Real Stories: True Narratology, False Narrative and a Trial

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> *If it be accepted, as I would be prepared to accept, that the motivation for the original plan to lure Mr Johnson to the scene and assault him was not a desire for violence for its own sake but related to anger at the conduct of homosexuals in the toilet, that nevertheless does not mitigate the seriousness of the savage attack that followed.*[1]

That was His Honour Justice Badgery-Parker presiding (pre-siding) at a murder trial in April 1991.

This is me now:

> Ladies and Gentlemen of the jury, the facts in question are as follows. That the eight co-accused, all schoolboys from Cleveland Street High, did on the 24th of January 1990, bash Richard Johnson to death outside the Alexandria Park public toilets, the deceased having been lured there by a telephone call made by Accused A, who memorised the deceased's number from off a toilet wall. The eight accused then hid behind a nearby brick wall and when the deceased arrived they ambushed him en masse, Accused B king-hit him and he fell to the ground semi-conscious, whereupon the group stamped on his face, all over his head, his torso, his groin, his legs. One or more of the accused dropped full-weight to their knees, like

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[1] Supreme Court of New South Wales Criminal Division, Nos. 70372-70377 of 1990, 15.4.91, *Sentence*, p. 21. Further references to transcript by date and page.

> this, crushing down right through his ribcage, and a two to three minute frenzy of punching and kicking ensued. Accused D then went through his pockets then all accused left the deceased for deceased.
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> These, then, are the facts in question.

But they're not facts. And they're not in question. They *are* the question, a critical question in all senses of the phrase, to which the trial, with all its unquestioning stories, is an evasive reply.

I want here to interrogate, based on the full case transcript, the hierarchical complex of strategic stories told *to* the Court, reflexive stories told *by* or *of* it, and the transpositions and torsions between all these, so our critical aperture will be narrativity, primarily within the trial but briefly also in its (explicit) literary re- and anti- readings through short Queer fiction. To attempt a focal fit between multiple literary and legal theoretical lenses — and to pre-empt blurring into a kind of theoretical heteroglossolalia among competing jargons — we need a clearly-delineated analytical construct. This is mine: overstated, oversimplified and over-easy— in this, similar, maybe all, trials narrative is false and narrating not to be trusted, but narratology is true and narrativisation forensic; the former is story-telling, the latter story-extracting.

The transcendental guarantor (all senses) of justice, in this case, is not absolutist/idealist Justice, or even relativist/pragmatist Policy, but the *judicial process*, the trial itself. In postmodernity, or at least postmodern/ist discourse, we're supposed to have few Lyotardy mega-metanarratives left, but this is one, and it is a story-centred version of positivist technological teleology. The irresistible homology is of the trial as a high-powered, ultra-sophisticated anti-hermeneutic story-extracting cybernetic system, self-sufficient, self-perpetuating, feedback-directed and auto-correcting, subsuming all elements and levels of the case, working with subroutines of Foucauldian subjectifying-objectifying examination and confession disciplines, cross-indexing permutations of each strategic narrative, running through its discursive calculus on all the rival texts, until it extracts the *real story*, i.e. what's left over after the program terminates.

This is a meta-story told *by* and *of* the Court about the stories told *in* it. Like all institutional power-knowledge industries, the Court fuses disingenuous Enlightenment rationalist-objectivist metaphors at its matrix: archaeology,

pathology, illumination, recovery, discovery, past-reconstruction, etc. No discursive functions, textual positions, actantial role, no interpretation here, this is Heidegger's worst-case autonomous, automatic technology. The Court calls its cybernetic system *fact finding*, which becomes, in Summing Up and Sentencing, *findings on the facts*. I call it C^3PO, for command-control-communication-procedural ontology, in homage both to scientific fictions and to the US military's $84 billion operational restructuring on cybernetic lines.[2]

A gratifying consequence of this techno-rational homology is that lawyers are reformulated as a species of artificial intelligence. This is not merely ironic: they become transliterations of their code of conduct, instruments for the Court, working on an evidentiary corpus and witness-data (all senses) in elaborately reticulated and recursive but parsable and recurrent technical units, rather like hyperPropp Greimasian morphology working through Todorov's Transformational-Generative narrative grammar using Genette's software. All the standard narratological and narrative components are available to counsel as they run though their story-extraction programs, but they are not permitted to piece it together (excepting the Crown in his introductory, explanatory function): the "reconstruction" of the "real story" (insert your own scare quotes from here) is legally (ostensibly) the actantial role of the jury. Part (at least the degree) of this schematicisation at discourse analysis level has to do with the multiplicity and radical instability (undecidability) of proliferating narrative-texts in question, in dispute, in contention, in competition.

Even if we confine ourselves to network connections between a single set of narrativisable "facts" — the events preceding, during and immediately after the attack — C^3PO's performative productivity in terms of narrative-texts is J/justice-boggling. I must emphasise here that I'm using "text" with some technocratic precision, not brisk vagueness. This is NOT the predictable poststructuralist amnesiac slippage from social constructivism to grounded theory to proto-structuralist schemata to discourse to text to written word, such that you begin by talking about real people really talking in real situations and end up troping everything through homologies of a novel or poem. Evidentiary narrativity is self-evidently textualised and textual, *constructed* as text under carbonising pressure from illocutionary force, interpreted and manipulated in the courtroom *as* or *as if* text and, through

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2 Code-named C^3I, the I for "Intelligence": D Haraway, "A Manifesto for Cyborgs" in L J Nicholson (ed), *Feminism/Postmodernism*, Routledge, New York, 1990, p 191.

stenography (i.e. simultaneous transcription [i.e. simultaneous translation]) it is also automatically *produced* as text. Transcription. Word-processing.

So. On to a synoptic typology of narrative-texts. First, the originary *archetext*: what "actually happened" (pretend for the moment, like the Court, that it exists and/or we can access it). Then, from the witnesses, we have (1) conflicting, mutually exclusive *interview-texts*, the first (in this case) completely false (a consensual "story" about being chased by Tongans through the park), the second a "true" record-of-police-interview text; (2) a *statement* made while in detention; and (3) the *evidence* in Court. Once the first trial was aborted, all these texts become a *first-trial text* adducible and reconfigurable (through citation) in the second. Parallel to these, we have a prospective *template-text* in the opening address(es) from the Crown[3], a syncretic case infrastructure against which all other narrative versions and variants must perforce be compared, measured and tested.

At the other end of the process, chronologically, we have the three Judge-made models. (1) The *legal syllogism-text* in the Summing Up, where he scrupulously, "scientifically" dissects all the narratives into what said by whom can be evidence in what way with what inferences in what legal category towards proving what element of the charge for which accused with what probable plausibility and what quotient of lies told to what probable purpose. Then, both in the Sentencing: (2) the retrospective public-consumption *palimpsest-text*, where he reads backwards from the verdicts (and what is necessarily thus "proven") through the different narrative versions, superimposes them for an identikit match, then edits or generalises the mis- or un-connecting bits out of relevance and thus existence; and (3) the **very** retrospective, long-awaited *subjectivist-text*, where (remembering the explicit audience here includes accused, Court, appellate courts, profession, the media and the "general community") he finally SM-briefly reinserts the palimpsest text within psychosocial questions of *motive* rather than *intent*. Only when C[3]PO chugs out the last of its rhetorical jurisprudent justificatory chits do we get a *why?* as well as *how?* and the rest of the imperative interrogatories.

In between Crown's opening and Judge's closure, there are the *tactical texts* deployed by all the actants in their various roles, with the exponentially multiplying intersections, interleaving, interlacing, interanimation and jamming that they produce. These — repeated sequences of questions,

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[3] Supreme Court of NSW Criminal Division, above n 1, 6.2.91. p 112 ff; 7.2.91, pp 11-21.

rhetorical tropes, courtroom tactics and so on — are the most flexible of the text-types, fractally manoeuvrable in discursive regularities, meccano-slotting together or disarticulating down to micro-sized sharp-edged chips. Most frequently they lock into complexes, separable where needed into effective recurring algorithms like positionality, line of sight[4], accomplice identification[5], Crown inducement, etc. etc. *ad nauseam* add lawyer. From a narrativity perspective, perhaps the most instructive is the algorithm of "recollection-*vs.*-refreshed memory": Did you actually see that? Do you remember it happening or are you remembering your police record-of-interview or are you perhaps unwittingly quoting from your formal statement or paraphrasing your later addenda to that statement or your revision of its content? How many texts are you reading from?

Dramatisation is a primary narrativisation technique within these tactical texts, from deictic evidence schema (marking objects, positions, routes on plans, photographs and transparencies[6]), through re-enactments (of movements, bodily configurations, attempts to use dummies, etc.[7]), dramaturgical readings (the Judge taking on characters and voices when reading out records-of-interview and statements to the courtroom[8]) and dramatic role-playing (witnesses instructed to "speak as though you were the person"[9] whose words or actions they are relating[10]). This dramatisation reaches an astonishing culmination in what I can only call *confession texts*. In unsworn statements, the accused directly address, play to, plead with, the jury from across the courtroom, as a public confession and performance of remorse. A narrative space is jemmied open in all this mechanical tentacular artificiality: they're not questioned or cross-examined, it's a self-enclosed (all senses) theatre-piece. They deliver their lines and leave. The legal name for this performance is "The Case For The Accused". It's a bizarre mixture of bathetic self-serving display, the terrifyingly banal and prompted fake-sincerity, all with admixtures of pidgin-legalese.

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4 Supreme Court of NSW Criminal Division, above n 1, 6.2.91, pp 156-157.

5 Supreme Court of NSW Criminal Division, above n 1, 6.2.91, pp 146-147.

6 From innumerable examples: Supreme Court of NSW Criminal Division, above n 1, 6.2.91, pp 154-155, 158.

7 For example: Supreme Court of NSW Criminal Division, above n 1, 6.2.91, pp 161, 162, 164.

8 For example: Supreme Court of NSW Criminal Division, above n 1, 8.2.91, pp 258, 264.

9 Supreme Court of NSW Criminal Division, above n 1, 7.2.91, p 30.

10 Examples at: Supreme Court of NSW Criminal Division, above n 1, 6.2.91, p 166.

M: Members of the jury, let me say at the beginning I am very sorry for what happened to Mr Johnson and I am very, very sorry that he died. I am ashamed of myself, what I did that night. After basketball we cooled off and the eight of us, with [R], set off to go home. We went to the toilets and [C] suggested we get a number off the wall.[11]

H: Ladies and Gentlemen of the jury, on 24 January I was at home. I was with me Mum when - and I was starting a job on Monday and I went to lunch - have lunch with me Mum. I went up to the shop to get some stuff for me Mum and [B] and me made an agreement to play basketball - that was at Cleveland Street High. I went back home - had dinner with me Mum; then we went out to basketball with [B] and [J]. There were five players, two reserves and the players on one team with the eight accused and [R] as one of the reserves. I think [J] was on the other team, with the older people. We finished the game about 9 o'clock; we went outside. The older people drove off to go home. We cooled down for a while. I wanted to play another game of basketball because the outside courts were still lit up, but the others didn't say that they wanted a game, so I saw a couple of them heading back towards the - back home, the Waterloo area, so I followed.[12]

In the dock for murder and talking basketball. Why is that? To demonstrate memory? Being realist-ic? Remember, these confession-texts are designed to show or initiate privileged spontaneous access to the arche-text, to unmediated truth: real people really telling their real story. Instead, we find bad stage-management—

Mo: I didn't know anything about the Tongan story that was made up and I am innocent of killing the deceased. That's all.

Lawyer: I would seek to remind Mr [Mo] of two matters. I realise it is out of order.

Mo: I am sorry, I forgot one part. As the assault was taking place I left with [M]. We were the first to go and as I was

[11] Supreme Court of NSW Criminal Division, above n 1, 15.2.91, p 291.

[12] Supreme Court of NSW Criminal Division, above n 1, 15.2.91, p 292.

> leaving I turned around and seen [C] jump on his stomach with both knees and I thought he had gone crazy and I didn't want anyone to go on like that and I didn't think anyone wanted to hurt him really bad. Oh, also, when I go to sleep at night I see visions of the man. I have nightmares of him laying there and a close-up of his face. Thank you.[13]

Here we should note constitutive missing dimensions: we have no access to the vocal and physical settings and languages of the trial and hence lose both a powerful disambiguation tool and several modalities of narrating and narrativisation at once. But, however paratextually circumscribed, we are at a nexus of the legitimating technologies generating the cybernetic system. A trial-in-progress[14] never remains so, because it is also and always-already a text-in-progress, being transcribed and made materiality for unambiguously textual reading and rereading and intertextual deployment. Re-enactments are subtitled with question-and-answer confirmations from counsel and what you say now will be read to/for/through/ against you this afternoon, and your readings required of you. The theoretical legal-literary corpus often seems grossly to underestimate the capacity of a trial-as-system to recuperate textualised discourse, reified subjectivities and human interaction whilst constituting and rearticulating the resultant textuality so many times through so many actants at so many levels in so many modes that certain analytical approaches become il-legal or clumsy or inappropriate or useless or myopic or, at times, invidious, the heuristic equivalent of Le Doeuff's philosophical imaginary. The stakes are too high and the rules of this game, for all and especially the synecdochic Court, so wrapped in rhizomes of practice, field, habitus and sheer discursive-performative un-theory-like power, that early or late surface or deep semiotics or structural linguistics, let alone everyone's latest deconstruction (≠ de-construction) . . . often collapse down to flattened cardboard metaphor, applicable only in attenuated technically-specialised fashion to *a* text *qua* text, not the multiplicity and imbrication of text-types of which a trial is made.

All these narrative texts artificially separated here for analysis, are not only inextricable within the cybernetic system, but their core — the typology of witness-data — is wired up like an Intel microchip. The accused-turned-

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[13] Supreme Court of NSW Criminal Division, above n 1, 15.2.91, pp. 297-298.

[14] M S Weinberg, "Evidence Scholarship and Theories of Adjudication" in D J Galligan (ed), *Essays in Legal Theory*, Melbourne University Press, Melbourne, 1984, pp 129-130.

prosecution-witnesses give evidence in Court on 12.2.91 about (i) what they remember *seeing* on 24.1.90, (ii) what they remember *saying* in their statements, (iii) what they remember *reading* in their statements before signing them, (iv) what they remember saying in their second ("true") record of interviews, and (v) what they remember supplementing their statements with after refreshing their memory from the records when recording the statements.[15] It is precisely this conflation and multi-stor(e)ying and paraphrasing into legal (all senses) language, between mental picture, memory, recollection and extrapolation from documents adopted as true statements, that defence counsel attack with an array of algorithms: who was there, was it question-and-answer or narrative, what were the inducements, the cross-infecting intertextualities, the feared consequences and so on.

Moreover, every single narratological/narrativisation technology and narrative text sketched thus far is compounded by an essentialist gothic fiction: the interminable abdications, with Khrushchev cheerfulness, of Judge to jury in matters of fact. This is the most overt facet of the foundational objectivist metanarrative of legal practice. You find the facts, I tell you the law, together they form a syllogism in this closed formal logic system. Having accepted your actantial role and thus your duty as jurors, we now share the same semiotic habitus and work from overlapping narrative competencies, the judicial process guarantees the verdict and its legitimacy. This is science. This is institutional definitional procedure[16], working its way through the system towards validating the truth-claims of the palimpsest-text of evidence. No Dworkinesque creation (novel-emplotment) or critique (literary analysis), no hermeneutics, only exegesis, no Fish-y interpretive communities or reflex-conventionalist text-making, no class in this text, thankyou, and no sex with our violence: absolutely-minimised homosexuality, no homophobia, no homosexuals as other than the universal subject of Equal Law For All[17], no central plots starring schoolboys playing at phone-sex, no pre-victims with ex-lives . . . all these do not compute, do not enter the cybernetic system. The only time Badgery-Parker consistently intervenes is to stop lines of questioning that would re-place Johnson as a gay man, victim of a gay bashing: it's irrelevant, let's not discuss it (he repeats over and over), since

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15 Supreme Court of NSW Criminal Division, above n 1, 7.2.91, pp 65, 66-68, 78, 81, 83-84, 91-93.

16 By Weber out of Fish: S Weber, *Institution and Interpretation*, University of Minnesota Press, Minneapolis, 1987, 6, p 17.

17 T Threadgold, "Legal Practice in the Courts: Discourse, Gender and Ethics" (1991) 7 *Aust J of Law & Soc* 43.

homosexuals are protected by the l/Law too (and O how liberal, how equitable, how easy).

Nowhere in all this legal circuitry is there more than the merest blip registered about WHY eight schoolboys, after a regular basketball game, would sexually entice a man they would never know to a park late at night to bash him so frenziedly not all the forensic repetition in the world can dull its horror. Perhaps answers don't fit the game. Perhaps the stakes are too divergent. That's why we have literature. Narrating and narrative (in its full, not its C^3PO sense), and every issue jurisprudence will not admit, undergoes reconstruction in the literary re-readings and re-writings. The Queer short fiction seems at first derivatively re-constructive, journalistic-documentary, metafiction literally/literarily of a piece with C^3PO:

> Richard Norman Johnson aged 33 of Coogee in the State of New South Wales was planning a quiet night at home. Just him, the "7.30 Report" (he felt it was important to be aware of current events), a cup of tea and bed. Living alone had certain small comforts.[18]

But the archaeologies of reality de-construct self-consciously, painfully aware of what cannot be retrieved or known, playing with the discourses of narrativisation and fact-finding:

> (and how does it start?)
> **A Bunch of Good Mates:**
> **Alex, Dean, Ron & Bradley (actual names)**
> Bored inner-urban loungeroom spewing televised drones and vinyl cushions. (But what does one say? How does one commence?)
>
> BRADLEY: Hey, guys, how about we go and get some poofter and bash him to death?
> And off they march on their noble quest, with mother packing cut lunches?[19]

The short stories also focus almost obsessively on retributive justice:

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[18] S Dunne, "From My Notebook" in S Carter (ed), *The 1992 Australian Gay & Lesbian Short Story Anthology,* Designer Publications, Melbourne, 1992, p 31.

[19] S Dunne, above, n 18, p 30.

> When the verdicts came out, I was having coffee with a few libertarian queers. People like me, really, who muttered when others on television called for hangings and stiffer sentences. We understood that criminality is a social problem, that gaol is no deterrent, that the lust for vengeance is misguided, inhuman.
>
> The paper was in front of us.
>
> — They gave 'em ten years non-parole! one of us said triumphantly.
>
> Fuck liberal niceness. Alex got ten years bottom, eighteen years top. We could barely contain our guilty glee.[20]

This technique overlaps with that of bleakly-ironic, social-diagnostic poetic justice: schoolboy poofter-bashers made homoerotic, or possessed (precisely) with homoerotic desires, sublimated, transferred, denied or made profitable:

> Third Schoolboy: Why'd you have to go and tell that Lester prick I was cracking it on the street? I was only saving up for a Harley, you know that. Not everyone can get a job at MacDonald's.[21]

This is above all a reinscription of the sexual violence (especially Dunne's sado-masochistic yoking of assault, victim, killer, jailer, narrator, reader) of the attack, its sexuality-motivated character, and a psychosocial translation of "homophobia" in its more extreme and literal sense: the irrational and potent metaphorisation of homosexuality as contagion, sickness to be caught, stamped out or — surely the most terrifying and self-perpetuating, enough to spark psychosis under the right conditions? — a cancer harboured either in one's own body (to become perhaps morbidly curious about, or disgusted), or hidden in anyone else's (to be vigilant for, on guard always), even your barrister:

> After the verdict, the barrister came to give him a fatherly lecture. About the facts of life, or at least the facts of his new one. Son, he said (you don't mind if I call you that?) You should be aware that there are ... men like that in prison.

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[20] S Dunne, "From His Cell", 3, unpub ms, 1993.

[21] I MacNeill, "Homophobia" 18 unpub ms, 1992.

> — What, poofters? (the boy says, bravado covering a sinking feeling)
>
> — Yes, son. Now, you're an attractive lad. Young. You have to remember you don't have to put up with that sort of behaviour, no matter what the other inmates may threaten you with, or offer as inducement. If anyone does ... try anything, just report it to an officer. You'll be OK.
>
> The barrister's hand brushes his shoulder, not lingering, just in case it was open to misinterpretation, which, after all, would never do.[22]

You just can't be sure. It's a reason as much as a punishment, that so many poofter-bashers in these versions find a poofiness of their own. And in varying modalities from self-conscious irony through to savage sardonic satire, the motivations are at last explored, the socio-historical and -economic contexts returned to the scene of the crime. Homophobia exists here, with its political, religious, medical, legal, bureaucratic, media, educational, community and teenage peer-pressured viscera. And the victim position expands, as it never did in the trial, to include other gay-bashings, past and terrifying present.

The fiction gives Johnson back his life, his personal history and some sense of a self, pre-empting judg/e/ment by placing narrator and reader in isomorphic positions alternately or simultaneously through perspective and focalisation. Instead of proliferating texts contained and configured in logical synapses, the queer fiction bricolages from voices, registers, discursive formations, enunciative modalities and narrative text-types illegally hacked from the Johnson case cybernetics. It doesn't have or find answers or facts, and doesn't pretend to, but it does make the story of Richard Johnson's death into a question, and asks of it all the questions the trial should, won't and pretends it can't.

It's only in the Sentencing, when nothing more can be done except the annunciation of a *fait accompli*, when the justificatory *palimpsest-* and *subjectivist-texts* have terminated, it's only when C^{3}PO has clicked all the text-types into place codifying and verifying the uttering of this sentence, that Badgery-Parker gets around to telling us, in a reading from his written text,

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[22] S Dunne, above, n 20, p 5.

with one eye on the *Sydney Morning Herald*[23] and the other on the Court of Criminal Appeal, why it was important that these boys be Fred Nile's social workers.

It's too little.
It's too late.
It's the wrong question.
It's the wrong answer.

[23] Which he specifically addresses.