

# MAKING A MURDERER REVEALS THE BLURRY LINES BETWEEN NARRATIVE AND FACT



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LAW, JUSTICE AND HUMAN RIGHTS

*Hit Netflix documentary Making a Murderer has people asking a number of questions – “Did he do it?”, “Was he framed?”... **Nolen Gertz** thinks the bigger issue is whether our justice system presents objective reality at all.*

Even the very title of Netflix documentary miniseries *Making a Murderer* is somewhat ambiguous.

On the one hand, the documentary appears to be an attempt to show how the Wisconsin justice system – from vengeful cops and overzealous detectives to manipulative lawyers and biased jurors – could make Steven Avery (the alleged murderer at the centre of it all) into someone who would be found guilty of murder. On the other hand it appears to be an attempt to show how the American justice system – from questionable policing and coercive interrogations to prosecutorial misconduct and media-infected jury pools – could make *anyone* into someone who would be found guilty of murder.

There is no reason these two aims cannot be synthesised. Yet, as the response to the documentary has shown, the salaciousness of the question of Avery’s guilt or innocence has left little room to debate the complexities of the latter question – the system’s ability to render any one of us guilty. Considering what it means to question the entire system rather than one case, perhaps this response is not simply an accident.

In an article such as this, it is typical to begin by laying out the case’s facts and clarifying the distinction between what we know and still need to find out. Yet trying to determine what is and is not a “fact” is precisely the problem for both the subject of the documentary – Avery – and the documentary itself.

The American justice system operates through the cyclical creation and destruction of narratives. First, the narrative of crime. The police work with what has been reported, trying to fill in gaps, clarify confusions and make order out of the disorder. Witnesses

are found, scenes are searched, suspects are interrogated...

This leads to the creation of the second narrative – guilt. The suspect then works to convince the police that their narrative is wrong, that dots have been connected incorrectly, that events and evidence can and must be made part of a new and better story.

All this gives rise to a third narrative – accusation. Investigators and lawyers test the opposing narratives, finding support for one, doubt for the other, all the while moving to build a case for a trial.

This leads to a fourth narrative – prosecution. Judges and juries, prosecutors and defenders, the media and the public all enter the fray, hearing stories, sharing stories, and creating new stories. Now we reach the narrative of *what really happened*. Opinions are elevated to facts. Facts are relegated to opinions. Judgments are handed down. Opposing sides, opposing outcries, opposing realities.

Finally, the narrative of *what should be done* – the narrative of justice – is created.

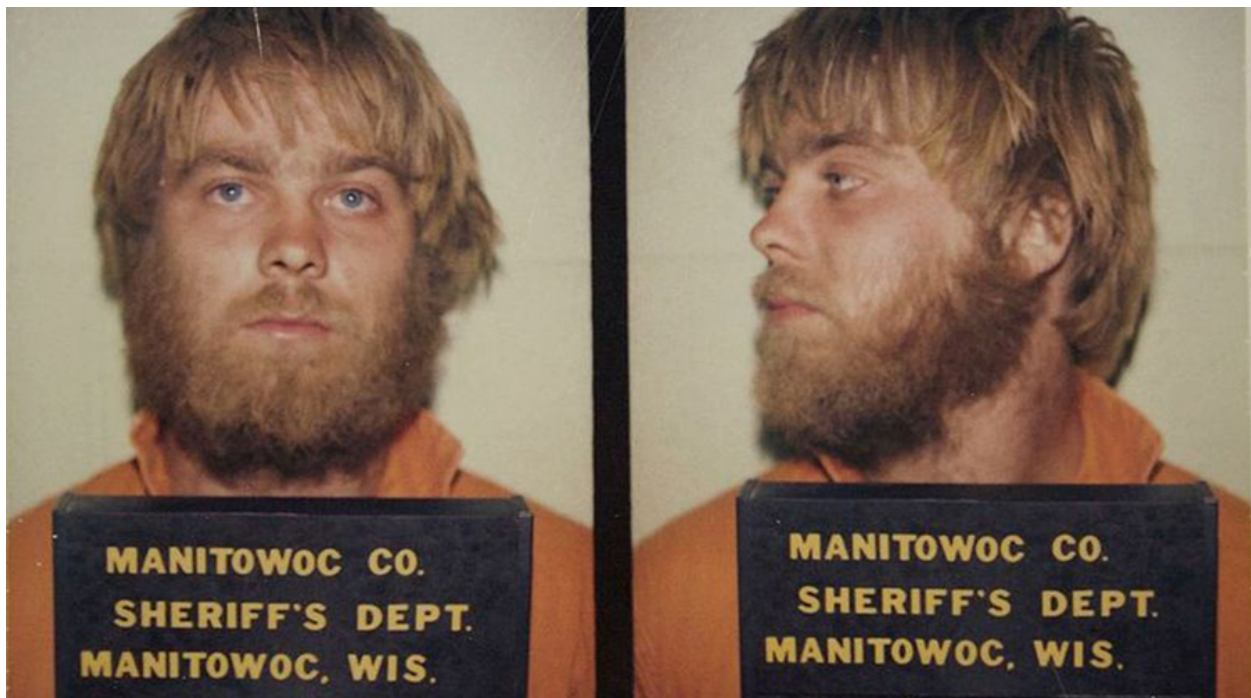
The idea that justice relies on story-telling is not new. From *The Iliad* to *The Trial*, from Cain and Abel to Batman and Superman, we have used narratives to shape our ideas of what is just and unjust, deserved and undeserved, pardonable and punishable. However, what *Making a Murderer* helps reveal is the discomfort and anxiety that comes from having to confront what it means to have a justice system built on narratives on top of narratives on top of narratives.

This problem is endemic to the justice system because it is endemic to humanity.

In his classic text *The Structure of Scientific Revolutions*, Thomas Kuhn argues science is not merely a collection of facts objectively discovered and investigated. Rather, it is a series of long periods of peace operating under one narrative of reality, punctuated by periods of crisis because a new narrative has been created. The key is that these new narratives – though they are the subject of much debate and controversy – are, once accepted, no longer *seen as narratives* but as *objective reality*.

Kuhn, much like the producers of *Making a Murderer*, reminds us that so long as humans are part of a system, objectivity cannot be taken for granted. Yet, as Kuhn's critics and Steven Avery's prosecutors warn, we challenge the objectivity of the system at our own peril. In both cases, if we see facts as social constructions, if we take reality to be up for democratic debate, then we are inviting the mob to rule.

The scientific consequences have been disastrous. Mob rule has turned the scientific issue of climate change and emission regulation into a political conflict between Big Business and Big Government. In the case of Steven Avery and Brandon Dassey it turned the legal matter of guilt and innocence into a conspiratorial issue of The System versus The Accused.



*Debating Avery's guilt or innocence distracts from the more disconcerting revelations of *Making a Murderer*.*

One response to these threats has been to challenge those who see bias in the system as themselves biased. Kuhn is accused of having cherry-picked historical examples to support his argument, just as the producers of *Making a Murderer* are accused of having cherry-picked details from the Avery and Dassey trials. In the former case, to argue the history of science with Kuhn is to already accept his call to take the history of science more seriously. In the latter case, to argue bias in the creation of narratives about justice is to accept the filmmakers' call to recognise bias in the creation of narratives about justice.

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For Kuhn such challenges and counter-challenges to his work have helped strengthen the philosophy of science. However, it is too early to tell whether the same debate over *Making a Murderer* will help strengthen the justice system.

For now, the majority cling to the beliefs that the police are above reproach, the accused always get a fair trial, those in prison deserve to be in prison – that, in other words, *the system works*. So long as this is the case, it is likely debates about *Making a Murderer* will focus on the 'trees' of Steven Avery and Brandon Dassey, ignoring the 'forest' of how systemic injustice really is.

As Avery's lawyer Dean Strang laments, the problem of the justice system is the hubris of certitude. But this problem is endemic to the justice system because it is endemic to humanity. We are willfully ignoring this forest for fear of finding that roots lead back to us. And if, as Kuhn as shown, these roots entangle science as well, we have all the more reason to cling to our stories about justice. To do otherwise would risk the rabbit hole of demanding a new narrative.

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