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(In) Decent Exposure? Law in Film, Media, and Literature

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INTRODUCTION

The purpose of this article is to examine law[1] as a means of exposure.This paper begins with a discussion of the differences between law in the news ("media exposure") and law as the news ("judicial exposure"), continues with a discussion of rule regimes, and then concludes with a discussion of the use of narrative storytelling in the law as a means of exposing "truth." Overall, this article will attempt to navigate the tension between the exposure of legal evidence and the effect such exposure has on the non-legal world.

At the most basic level, law can be used to expose evidence. At a more complex level, law can be used to expose innocence or guilt either in a legal or non-legal setting through the use of storytelling. Specifically, narrative is used during a judicial proceeding to persuade the jury or audience which legal version is more truthful. Whether information can and should be exposed within the legal field is based on legal rule regimes and judicial process. Outside of the legal context, rules dictate how and to whom information should be exposed.

In June of 1994, the public's context for judicial knowledge changed.[2]

1. In this paper, the term "judicial law" is used to refer to the laws of the court and the laws of the practice of law. This will be contrasted to the term "law" as another word for "rule" later in the paper.

2. Janice Scheutz, THE O.J. SIMPSON TRIALS: RHETORIC, MEDIA, AND THE LAW 1-2 (1999).

The O.J. Simpson case, beginning with a high speed chase, continuing with criminal charges, and ending with civil litigation, was televised.[3] Since that time, Court TV has broadcast thousands of courtroom spectacles in the interest of justice and exposure.[4] According to Court TV, "[t]elevision coverage of trials tells the whole, real, true story about a complicated, often misunderstood and underreported subject. It allows participants in a democracy to judge for themselves how well the institution that makes the most fundamental decision that any government makes - liberty or prison - is working."[5]

Court TV infers that the intention of "telelitigation"[6] is to give the public the opportunity to make an informed and rational decision about what is occurring in the courtroom. Unfortunately, legal scholars have found that "[t]he dramatic lure promotes entertainment rather than an informed understanding of the legal process."[7]

This dramatic exposure of legal events creates a shared sense of adventure, of "of participation, [and] a feeling of being on the inside of a national drama in the making."[8] While the intention of the media is to expose the drama of the story, the intention of the judicial system is to expose the truth. There is a tension between the two objectives: law is concerned with seeking justice while media is concerned with displaying drama.

I. EXPOSURE

For the purposes of this article, the term exposure will have two meanings. The first is "media exposure," which is the use of the media to tell the public a story about the law. In the case of media exposure, third-party commentators may edit the story or alter the delivery to "[lock] people into [a] common emotional experience."[9] In contrast, the second type of exposure is "judicial exposure" which is the use of law to tell the public a story about the legal field. Judicial exposure can come in the form of uninterrupted courtroom broadcasting, case law, or statutory rules established by Congress. Importantly, judicial exposure is not interrupted or edited by third-party commentators.[10]

While both media exposure and judicial exposure tell a story, the ultimate intention of the two is different. Media exposure of the law takes the law and transforms it into entertainment.[11] It goes beyond mere reporting – to the

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3. *Id.*
4. *Id.* at 7.
5. *Id. quoting* Caplan p. 203 (1996).
6. *Id.* at 5-7, (stating that telelitigation is similar to televangelisim, "including faith in technology, emphasis on personality and stardom, dramatic portrayals, and attention to feeling rather than argumentation.") *Id.* at 7.
7. *Id.* at 6.
8. *Id.* at 23.
9. *Scheutz supra* n.2 at 23.
10. Note - this does not take into account editing of case opinions by Judges prior to publication.
11. *Scheutz supra* n.2 at 26.

audience, it highlights the drama of the legal issue and avoids the educational aspect of the public's exposure to a legal situation.[12]

> The media cover all aspects of the case, often highlighting extralegal facts. Judges, lawyers, police, witnesses, jurors, and particularly defendants are interviewed, photographed, and frequently raised to celebrity status. Personalities, personal relationships, physical appearances, and idiosyncrasies are commented on regardless of legal relevancy. Coverage is live whenever possible, pictures are preferred over text, and text is characterized by conjecture and sensationalism.[13]

At its truest form, media exposure of law has taken on the characteristics the public most craves and presents them in a simple, understandable manner.[14]

In contrast, judicial exposure presents the law as it is, or at minimum based on legally acceptable standards; judicial exposure does not provide third-party commentary to heighten the entertainment value of a legal matter. Judicial exposure ***cannot*** be altered by third-party commentary, as the law itself imposes rules on the type and way in which a legal story is told.

II. RULE REGIMES

A rule regime is a set of laws that are consistent, rational, clearly articulated, and procedurally just. The audience has knowledge of the laws or rules, the regime applies equally to all people, and as a whole the individual rule(s) are supported by substantive due process. The rules may be formal (i.e. Robert's Rules of Order of the Federal Rules of Criminal Procedure) or informal (i.e. playground rules) varying based on the environment and the participants. As a result, the term "law" does not have to refer to legal rule regimes. In fact, there is a difference between "judicial law," which is a distinct set of rule regimes within the legal field, also known as "judicial process," and "law" which can be used as a synonym for the word rule.

The majority of judicial laws dictate the way law is exposed or a legal story is told to the jury or judge.[15] "[T]here are moments when the law notes that a story has been mis-told, or not told according the rules (of evidence, for instance), or doesn't make sense as it is told. Appellate courts are to some degree the enforcers of rule-governed storytelling."[16]

> All the rules of evidence – including the notorious 'exclusionary rule' – touch on the issue of rule-governed storytelling. The judge must know and enforce these rules. And when stories are culled from the trial record and retold on the appellate level, it is in order to evaluate their conformity

12. *Id.* at 26-27.
13. *Id.* at 26 (quoting Barber, 112-14 (1987)).
14. *Id.* at 23.
15. Peter Brooks, NARRATIVE TRANSACTIONS – DOES THE LAW NEED A NARRATOLOGY 27 (Working Paper) http://www.law.virginia.edu/pdf/workshops/0405/pbrooks.pdf (last visited Apr. 1, 2010).
16. *Id*. at 2.

to the rules.[17]

As with all stories, a law or rule regime dictates the way information is exposed to a jury, reader, or character within literature. For example, within the context of fairy tales, both magical rules and social rules are at play. In the familiar fairy tale, Beauty and the Beast, magical rules limit the Beast's ability to expose himself as a true prince under his beastly exterior.[18] This rule limits Beast's ability to expose his true self to both Beauty (the character) *and* the reader.[19] However, once the rules are met, Beast can expose himself to the rest of the world as the true prince that he is.[20]

Judicial law and fairy tales parallel the requirement that participants must meet certain rules and procedures in order to expose various truths – specifically, evidence cannot be exposed unless the collection process follows judicial rules (*see infra* the Fourth Amendment). Failure to follow judicial law may limit the defense or prosecution from introducing truth exposing evidence.

III. LAW AS A MEANS TO EXPOSE EVIDENCE

The Fourth Amendment is a form of judicial exposure; a statutory construction of the law, not to be altered by a third-party commentator (i.e. the media), that dictates the way a legal story must be told.

Under the Fourth Amendment persons in the United States are protected from unlawful searches and seizures to their "persons, houses, papers, and effects."[21] The Fourth Amendment states,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[22]

The text of the Fourth Amendment is both literal and metaphoric. Literally, the amendment dictates the rules for a search or seizure. Metaphorically, it summarizes the rights that citizens believe should not be violated by the government. For example, "the right of the people to be secure in their persons" is a metaphor which symbolizes that man is in charge of his own body and that which would be a part of his body. While the Fourth Amendment ultimately regulates the actions of the modern police force, its intention was to arm citizens with a defense against unlawful police action. Specifically, the word "unreasonable" acts as a compromise between absolute liberty and absolute government power. Ultimately, the Fourth Amendment is not just a

17. *Id.* at 27.

18. Jeanne-Marie LePrince de Beaumont, BEAUTY AND THE BEAST, http://www.pitt.edu/~dash/beauty.html (last visited May 3, 2010).

19. Jeanne-Marie LePrince de Beaumont, *supra* n.18.

20. Jeanne-Marie LePrince de Beaumont, *supra* n.18 at 8.

21. U.S CONST. AMEND. IV

22. *Id.*

literal interpretation of the public's rights, but an extended metaphor which suggests to the reader that he is the "king of his castle" and all objects therein.

In addition, the Fourth Amendment goes a step further, instructing the user to create his own narrative to prove whether or not he has met the burden imposed by the rule. "Searches and seizures, for instance, almost inevitably involve narratives: even the application for a search warrant entails a predictive narrative of what the search will have uncovered when it has been carried out. Distinguishing the permissible from the illegal search can be difficult . . . ."[23] As a result, there will be at least two stories of the same event (prosecution and defense), resulting in the exposure or non-exposure of evidence. The facts and the "principle events of what happened . . ." may not be in dispute, but the "narrative glue" that keeps the stories together is different.[24] Ultimately, the "judge's view of standard human behavior, on what words and gestures are held . . ." to confer consent to a search (or any other activity) will determine whether the jury is exposed to the evidence during the trial.[25]The judge must follow the prescribed judicial law (formal rule regime) to determine the admissibility of the evidence and which version of the story adheres to the formal legal rule regime. The rules of Criminal Procedure and Civil Procedure dictate whether the method used to expose the evidence (a Fourth Amendment search) aligns with the rules of admissibility or exposure in court.[26] If the judge determines that the search was conducted inappropriately, the evidence is not permitted to be exposed and is labeled inadmissible.[27] Ultimately, if the Fourth Amendment's search and seizure rules are properly followed, the judge can accept the prosecution's narrative of events and "reward" the prosecution with admissible evidence.

One of the few Supreme Court cases to use narrative "as a category of thought and presentation of reality"[28] is *Bumper v. North Carolina*. In *Bumper*, the issue presented was whether a search and seizure could be properly executed when consent was obtained based on the suggestion that a search warrant existed.[29] The Supreme Court held there was no consent and that the jury should not have been exposed to the evidence collected from the search of the home of Hattie Leath.[30] While the actual holding of the case is important, it is the means that were used to achieve the holding and the effect that the decision had on storytelling in the law that is relevant.

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23. *Brooks supra* n. 15 at 22.

24. *Brooks supra* n.15 at 13. Narrative glue is the use of the same facts with varying words that give a different narrative to the events. Brooks gives an example of the term "rape" versus "consensual sex." The outcome is the same, the man and the woman engaged in intercourse but the means change based on the "narrative glue" or perspective of the story. *Id.*

25. *Brooks supra* n.15 at 14.

26. Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure.

27. *Id*.

28. *Brooks*, *supra* n.15 at 2.

29. *Bumper v. N. Carolina*, 391 U.S. 543, 548 (1968)

30. *Bumper*, *supra* n.29 at 548.

The facts and the principle events of the *Bumper* case are not in dispute; instead, the "narrative glue" is what creates two different stories:

> [P]etititoner lived with his grandmother, Mrs. Hattie Leath, a 66-year-old Negro widow, in a house located in a rural area at the end of an isolated mile-long dirt road. Two days after the alleged offense [rape and shooting of a young couple] but prior to the petitioner's arrest, four white law enforcement officers – the county sheriff, two of his deputies, and a state investigator – went to this house and found Mrs. Leath there with some young children. She met the officers at the front door. One of them announced, 'I have a search warrant to search your house.' Mrs. Leath responded, 'Go ahead,' and opened the door. In the kitchen the officers found the rifle that was later introduced in evidence at the petitioner's trial after a motion to suppress had been denied.[31]

The "narrative glue" focuses on the term "consent." It is the way in which the "the incidents and events combine[] in a meaningful story, one that can be called. . ." consent "on the one hand . . ." or coercion "on the other."[32] If the prosecution can show that Mrs. Leath consented to the search the judge may "reward" the prosecution by ruling the evidence admissible and allowing it to be exposed to the jury.[33] In contrast, if the defense can prove that Mrs. Leath was coerced into consent, making the consent involuntary, the judge may "reward" the defense by ruling the evidence inadmissible and prevent the evidence from being exposed the jury.[34]

The judge must weigh the two narratives and determine which version is mere rhetoric and which is not. The judge must evaluate the statements made by the police officers to Mrs. Leath both for their literal and metaphoric meanings. "He said he was the law and had a search warrant to search the house, why I thought he could go ahead, I believe he had a search warrant."[35]

The statement "he said he was the law" is arguably a metaphor for the authority that the officer was imposing on Mrs. Leath.[36] The officer is not actually "the law" he is a police officer or sheriff charged with enforcing the law according the legal rules and standards of judicial process. Metaphorically, this phrase was used to illegally gain consent from Mrs. Leath thereby exposing useful evidence against the legal rule regime. Despite the usefulness of the evidence in exposing the criminal activity of Mrs. Leath's grandson, failure to follow the judicial rule regime prevents the evidence from being exposed to the jury.

Literally, Mrs. Leath relied upon the existence of a search warrant as

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31. *Bumper*, *supra* n.29 at 546.
32. *Brooks supra* n.15 at 13.
33. Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure.
34. *Id*.
35. *Bumper*, *supra* n.29 at 547.
36. *Id*.

reason to consent to a search of her home.[37] Although no search warrant actually existed, the apparent authority that the warrant gave the officer coerced Mrs. Leath into "voluntarily" consenting to a search.[38]

In *Bumper*, the judge ruled that the prosecution's story was the wrong story. The court relied on the metaphoric authority imposed by the police officer, and the literal suggestion that a search warrant existed as support for holding that Mrs. Leath's consent was coerced.[39] As a result, the court holds that the rifle should not have been exposed to the jury.[40] Ultimately, the court remands and reverses the lower court's holding because the evidence was improperly seized (initially exposed against judicial process) and improperly admitted to the jury (continuing exposure against judicial process).

A. The "Truth" of Unexposed Evidence

Although the officers in *Bumper* did not adhere to the judicial rule regime outlined by the Fourth Amendment, the evidence exposed is no less meaningful or truthful in exposing the guilt of the defendant. The operation of the Fourth Amendment renders certain "truths," such as actual evidence of a crime, as fictive merely because the evidence was obtained against the norms of the Fourth Amendment. In other words, the mere fact that the evidence was collected improperly does not make it any less truthful. Moreover, from a narrative perspective, disallowing the exposure of evidence that can significantly impact a case merely because it was collected against a rule regime leaves a gap in the story that the jury is hearing. As a result, the jury is left to create its own reality of events rather than relying on those supplied by the prosecution or defense. As Justice Souter states in *United States v. Old Chief*, "making a case with testimony and tangible things . . . tells a colorful story with descriptive richness."[41] In addition, Justice Souter suggests that there is a need for "evidentiary richness and narrative integrity in presenting a case," inferring that the evidence presented must be truthful, and making no comment about the means used to expose the evidence.[42]

Commentators have noted the importance of establishing a beginning, middle, and end to a narrative story.[43] "People think in narratives – in beginnings, middles, and ends. The danger when you edit something too severely is that it no longer makes sense; worse still, it leaves people with the disquieting impression that something is being hidden."[44] "People who hear stories interrupted by gaps of abstraction may be puzzled at the missing

37. *Bumper*, *supra* n.29 at 547.
38. *Brooks*, *supra* n.15 at 7.
39. *Bumper*, *supra* n.29 at 550.
40. *Bumper*, *supra* n.29 at 550 (emphasis added).
41. *Brooks*, *supra* n.15 at 30 (quoting *United States v. Old Chief*, 519 U.S. 172, 187).
42. *Brooks*, *supra* n.15 at 30 (quoting *Old Chief*, 519 U.S. at 183).
43. *Brooks*, *supra* n.15 at 30.
44. *Brooks*, *supra* n.15 at n.99 (quoting Errol Morris, *Where's the Rest of Him?* THE NEW YORK TIMES, January 18, 2005).

chapters. . . A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than a second best."[45]

In the case of *Bumper*, the rifle itself may have been improperly seized, but by preventing the exposure of the rifle to the jury, a gap in the narrative was created. Consequently, the judge's decision to rule against the exposure of evidence to the jury fails to consider whether the evidence will present truthful, integral, and necessary information, despite whether the evidence was collected outside of the judicial process. In ruling that the evidence was "not harmless error" the court essentially stated that the evidence – albeit truthful, "negatively" influenced the jury's verdict.

> Evidence thus has force beyond any linear scheme of reasoning, and as its pieces come together a narrative gains momentum, with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict. This persuasive power of the concrete and particular is often essential to the capacity of jurors to satisfy the obligations that the law places on them.[46]

It brings up the question of whether the jury's verdict can in fact be "negatively" influenced by truthful evidence.

During the O.J. Simpson criminal trial, the jury was exposed to narrative gaps where evidence was suppressed or ruled irrelevant. The judicial rule regime prevented exposure of evidence that was either collected against the Fourth Amendment or considered irrelevant under the Federal Rules of Evidence. In an attempt to build a motive for O.J. Simpson's alleged murder of his wife, the prosecution attempted to introduce evidence of the domestic violence suffered by Simpson's wife.[47] Judge Ito ruled "statements Nicole made to other people and in her diary" inadmissible for the discussion of domestic violence.[48] Although Judge Ito ruled that this evidence could not be exposed to the jury, his ruling said nothing about the truthfulness of the evidence.[49]

The defense relied on the Fourth Amendment's narrative to establish that Officer Mark Fuhrman (prosecution witness) violated one of the most fundamental metaphors of the amendment – "a man's home is his castle."[50] By suggesting that Fuhrman improperly exposed evidence at the crime scene (i.e. the bloody glove), the defense suggests Simpson's own rights are on trial, invariably over-shadowing the question of murder. Finally, by suggesting to the jury that the evidence was exposed incorrectly at the crime scene, the

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45. *Brooks*, *supra* n.15 at 30 (quoting *Old Chief*, 519 U.S. at 189).
46. *Brooks*, *supra* n.15 at 30 (quoting *Old Chief*, 519 U.S. at 187).
47. *Scheutz*, *supra* n.2 at 41.
48. *Id*.
49. Christopher Darden, Opening Statements, p.6.
50. U.S CONST. AMEND. IV

defense inadvertently suggested that Simpson was innocent. However, as discussed above, merely because evidence is improperly collected and improperly exposed at a crime scene *does not* equate to a conclusion of innocence. Legal scholars have highlighted this point in their analysis of the O.J. Simpson trial, "[i]nvoking police misconduct (which does not prove Simpson's innocence) . . . is legitimate.[51]

In contrast, the media audience (the general public) was given information to close those gaps left by inadmissible evidence. Because of this, the popular culture perspective of the crime differed from that of the jury. The media audience was able to form rational and legally related conclusions based on access to evidence that the jury did not have. Many public conversations of the law focused on the legitimacy of the legal system within the context of race and gender. "Invoking police misconduct . . . to discuss racism in the trial and in the American criminal justice system is legitimate."[52] In addition to viewing the live criminal trial and exposure to suppressed and irrelevant evidence, the media audience was exposed to interviews with witnesses and counsel.[53] Essentially, the general public was given the opportunity to create a legal syllogism out of a narrative.

This perspective changed during the civil trial. During the civil trial, much of the evidence ruled inadmissible during the criminal trial was admissible, thus closing the narrative gap for the jurors.[54] In contrast, the media had little (if no) access to the civil trial; Judge Fujisaki silenced the attorneys - "the media commentators were handicapped in their ability to broadcast pictures of conflict."[55] The media was forced to focus on the attitudes of the attorneys, rather than the trial itself.[56] As a result, the media exposed Simpson's attorneys as "subdued and surly" while the plaintiff's attorneys were "enthusiastic and committed."[57] The media's exposure of such a change in demeanor influenced the popular culture perspective – the civil trial was no longer a trial about racism. One of the only judicial rule regime shifts during the civil trial was the testimony of O.J. Simpson. During the criminal trial O.J. Simpson was not required to testify on his own behalf, however during the civil trial, "Simpson was forced to testify under the rules of civil procedure[]."[58] This may be one reason why the criminal and civil cases resulted in different verdicts.

It is important to follow judicial process and rule regimes in order to maintain a judicial structure and avoid improper law enforcement behavior.

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51. Devon Carbado, *The Construction of O.J. Simpson as a Racial Victim*, 32 HAR. C.R.-C.L. L. REV. 49, 58 (1996)
52. *Carbado*, at 58.
53. *Scheutz*, *supra* n.2 at 10.
54. *Scheutz*, *supra* n. 2 at 41.
55. *Scheutz*, *supra* n. 2 at 10.
56. *Shuetz*, *supra* n. 2 at 8.
57. *Shuetz*, *supra* n. 2 at 8.
58. *Shuetz*, *supra* n. 2 at 9.

The judicial process should rely on the Fourth Amendment as a narrative guide to interpreting the rules and not as a stringent rule regime. As a result, improperly exposed evidence would be admitted to the jury based on truthfulness and the narrative gap would be closed.

IV. LAW AS A MEANS TO EXPOSE INNOCENCE OR GUILT THROUGH STORYTELLING

"Trial lawyers. . .as. . .we all know, are aware that they need to tell stories, that the evidence they present in court must be bound together and unfolded in a narrative form."[59] The story must lead the audience to a logical finish, one in which they anticipate the "end" or the next legal conclusion.[60] The audience should not feel compelled or required to guess the ending or make a determination before the ending has been told. "Narrative itself is retrospective, its meanings become clear only at the end, and the telling of a story is always structured by anticipation of that end, the 'point' of the story, the moment at which its sequences and their significance become clear."[61]

As a result, attorneys tell stories that weave evidence and testimony into a single narrative.

> At trial [stories] are elicited piecemeal by attorneys intent to shape them to the rules of evidence and procedure, then reformulated in persuasive rhetoric to the listening jurors. The fragmented, contradictions, murky unfolding of narrative in the courtroom is subject to formulae by which the law attempts to impose rule on story, to limit its free play and extent.[62]

The narrative appears to have no holes or gaps; rather it follows the normal sequence of storytelling – a beginning, middle and end. However, the stories are rarely told without interruption, instead the flawless tale is an illusion.[63] The jury must trust that the storyteller is providing as much information as possible to create the most accurate version available.

A. The Story

One of the most important aspects of a story is the storyteller himself. "Narratology[64] . . . considers perspectives of telling: who sees and who tells; the explicit or implicit relation of the teller to what is told; the varying temporal modalities between the told and its telling."[65] If the storyteller is thought to be credible by the audience, he may persuade the jury or audience to draw an unlikely legal conclusion.

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59. *Brooks*, *supra* n.15 at 26.
60. *Brooks*, *supra* n.15 at 20.
61. *Brooks*, *supra* n.15 at 20.
62. *Brooks*, *supra* n.15 at 27.
63. *Brooks*, *supra* n.15 at 27.
64. The study of narrative.
65. *Brooks*, *supra* n.15 at 32.

During the Clarence Thomas confirmation hearings, Anita Hill came forth to tell her story about a past work relationship with Justice Thomas. Hill began her testimony with a recitation of her history; illuminating her modest upbringing, her religious faith, and highlighting her legal education and legal career.[66] From the beginning of her testimony Hill attempted to establish that she was not merely a former employee of Thomas's, but an educated, respectable, woman trying to survive in a male dominated society.[67]

Hill's opening testimony was offered to establish her credibility as a storyteller, however, the media told the story as a soap opera tale about sex, scandal, and racism; ultimately, casting Hill as the villain in her own story. For many, this was a discussion about race, sexual harassment, and gender inequality – not about Thomas's ability to serve as a Supreme Court Justice.

Because Hill's credibility as a storyteller was tarnished, her truth was criticized by the media, and she was not taken seriously as a Black woman who suffered sexual harassment.[68] "[F]ew Black people saw the Senate Judiciary Committee's decision to confirm Clarence Thomas to the Supreme Court, in spite of Hill's allegations of sexual harassment, as an indication of a Black woman being abused by the system – being denied her right to be free from male sexual aggression."[69]

In contrast, Thomas was portrayed by the media as a credible symbol of "a Black man in trouble," and thus he "received more support from the Black community subsequent to Hill's allegations of sexual misconduct."[70] He adamantly denied Hill's allegations, and likened the hearings to a high-tech lynching, "I will not provide rope for my own lynching or for further humiliation."[71] Thomas altered the course of the hearings; he forced the Senate Judiciary Committee to rule on the issue of race rather than on his qualifications. If the Judiciary ruled against Thomas, they were a mob of white men "lynching" him, like their ancestral counterparts, if they ruled for him they were men who believed there was not enough evidence to support Hill's allegations of sexual harassment.[72]

The media's exposure of the event as "soap opera worthy" entertainment highlighted the issues of sex and race while overshadowing questions of Thomas's judicial qualifications. According to Hill, the race and gender subtext

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66. Anita Hill Testimony at 1, http://www.mith2.umd.edu/WomensStudies/GenderIssues/SexualHarassment/hill-thomas-testimony (last visited May 10, 2010).

67. *Hill* at 1.

68. *Carbado*, *supra* n.51 at 77-78.

69. *Carbado*, *supra* n.51 at 77-78.

70. *Carbado*, *supra* n.51 at 78-79.

71. Clarence Thomas Testimony, at 1, http://www.mith2.umd.edu/WomensStudies/GenderIssues/SexualHarassment/hill-thomas-testimony (last visited May 11, 2010).

72. *Carbado*, *supra* n.651 at 78 (quoting CORNEL WEST, RACE MATTERS 37, 37-42 (1993)).

served to distract from the true issue, whether Clarence Thomas had the judicial qualifications to sit on the Supreme Court. However, Hill's story was about sexual harassment and Thomas's inappropriate behavior as her boss, not about his lack of qualifications for the position. Her story failed to take the audience down a path that would lead them to conclude he lacked the skills necessary to serve as a Supreme Court Justice.

The same question of relevance was raised during the O.J. Simpson trial when the prosecution attempted to introduce evidence of prior domestic abuse charges against Simpson to insinuate that he murdered his wife. "The story of a past crime might lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged. The story of the past crime must be excluded, not because it is irrelevant, but because it may appear over-relevant. . ."[73] As a result, the evidence that Simpson may have abused his wife exposed no truthfulness as to whether he committed murder. The prosecution hoped to introduce story elements to close the narrative gaps for the jurors. However, Simpson's prior crimes were not a natural sequence of narrative regarding the present crime.[74] Thus, the story created by the prosecution was in a sense fictional and untruthful – the prosecution was attempting to seduce the jury off the legal path and into the forest of narrative.

However "[o]ne should of course worry about the emotional impact of stories told at trial. . . ."[75] The prosecution does not want to take the jury down a path and "eat" them, he wants to consume them with his story and ultimately scare them into believing if they rule against him they will be letting a killer go free.

Unfortunately, the court found that the evidence used to show Simpson as a "beast" was not relevant and therefore inadmissible. "Prosecutors submitted their motion on domestic abuse, citing 'sixty-two separate instances of abuse, manipulation, and threats by Simpson.'"[76] Judge Ito ruled them inadmissible.[77] As a result, the prosecution was left to establish a narrative that made Simpson look like a "beast" without all of the available evidence. [78]

Both the prosecution in the O.J. Simpson trial and Anita Hill relied on their narratives to paint a picture to their audience. They assumed that the story they told would seduce the listener into believing their version of events. They exposed evidence that would not ordinarily be relevant to the legal question, and attempted to stay within the legal parameters of the issue rather than diverging too far into narrative. In contrast, Clarence Thomas and O.J. Simpson relied on popular culture and historical meanings of race and gender to provide context to their legal stories. They tantalized their listeners with

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73. *Brooks*, *supra* n.15 at 29.
74. *Brooks*, *supra* n.15 at 31.
75. *Brooks*, *supra* n.15 at 6.
76. *Brooks*, *supra* n.15 at 41.
77. *Brooks*, *supra* n.15 at 41.
78. *Brooks*, *supra* n.15 at 41.

imagery, and exposed themselves to the media for evaluation, criticism, and support. Ultimately, Thomas and Simpson's stories were more believable than their counterparts regardless of the truthfulness offered by either.

CONCLUSION

Judicial process is used to expose the truth of a matter while conforming to legal rule regimes. Laws themselves dictate the manner in which rule regimes are followed outside of the legal context. When a legal event is exposed through the media and not merely through the judicial process, there is a tension between rule regimes and the legal field, as can be seen by the public's response to the O.J. Simpson trial compared to the jury's. Popular culture discourse overlaps with judicial process, and narrative gaps in evidence not exposed to the jury are presented to the world for public evaluation, as a result, popular understandings of the legal system may even overtake the judicial process. As a result, the public feels they are more informed to make legal conclusions than the jury. Ultimately, it is not about whether the individual is innocent or guilty, it is about which storyteller is better at seducing the audience.