without legal evidence, the outcome of the trial depended entirely on the strength of the stories told by prosecution and defence.

In the following, I will offer some conceptual framing, starting from narrative criminology and place of the study of courtroom interaction within the field, through to the emphasis on the importance of familiarity (and judgeability) of the narratives told by legal professionals in court, thus leading to description of a particular type of narrative that becomes relevant to courtroom interaction: tropes. These tropes will serve to describe and categorise the master narrative of the prosecution and the counter-narrative of the defence. After briefly outlining these, I will offer a brief methodological discussion, along with the output of the approach taken. I will then briefly describe the case of Adnan Syed, before analysing how the respective tropes of the prosecution and defence were presented, how they keyed into wider cultural understandings about social life, what elements of “what really happened” are treated as relevant to the construction of their trope, and, ultimately, how one story triumphed over the other.

NARRATIVE CRIMINOLOGY, CRIMINAL PROCEDURE, AND TROPES

Within the social sciences, it is common to identify a “narrative turn” in the second half of the 20th century (e.g. Czarniawska, 2004; Goodson & Gill, 2011; Polkinghorne, 1988), often referring to a shift in scholarly focus from studying social phenomena through positivist approaches to understanding them through narratives and stories. Within this context, criminology came to the narrative turn relatively late. Lois Presser coined the term narrative criminology (NC) only in 2009 (Presser, 2009) and reviews of the field only began to proliferate in the following decade (Halsey, 2017; Maruna & Liem, 2020; Presser, 2016; Sandberg & Ugelvik, 2016).

While covering large methodological and conceptual ground, scholars in NC universally agree that there is a crucial distinction between NC and other studies of narrative within criminology. The latter ‘value stories [...] for their capacity to tell us about something else’ (Presser, 2016, p. 141); in this “representational view” (Presser, 2016, p. 141), narrative is only a ‘delivery system for other data’ (Presser, 2016, p. 142). In courtroom-based studies, for instance, language and narratives have for decades been studied in terms of what they reveal about emotions (Bens, 2018a, 2018b; Dahlberg, 2009; Rock, 1991), judicial discretion (Emerson, 1969; Harris, 2007; Paik, 2011), control (Carlen, 1976; Cicourel, 1976; Rock, 1991), among other concepts. In contrast, NC takes a constitutive view of language and narrative: ‘narrative criminologists are interested in what stories *do* [...] and not principally in what they *reveal*’ (Presser, 2016, p. 139).

Traditionally, the practice of NC research has been narrower than this broad epistemological stance implies, with two main sources of data emerging: the narratives of offenders, usually in terms of desistance from crime; and the narratives of victims, usually in terms of recovery from crime (Maruna & Liem, 2020). Less attention has been paid to the narratives told in interaction during the actual criminal justice process, such as at trial although calls for this have been made. Barrera (2019), for instance, showed the key role that narratives play in decision-making processes throughout the criminal justice process, while Offit (2019) studied the narrativization of cases by legal professionals in preparation for trial. In fact, long before NC became a field of study, O’Barr and Conley’s (1985) research on small claims courts attributes satisfaction of lay participants to the way their narratives are received by legal professionals, while a number of scholars have remarked on the link between certain qualities of narratives told in court and court outcomes (Bennett & Feldman, 1981; Ewick & Silbey, 1995; Fielding, 2013).

In this article I emphasize the importance of one of these many narrative qualities: familiarity. For a listener, “to know is to connect to a familiar narrative” (Roemer, 1997, p. 13). Indeed, this is salient particularly in the criminal justice system: Hall and Rossmanith observe that “technocratic justice requires stories that can be easily categorized, sorted and stored” (2016, p. 42), relying on familiarity for efficiency in progressing through overwhelming caseloads. However, this process may be far from particular to criminal process. Billig (1985), in the tradition of cognitive social psychology, argues that processes of social categorization, whereby perceptual information is placed into pre-existing categories, are characteristic of cognition in general, as a way to “reduce ‘the infinite differences among stimuli to behaviourally and cognitively usable

proportions” (Rosch, 1978, p. 28). That is, appealing to the familiar is simply a way to make sense of experience.

A concept that marries the processes of categorisation with the power of familiarity in storytelling is that of “tropes.” In Sandberg’s (2016) terms, these are short phrases that key into culturally recognizable stories “generic shorthand[s]” (Pemberton et al., 2018, p. 7) or the ‘same old story’ (McKendy, 2006, p. 498) with which people are already familiar. For instance, Sandberg references how an interviewee uses a rapid short account “Child Welfare Services, foster care, group homes, that sort of thing” to access wider cultural understandings about what it means to be in foster care and call to the mind of an audience aspects such as a troubled childhood, severe problems at home, and potential emotional disturbance (Sandberg, 2016, p. 165). Tropes, therefore, have the authority of common cultural knowledge and are easier to judge and sentence.

A wide tradition of scholarship exists on the compelling relationship between tropes (as extended metaphors) and the concept of truth, dating back to the 18th and 19th centuries (Burkhardt & Nerlich, 2010). Tropes are units that “have been poetically and rhetorically intensified, transferred, and embellished” to the point that their “long usage” has led people to imagine them “fixed, canonical, and binding” (Nietzsche, 1873, p. 117). This is important in the courtroom because, relativist philosophies aside, reaching “the truth, the whole truth, and nothing but the truth” is a key aim, thus explaining at least in part their reliance on tropes.

However, scholars have also been wary of the link between tropes and truth, cautioning that tropes can be used, consciously or not, to mislead from truth, based on the same exact qualities (e.g. Danblon, 2010; Lakoff & Johnson, 2003). The problem, of course, is that no individual story can be entirely like another. Lakoff and Johnson write that metaphors can be problematic to interpretation because “in allowing us to focus on one aspect of a concept [...] a metaphorical concept can keep us from focusing on other aspects of the concept that are inconsistent with the metaphor” (1980, p. 5).

Thus, I return to the implications of this body of research on courtroom interaction. Tropes have power in court, by their cognitive relationship to truth, and through the characteristics of familiarity and recognizability. Prosecution in the Adnan Syed trial presented their case highlighting the “facts” that fit their proposed trope. The role of the defence is to emphasize the facts that do not fit with the proposed trope the aspects of the metaphor that are not like the sequence of events in question in order to delegitimize the prosecution’s case. Similarly, when defence proposed a trope of their own, the prosecution had the same role to play. Discursive practice in the court is an endless process of reliance on

categorization to present the story and particularization (Billig, 1985) to negotiate, reconstruct, and redeploy evidence.

Specifically, the trope invoked by the prosecution is that of Adnan as a Jilted Muslim Lover, whereby he killed his victim in a fit of jealous rage after she ended their relationship. Relying on its jury consisting of a non-Muslim American majority, familiar anecdotally with Islamic honour killings, prosecution needed little to weave its master narrative. Defence attempted to call into question the motive, emphasizing Adnan's good character, and proposing a counter-trope of tragic star-crossed lovers who loved each other and could not harm each other.

METHODOLOGY

The data used for this research consists of the official legal transcripts of the Adnan Syed trial, consisting of 2,559 pages of A4 writing. These were publicly available at the time of the research, although have since been removed (The Undisclosed Wiki, n.d.). Produced by an external transcription company at the commission of interested parties, legal transcripts present limitations to scholars of talk-in-interaction. The focus of transcription is on preservation of legal content (Prasad et al., 2002) rather than faithfulness to interactional details. As such, data that would be important to a conversation analyst is often absent: from linguistic detail such as repeated words, false starts, or hesitations, or in general much of the "narrative debris" (McKendry, 2006) that characterizes story construction in interaction; to acoustic details usually preserved in the characteristically detailed form of conversation analysis (CA) transcription such as gaps/ pauses, intonation, volume, speed of speech, gasps/ sighs, voice quality, gestures of emotion, etc. (Sidnell & Stivers, 2014).

On the other hand, using legal transcripts offered some benefits, particularly in terms of analysis of narratives rather than simply linguistic details. CA transcription has long been criticized for its level of detail (Hepburn & Bolden, 2014). Thus, the bare legal transcript allowed better examination of larger structures such as verbal 'projects' that are interactionally negotiated, jointly launched, diverted or aborted' (Hepburn & Bolden, 2014, p. 126) – projects like telling a story.

Coding of data combined inductive and deductive approaches (Saldaña, 2021). I began by making observations around the broad concepts of language, narrative, and power, which led to the creation of codes, which in turn informed further observation. The analytic framework drew from CA, particularly with

attention to question/ answer adjacency pairs, epistemic authority and the privileging of first-hand experience in interaction, and repairs as exercise of power.

CA has roots in ethnomethodology (Pomerantz & Atkinson, 1984), a sociological approach that explores how individuals use conversation to construct a common-sense view of the world (Garfinkel, 1967). Thus, the argument of this article is that prosecution's narrative triumphed not simply because it was a "better" story more consistent, more coherent, more plausible, more popular, or better told in some essentialist way. Rather, by studying the details of interaction, it may be identified what participants themselves treated as important to their narrative constructions, how proposals of reality were negotiated. Ultimately, I argue that the defence's attempts to rebut the prosecution's narrative failed when the defence lawyer deployed details that served the prosecution's case, thus unintentionally lending them credibility.

THE TRIAL OF ADNAN SYED

Over the course of the trial, some facts of events were established and agreed upon by the opposing sides, which I briefly summarize here. Hae Min Lee, a Korean-American student at Woodlawn High School near Baltimore, Maryland in the United States was reported missing on January 13th, 1999. Her body was found a few weeks later partially buried in Leakin Park. On February 28th, 1999, Hae's Pakistani Muslim ex-boyfriend, Adnan Syed, was arrested for her murder. They had been broken up only a short time when Hae went missing.

Adnan Syed's trial began on January 21st, 2000, with Mr. Urick and Ms. Murphy for the State and Ms. Gutierrez for the defence. This trial lasted 22 days, with 27 witnesses brought by the State and 12 by the defence. The trial ended with Adnan Syed being convicted of the murder of Hae Min Lee by the Baltimore Circuit Court and sentenced to life in prison plus 30 years.

At the time, Adnan's case generated little public interest beyond the local. However, it became a highly publicized case of international interest in 2014. The case came to Sarah Koenig, an investigative reporter, who hosted a popular podcast named *Serial* on the topic (Koenig, 2014). Sarah Koenig meticulously investigated the credibility of the circumstantial evidence that led to Syed's conviction: cellular phone records; testimony from a star witness; and claims about Syed's motivation.

Appeals were requested at several points in the 2000s and were eventually repealed at the Supreme Court level in 2019 (Piccotti & Chang, 2023). In September 2022, a Baltimore City Court judge vacated Adnan's conviction, in

light of new evidence about procedural failures. A month later, prosecutors dropped the charges entirely and Adnan was set free (Witte, 2022). In March 2023 the conviction was reinstated on the grounds that the court did not give the victim's family enough notice to attend the hearing (Prudente, 2019). Adnan remains free, pending a repetition of his hearing.

Prosecution's Trope: The Jilted Muslim Lover

Mr. Urick's storytelling strategy in his opening statement artfully blends fact with plausible speculation on Adnan's motive. He begins at the end, with what is an apparent forensic fact: at 7:09pm or 7:16pm, Jen Pusateri calls Adnan's phone looking for her friend, Jay; Adnan answers, says they're busy, and hangs up the phone. This will be pieced together from phone records and Jen's testimony. Mr. Urick delivers the dramatic punchline:

At that moment the defendant, along with Jay Wilds, was in Leakin Park. The defendant was burying the body of one Hae Min Lee.

From there, Mr. Urick segues to the beginning – the relationship between Adnan and Hae at school prior to her death. He begins his construction of the Jilted Muslim Lover narrative not with the “jilted” part, but with the “Muslim” part, reducing the story of Adnan and Hae into an efficient 7 sentences and 71 words.

This relationship caused problems. The defendant is of Pakistani background, he's a Muslim. In Islamic culture, people do not date before marriage and they definitely do not have premarital sex. Their family is a very structured event. They're not supposed to date. They're only supposed to marry and engage in activities after they marry. So he was breaking the cultural expectations of his family and his religion to date Ms. Lee. (Day 3, p. 97)

Rhetorically, this story is presented in short and mid-length, simple sentences for easy digestibility contrasting to the longer sentences preceding it. By its style, it marks itself as the core narrative of the prosecution's case. There is Othering occurring at this point in Mr. Urick's statement he informs the jury what things are like in this foreign culture that Adnan belongs to and that they themselves don't.

Most importantly, it is only Adnan being Othered; Hae Min Lee, despite also coming from a foreign country that is not represented on the jury, is not Othered. This distinction will become important when looking at Ms. Gutierrez's opening statement, where she attempts to reverse this.

Immediately following this, Mr. Urick returns to apparent "facts" to support the tension and defends the legitimacy of his narrative by using examples. He brings up the Homecoming dance at which Adnan's parents showed up and took their son home after meeting Hae. However, according to Mr. Urick, they didn't just take Adnan home, they 'practically dragged' (Day 3, p.98) him home; and they didn't just meet Hae, they spoke to her in a way that was 'abusive' (Day 3, p.98). This infuses the passive story of Adnan going against his family with real consequences invoking, arguably, the violence of Islamic culture as an Islamophobic audience might understand it. Mr. Urick also reads out excerpts from Hae's diary that emphasize that Adnan's religion was important to him and caused him internal conflict.

Mr. Urick then concludes his speculation on motive:

[Hae] saw that the relationship was not good for the defendant, and because she truly loved him, she let him go. The defendant, however, had a different reaction. In order to have this relationship, he had to live a lie. He'd had to lie to his parents. He'd to had to lie to his religious friends. He was living a lie, denying to them that he was engaging in the activities that was forbidden in their culture. This is a great sacrifice. It was a double life for him. He was leading a lie, and when it ended, that's all he had left, was the lie that he'd been leading. He became enraged. He felt betrayed that his honor had been besmirched. And he became very angry. And he set out to kill Hae Min Lee (Day 3, p.101).

Mr. Urick repeats during the trial that Hae let him go because she loved him so much, implying that what Adnan felt for her wasn't love. Once again, there is Othering of Adnan; he is being contrasted not only with Hae but also with "everyone else," who would have reacted as she did. Mr. Urick emphasizes through repetition the "lie" that Adnan was living. Having successfully keyed into the fundamentalist Islamic narrative, Mr. Urick finishes with the logical conclusion to the story: murder.

Logically, there are a number of things that Mr. Urick would have to defend in order for his Jilted Muslim Lover theory to be proven beyond reasonable doubt: e.g. not just that Adnan was Muslim but that he was fanatical about his faith, and that he was angry or self-righteous (i.e. “jilted”) about the break-up. However, for the most part, what Mr. Urick treats as important to prove his story is not Adnan’s character as violent or “jilted.” Throughout his examination of the 27 witnesses the State brought, Mr. Urick is concerned with establishing that Adnan was going against his religious beliefs and his family’s expectations to be in a relationship with Hae. This is a passive fact.

Mr. Urick establishes with Nisha, a romantic interest of Adnan’s, on Day 4:

Q. What, if any, instructions did he give you as to how to contact him?

A. He did give me his pager number. He didn't give me his house number.

Q. Did he ever give any explanation why he didn't give his house number?

[...]

THE WITNESS: Well, later on, he did say that his parents were a little strict about having girls call, but he did give me his house number, but I never did call him.

(Day 4, p.204)

Immediately afterwards, in his early examination of Krista, a school friend of Adnan and Hae, Mr. Urick establishes several times that Adnan’s parents did not approve of him seeing girls.

Q. And where did you let him off?

A. At the church parking lot across the street from his residence.

Q. Why didn't you take him to his residence?

A. Because he requested that I drop him off across the street.

Q. Did he explain why?

A. Usually because his parents didn't approve of him speaking with girls, especially out of his ethnic background. So it would have been better for him had I dropped him off across the street so that they wouldn't have seen who drove him home.

(Day 4, p.215)

Through his first witnesses, Mr. Urick establishes thoroughly and without challenge from the defence that Adnan was hiding his relationship with Hae from parents who didn't approve of the relationship because of their religion. This lays the foundation of the Jilted Muslim Lover narrative. It is with the introduction of Jay Wilds that Mr. Urick drives the point home.

Jay Wilds is the State's key witness. An acquaintance of Adnan's, Jay was a drug dealer who sometimes spent time driving around and smoking marijuana with Adnan. On the day that Hae went missing, Adnan had left his car and cell phone with Jay so that Jay could buy a gift for his girlfriend, Stephanie, a good friend of Adnan's. According to Jay, Adnan contacted him after murdering Hae immediately after school. Adnan showed him the body in the trunk of Hae's car in the parking lot of a Best Buy. Adnan said he needed to make an appearance at track practice after school in order to have an alibi, so Jay drove him back to school. Jay testified that at this point he had a conversation with Adnan on the subject of the breakup:

This is when we started to talk a little bit. I don't know, he said to me it kind of hurt him but not really, and when someone treats him like that, they deserve to die. How can you treat somebody like that that you are supposed to love? And then, all knowing is Allah. (Day 9 p.142)

These few lines are the only moment in the entirety of the trial that bridges the gap between Adnan's religion ('all knowing is Allah'), his character as in some sense "jilted" ('it kind of hurt') and his motive to kill ('they deserve to die').

Defence's Counter Trope: The Star-Crossed Lovers

In traditional an adversarial American trial such as this one, the burden of proof is on the prosecution to prove their case beyond a reasonable doubt. In terms of storytelling, it would therefore be sufficient for the defence to simply rebut the State's narrative, exposing inconsistencies and implausibilities. Ms. Gutierrez takes up this narrative task, but, as is often the case, she also attempts to offer an alternative story trope that of the star-crossed lovers.

In contrast to Mr. Urick's storytelling practice, which is clear in its strategy if not linear, Ms. Gutierrez jumps back and forth between her dual narrative tasks. She begins by proposing her trope:

It is important that you understand who these two young people were. Young, star-crossed lovers of different cultures, of different races, from different countries, from different families, from different religions, from one side of the street to the other, from one set of answers straight to another, throughout history populated our collective human history. The younger they are the more tragic it is. (Day 3, p.113-114).

As described above, in the State's case only Adnan is being Othered while Hae remains to belong to the same group as the rest of the non-Muslim population. Hae is "normal" while Adnan is not. Ms. Gutierrez tries to reorganize this arrangement, casting them as different relative to each other, essentially Othering them both – or, rather, normalizing them both. She continues this attempt by integrating Adnan and Hae into their friend group at Woodlawn High School and casting them all as different from each other: 'You will be amazed at the diversity among this group of children. Some of them were Muslim who consider themselves Mideastern. Others were Indian, others were black of every hue, others were white of every ethnicity' (Day 3, p.116-117). She does not mention Hae's Korean background at this stage, but the overall effect is to normalize Otherness.

At this point, Ms. Gutierrez is side-tracked from her star-crossed lovers narrative. She must take a break to counter the State's arguable fear-mongering of Islam. She embarks on a verbal journey of education and awareness-raising, as she attempts to further normalize Adnan's Muslim heritage and associate it with aspects other than violence and restriction – essentially attempting to introduce a counter-narrative.

His ancestry on both his mother's and father's side, whom you will get to know and identify, is of Pakistan. They are Pakistani. And they came to this country before he was born or thought of in hope of a better life from their native land, like generation after generation of immigrants, other than the first people in this country, with their hopes and dreams for new families, for new life. (Day 3, p.117).

Here, being Muslim is not an isolated identity, but just like any other immigrant identity. It is associated, therefore, with positive ideas of hopes and dreams, keying into a trope story just as familiar to an American audience as the fundamentalist

Islam narrative – the American Dream narrative. Indeed, she insists that Muslims fleeing their countries are no different from other immigrants, be they “German, Dutch, Finnish, [or] Italians” (Day 3, p.119) interestingly, all Western European countries.

After this geographical and historical detour, Ms. Gutierrez returns vaguely to the star-crossed lovers narrative, emphasizing the love Adnan and Hae had for each other. It is ill-fitting, given certain realities. The star-crossed lovers trope of the Romeo-and-Juliet-type have a strong bond of love that defies the people around them; they do not have the frequent break-ups that Adnan and Hae did, as reported in Hae’s diary.

You'll see the ups and downs of the relationship. She talks about the continual declaration of what she calls "recesses," which me and you will see exactly what they sound like. She would declare a recess from the relationship (Day 3, p.126)

Ms. Gutierrez concludes her argument by attempting to directly repair Adnan’s character from the State’s characterization of him as a jilted Muslim lover. However, rather than using examples of behaviour, as Mr. Urick did, Ms. Gutierrez relies on absence of negative behaviour (e.g. ‘from [Hae’s] diary, you will see nothing from Adnan, no asking, no pushing her away, giving her space’ [Day 3, p.127]) and on character references (e.g. Adnan was ‘laid back, funny, always joking, completely understanding and compassionate, willing to do anything for anyone, very good listener,’ [Day 3, p.127-128]).

Thus, in opening statements, Mr. Urick and Ms. Gutierrez lay out their core tropes stories. These encode both characterisation of Adnan and the issue of motive Adnan had a motive to kill Hae because he was a jilted Muslim lover, Adnan didn’t have a motive because he was a loving partner in a tragic situation. Throughout the rest of the trial, both attorneys orient themselves to their respective stories and attempt to elicit testimony that serves to back them up.

Mr. Urick’s story is straightforward; Ms. Gutierrez has a much more complicated job. In her cross-examination of witnesses, she makes a few attempts to independently construct a star-crossed lovers narrative. That is, she emphasizes Hae’s Korean background and makes it known to the jury that her mother didn’t approve of the relationship either.

Q. These young people were agonized over their families' reaction to the relationship; were they not?’ (Day 9, p.37).

It is essential for a star-crossed lovers narrative that the resistance to the relationship comes from both sides of the families. Ms. Gutierrez later uses a witness school friend Debbie to establish that, in fact, both Adnan and Hae are from Asian countries. This combats the sole Othering of Adnan, reminding the jury that Hae is different as well; or, rather, that they are both normal enough.

In her cross-examination of Aisha, who testified that Adnan's parents did not approve of him having contact with girls, Ms. Gutierrez briefly returns to the terms of her star-crossed lovers narrative.

Q. And there was nothing hidden about this anguish eating up these two young people who professed their love openly? (Day 4, p.270).

In fact, in her emphasis, she assumes that one element that effectively disproves the jilted Muslim lover narrative and supports the star-crossed lovers narrative is whether the relationship was hidden. Ms. Gutierrez establishes from Aisha that Adnan and Hae were open about being in a relationship to everyone else except their parents. Another element she orients herself to as disproving the jilted Muslim lover narrative is whether Adnan expressed his feelings or bottled it up:

Q. And did you sense his sadness over it?

A. Yes.

Q. And was he able to express those emotions to you?

A. Yes.

(Day 4, p.277)

By her choices, Ms. Gutierrez indicates what she thinks disproves the jilted-Muslim lover trope: for it to be accurate, Adnan must have been keeping the relationship a secret and he must have been repressing his negative emotions.

The Failure of the Star-Crossed Lovers Trope

Ms. Gutierrez has a very dogged style of examination. Where Mr. Urick makes a point and ends his examination, Ms. Gutierrez is exaggeratedly thorough and often repeats herself to the point that this starts causing problems when the judge begins to sustain objections to repetition later on in the trial. In her

thoroughness and her attempt to tackle the religion issue head-on, she embarks on an educative campaign about Islam that backfires as early as the opening statement.

Her very attempt to explain Pakistani history and Islamic traditions contributes to the Othering effect. She mentions in her educational campaign in the opening statement that “Pakistan was a country that was formed out of the bloodbath that was India right after India gained its independence from Great Britain. It was a bloody revolution” (Day 3 p.118). This association of Adnan’s country to blood and violence more supports the State’s narrative than the defence’s. She also presents two separate statements which, juxtaposed, creates an Othering effect she initially describes how many immigrants attempt to assimilate, ‘to leave behind their native languages, their native customs, their native dress, their native culture, and their religions” (Day 3, p.118) but later, when describing Adnan’s family, implies they were not these kinds of immigrants, as they “brought with them their culture, their religion, their habits, their beliefs, their way of life, they’re [sic] own language” (Day 3, p.119).

Furthermore, during her cross-examination of various prosecution witnesses, she ends up inadvertently supporting Mr. Urick’s point by eliciting more details of how the relationship went against Adnan’s parents and religion. For instance, as seen above, Mr. Urick established with Krista and Nisha that Adnan’s parents didn’t approve of the relationship. Only Krista mentioned this was for “ethnic” reasons. Mr. Urick leaves his examination with this small mention of ethnicity. The religious aspect was, in fact, interrogated by Ms. Gutierrez herself. She begins her cross-examination.

Q. And prior to the time when they became an item as a girlfriend and boyfriend, everyone in the class knew that Adnan Syed was a Muslim, did they not?

A. They did.

(Day 4, p.217)

Over the next three pages, Ms. Gutierrez relentlessly pursues the issue and succeeds more thoroughly than Mr. Urick to establish the contradictions between Adnan’s behaviour and his religion. In fact, the story is often told by Ms. Gutierrez herself, as Krista’s testimony consists only of confirmations of Ms. Gutierrez’s comments. The testimony continues:

Q. And that he didn't, or he had not dated?

A. Correct.

Q. And he hadn't dated, not just because his parents didn't approve of it, but because his religion didn't encourage that; is that correct?

A. Correct.

Q. And all of you all just sort of accepted that, did you not?

A. Yes.

(Day 4, p.218)

Ms. Gutierrez's questions about Adnan's Muslim faith at times actively contradict her Star-Crossed Lovers narrative. Star-crossed lovers like Romeo and Juliet are passionately together despite resistance from outwith their relationship, while Adnan and Hae, as Ms. Gutierrez herself establishes, had frequent breakups.

Q. And they knew about the difficulties regarding Adnan Syed's parents and his Muslim faith, disapproving of that relationship? Did you not get that information from almost everyone?

A. Yes.

Q. And that because of that difficulty, the relationship had been tumultuous?

A. Yes.

Q. And that it had been off again, on again on more than one occasion from the time they began having a relationship in the Spring of 1998 all the way up to the end, at the end of December, 1998?

(Day 5, p.31)

Ms. Gutierrez even makes the point when the witnesses themselves does not.

Q. And were you aware prior to that evening that Adnan Syed and his family were Moslems?

A. No.

Q. And that going to dances was forbidden for Moslems?

A. No.

Q. And dating was forbidden for Moslems.

A. No. (Day 7 p.97-98)

Ms. Gutierrez could have stopped after the witness's denial of knowledge of the fact of Adnan's religion. Arguably, this would have supported

her case – Islam was not so core to Adnan’s identity that it was the first or only thing people know about him. At times, her attempts to normalize Islam backfire, as when she cross-examines the athletic trainer at Woodlawn:

Q. You were aware that other Muslim students also, like Adnan, violated their religious tenents [sic] and dated others; were you not?

A. No, I don't know of any other Muslims that dated.

(Day 9, p.46)

Another way Ms. Gutierrez may be said to be making Mr. Urick’s point for him is in the way her educative campaign about Islam backfired during examination of one of her own witnesses. On Day 20 of the trial, Ms. Gutierrez called as witness Adnan’s father. His testimony consisted of very detailed information about Islam. However, it is unclear if this had the desired effect.

Q. And that is supposed to be the person, according to Islamic faith, that created all life?

A. Creator for the whole entire universe.

Q. Okay. Now, is there a figure in Islam that is called Allah?

A. No figure.

Q. I mean, is there a person that's referred to as Allah?

A. Well, actually, Allah, the creator, is beyond comprehension of a human being who have been created from a drop of seed.

(Day 20, p.259)

In this case, the fact that Rahman Syed regularly repaired Ms. Gutierrez’s questions may have had the effect of further Othering the religion. Islamic beliefs are even beyond Adnan’s attorney. Furthermore, it does not serve Ms. Gutierrez’s attempts to counter the jilted Muslim lover narrative that there were frequent subtle examples of restrictiveness and control in Rahman’s testimony.

Q. And what -- in the daytime -- and back then in December and January, did Adnan have a job?

A. We never let him have any job.

(Day 20, p.273)

In one instance, Rahman attempts to repair Ms. Gutierrez's language to a less restrictive verb and Ms. Gutierrez does not accept it.

Q. All right. And did you require your sons to go with you to pray during Ramadan?

A. Yeah, I asked them to go.

Q. Did you -- well, now, you asked them. Does that mean that they were expected to go?

A. Well, when we ask them, they are, yes, they are expected to go with us there.

Q. They're expected to do what you ask?

A. That's right.

Q. Because you are the father?

A. That's right.

(Day 20, p.281)

Ms. Gutierrez introduces the restrictive term "to require" a certain behaviour, which Rahman Syed attempts to repair to the term gentler verb "to ask." Ms. Gutierrez does not accept this and clarifies that there was a pressure on Adnan to behave by certain standards. Ms. Gutierrez is then, again, the one to offer the reason Rahman's authority as a father.

Ms. Gutierrez therefore confirms Mr. Urick's point that Adnan led a contradictory life and that Islam is a restrictive religion (from the examples above, she used absolute terms such as "forbidden," "violated," and "required"). Furthermore, in her examination of Rahman, her educative campaign fails, as she frequently gets details about Islam wrong herself. Arguably, this could have a distancing effect between her and her Muslim client. If even Adnan's attorney, hired to defend him, does not understand him, how are the jury expected to understand?

CONCLUSION

In this article, I studied the trial as a microcosm of society structured around a debate between a primary narrative and a rebutting narrative, mapped onto a Master narrative and a counter-narrative. The Adnan Syed trial is a particularly salient example because the dearth of forensic evidence clears the way for a consideration of the relative strengths and weaknesses of the respective stories. If, as the literature suggests, decisions in court depend in part on the familiarity and

judgeability of the stories told, and therefore their familiarity to the audience, then shorthand trope stories are a powerful force in trials.

In taking an ethnomethodological approach to social interaction, I sought to identify how interlocutors themselves signal what aspects of the narrative and counter-narrative are essential to the construction of their trope. In particular, there was a crucial disconnect in this trial between the attorneys' understanding of this. For instance, Ms. Gutierrez focuses on the "jilted" part of the jilted Muslim lover trope: she exhaustively establishes from witnesses both her own and prosecution's that Adnan was not angry or offended or otherwise "jilted" about the breakup. Mr. Urick, on the other hand, is not concerned with Adnan's character. He does not argue with the presentation of Adnan's good character and he does not seek evidence to the contrary. It is enough, for him, to emphasize the "Muslim" part of his trope. The association between this and "jilted" he entrusts to the jury to make.

Ms. Gutierrez's trope of the star-crossed lovers also evokes common cultural understandings. She like me, in this article have relied on an understanding of a Shakesperean drama painting the lovers as both blameless victims of outside forces. How strong this trope may be in a legal context has little chance in this trial to be seen, as Ms. Gutierrez was more concerned with rebutting the prosecution's narrative in the sense of questioning its assumptions than with her own counter-narrative. Indeed, this article has served to show how her attempts to counter the jilted Muslim lover narrative backfired: between her emphasis on Adnan's religion, her failed educative campaign, and her own ignorance about Islam, she met the terms of Mr. Urick's arguments effectively.

Finally, this article has not addressed one question: that of the choice of tropes. Indeed, it may rightfully be questioned whether Ms. Gutierrez's choice of countering a social narrative with a literary one within a legal context is an effective choice in the first place.

Funding

The PhD project upon which this article is based is funded by the Economic and Social Research Council in Scotland.

References

- Atkinson, J. M., & Drew, P. (1979). *Order in Court: The Organisation of Verbal Interaction in Judicial Settings* (P. Drew, Ed.) [Book]. Macmillan.
- Barrera, D. J. S. (2019). Narrative Criminal Justice. *International Journal of Law, Crime and Justice*, 58, 35–43.

- Bennett, W. L., & Feldman, M. S. (1981). *Reconstructing Reality in the Courtroom* (M. S. Feldman, Ed.) [Book]. Tavistock.
- Bens, J. (2018a). Sentimentalising Persons and Things: Creating Normative Arrangements of Bodies through Courtroom Talk [Article]. *Journal of Legal Anthropology*, 2(1), 72–91. <https://doi.org/10.3167/jla.2018.020105>
- Bens, J. (2018b). The courtroom as an affective arrangement: analysing atmospheres in courtroom ethnography [Article]. *The Journal of Legal Pluralism and Unofficial Law*, 50(3), 336–355. <https://doi.org/10.1080/07329113.2018.1550313>
- Billig, M. (1985). Prejudice, categorization and particularization: From a perceptual to a rhetorical approach. *European Journal of Social Psychology*, 15(1), 79–103.
- Burkhardt, A., & Nerlich, B. (2010). Introduction. In A. Burkhardt & B. Nerlich (Eds.), *Tropical Truth(s): The Epistemology of Metaphor and other Tropes*. De Gruyter.
- Carlen, P. (1976). *Magistrates' Justice* [Book]. M. Robertson.
- Cicourel, A. V. (1976). *The Social Organization of Juvenile Justice* [Book]. Heinemann Educational.
- Conley, J., & O'Barr, W. (1985). Litigant Satisfaction versus Legal Adequacy in Small Claims Court Narratives [Article]. *Law and Society Review*, 19(4), 661–702.
- Czarniawska, B. (2004). *Narratives in Social Science Research*. SAGE Publications Ltd.
- Dahlberg, L. (2009). Emotional tropes in the courtroom: On representation of affect and emotion in legal court proceedings [Article]. *Nordic Theatre Studies*, 21, 128–152.
- Danblon, E. (2010). Persuasion: between trope and truth. In A. Burkhardt & B. Nerlich (Eds.), *Tropical Truth(s): The Epistemology of Metaphor and other Tropes*. De Gruyter.
- Emerson, R. M. (1969). *Judging Delinquents: Context and Process in Juvenile Court* [Book]. Aldine Publishing.
- Ewick, P., & Silbey, S. (1995). Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative [Article]. *Law and Society Review*, 29(2), 197–197. <https://doi.org/10.2307/3054010>
- Felton Rosulek, L. (2014). *Dueling discourses : the construction of reality in closing arguments* [Book]. Oxford University Press.
- Fielding, N. G. (2013). Lay people in court: The experience of defendants, eyewitnesses and victims [Article]. *British Journal of Sociology*, 64(2), 287–307. <https://doi.org/10.1111/1468-4446.12018>
- Garfinkel, H. (1967). *Studies in Ethnomethodology* [Book]. Polity Press.
- Goodson, I. F., & Gill, S. R. (2011). The Narrative Turn in Social Research. *Counterpoints*, 386, 17–33.
- Hall, M., & Rossmannith, K. (2016). Imposed Stories: Prisoner Self-narratives in the Criminal Justice System in New South Wales, Australia [Article]. *International Journal for Crime, Justice and Social Democracy*, 5(1), 38–51. <https://doi.org/10.5204/ijcjsd.v5i1.284>
- Halsey, M. (2017). Narrative Criminology. In A. Deckert & R. Sarre (Eds.), *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice*. Springer International Publishing.
- Harris, A. (2007). Diverting and Abdicating Judicial Discretion: Cultural, Political, and Procedural Dynamics in California Juvenile Justice [Article]. *Law & Society Review*, 41(2), 387–428. <https://doi.org/10.1111/j.1540-5893.2007.00302.x>

- Hepburn, A., & Bolden, G. B. (2014). The Conversation Analytic Approach to Transcription. In J. Sidnell & T. Stivers (Eds.), *The Handbook of Conversation Analysis* (pp. 57–76). Blackwell Publishing Ltd.
- Jackson, J. (2023). Rethinking the Orality/ Confrontation Paradigm in a World of Remote Evidence. *The Criminal Law Review*, 265(4), 265–285.
- Koenig, S. (2014). *Serial* [Broadcast]. Serial Productions.
- Lakoff, G., & Johnson, M. (1980). *Metaphors We Live By* (2nd ed.). University of Chicago Press.
- Lakoff, G., & Johnson, M. (2003). *Metaphors we live by* (M. Johnson, Ed.; [New editi] [Book]. University of Chicago Press.
- Maruna, S., & Liem, M. (2020). Where Is This Story Going? A Critical Analysis of the Emerging Field of Narrative Criminology. *Annual Review of Criminology*, 4(1), 125–146.
- Matoesian, G. M. (1993). *Reproducing Rape: Domination through Talk in the Courtroom* [Book]. Polity Press.
- Matoesian, G. M. (2001). *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial*. Oxford University Press.
- McKendy, J. P. (2006). ‘I’m very careful about that’: narrative and agency of men in prison [Article]. *Discourse & Society*, 17(4), 473–502. <https://doi.org/10.1177/0957926506063128>
- Nietzsche, F. (1873). On Truth and Lies in a Nonmoral Sense. In K. A. Pearson & D. Large (Eds.), *The Nietzsche Reader*. Blackwell.
- Offit, A. (2019). Storied Justice: The Narrative Strategies of U.S. Federal Prosecutors. In J. Fleetwood, L. Presser, S. Sandberg, & T. Ugelvik (Eds.), *The Emerald Handbook of Narrative Criminology* (pp. 45–62). Emerald Publishing Limited .
- Paik, L. (2011). *Discretionary Justice Looking Inside a Juvenile Drug Court* [Book]. Rutgers University Press.
- Pemberton, A., Aarten, P., & Mulder, E. (2018). Stories as Property: Narrative ownership as a key concept in victims’ experiences with criminal justice [Article]. *Criminology and Criminal Justice*, 19(4), 404–420. <https://doi.org/10.1177/1748895818778320>
- Piccotti, T., & Chang, R. (2023, March 28). Adnan Syed: A Complete Timeline of His Trial, Appeal, Release, and the Murder of Hae Min Lee. *Biography.Com*. <https://www.biography.com/crime/adnan-syed-hae-min-lee-timeline-facts>
- Polkinghorne, D. E. (1988). *Narrative Knowing and the Human Sciences*. State University of New York Press.
- Pomerantz, A., & Atkinson, J. (1984). Ethnomethodology, conversation analysis and the study of courtroom interaction. In D. J. Muller, D. E. Blackman, & A. J. Chapman (Eds.), *Topics in Psychology and Law* (pp. 283–294). John Wiley & Sons.
- Prasad, R., Nguyen, L., Schwartz, R., & Makhoul, J. (2002). Automatic transcription of courtroom speech. *7th International Conference on Spoken Language Processing*.
- Presser, L. (2009). The Narratives of Offenders. *Theoretical Criminology*, 13(2), 177–200.
- Presser, L. (2016). Criminology and the narrative turn [Article]. *Crime, Media, Culture: An International Journal*, 12(2), 137–151. <https://doi.org/10.1177/1741659015626203>
- Prudente, T. (2019, March 8). Adnan Syed Case: Maryland High Court Reinstates ‘Serial’ Subject’s Conviction. *The Baltimore Sun*. <https://www.baltimoresun.com/news/crime/bs-md-ci-syed-appeal-20190222-story.html>

- Rock, P. (1991). Witnesses and Space in a Crown Court [Article]. *British Journal of Criminology*, 31(3), 266–279. <https://doi.org/10.1093/oxfordjournals.bjc.a048116>
- Roemer, M. (1997). *Telling Stories: Postmodernism and the Invalidation of Traditional Narrative*. Rowman & Littlefield.
- Rosch, E. (1978). Principles of Categorization. In E. Rosch & B. B. Lloyd (Eds.), *Cognition and Categorization*. Erlbaum Associates New York: Distributed by Halsted Press.
- Saldaña, J. (2021). *The coding manual for qualitative researchers* (Fourth edition.) [Book]. SAGE.
- Sandberg, S. (2016). The importance of stories untold: Life-story, event-story and trope [Article]. *Crime, Media, Culture: An International Journal*, 12(2), 153–171. <https://doi.org/10.1177/1741659016639355>
- Sandberg, S., & Ugelvik, T. (2016). The past, present, and future of narrative criminology: A review and an invitation [Article]. *Crime, Media, Culture: An International Journal*, 12(2), 129–136. <https://doi.org/10.1177/1741659016663558>
- Sidnell, J., & Stivers, T. (Eds.). (2014). *The Handbook of Conversation Analysis*. (2nd ed.) [Book]. Wiley Blackwell.
- The Undisclosed Wiki. (n.d.). *Official Court Transcripts of Adnan Syed's First and Second Trials in 1999 and 2000*. The Undisclosed Wiki. Retrieved February 11, 2024, from <https://www.adnansyedwiki.com/trials/>
- Witte, B. (2022, September 15). “Serial” case: Prosecutors move to vacate Syed’s conviction. *AP News*. <https://apnews.com/article/adnan-syed-conviction-baltimore-prosecutors-c6ee72fa85c79c1bdf7b5486ea762010>

Andreea Mihut is a final-year PhD candidate in Criminology at the University of Edinburgh. Her research focuses on the dynamics between language, narrative, and power in the context of the criminal courtroom, with a view to evaluating the applicability and value of the metaphor of “stolen stories” within the context of criminal trials. Other research interests in the context of criminal trials include hierarchies of epistemic authority, moral categorizations in interaction, and rhetorical strategies in discourse.