

THE NARRATOLOGY OF LEAKS, PART TWO: SCHOOLING WILLIAM WELCH

Let me just say I do not relish seeing William Welch making precisely the point I have made in one of his filings. When you read this,

That Mr. Feldstein's opinions are unreliable and based on no method at all is underscored by their internal inconsistency. He opines that "all statements in Chapter Nine that seem to indicate the potential identity of sources must not be taken at face value," Attachment A at 3. Yet at the same time, he also concludes that "taken at face value, Mr. Risen had multiple sources" for Chapter Nine, including multiple human sources and documentary sources. Id. Moreover, because such testimony has a substantial likelihood of confusing the jury, it is also inadmissible under Rule 403.

You'd almost think Welch had read this,

The filing goes on to suggest that because Risen used this same technique he succeeded in hiding his sources.

Chapter 9 of State of War attributes thoughts and motivations both to "the Russian scientist" and to "the CIA case officer." It is not possible to infer from this attribution whether Mr. Risen spoke directly to both of these individuals, one of them or neither of them, in gathering the information contained in Chapter 9, much less what information, if any, either individual provided Mr. Risen.

Now, in the literary world, scholars are cautious about making definitive statements about the intentionality of the author

(particularly as with books like this, which have clearly been edited to make the book a good read). But I'll grant that a good investigative journalist might be (though might not be) a lot more cautious about the legal implications of the narrative voice used than a fiction writer.

But there's another problem. The filing later suggests a reader **can** draw conclusions from the narrative presentation of evidence.

Taken at face value, Mr. Ilsen had multiple sources for the portion of Chapter 9 of State of War that discusses a CIA operation to provide flawed information to Iran's nuclear program. These sources include multiple human sources as well as documentary sources, which may have been provided to Mr. Risen by persons who also gave oral information to Mr. Risen or by others in addition to those who gave him oral information. Mr. Feldstein bases this opinion, in part, on the following examples: 1) page 197 of the book attributes information to a "secret CIA report"; 2) the material quoted at pages 204-05 of the book appears to have been quoted from a documentary source; 3) page 208 attributes views to unnamed "officials"; 4) page 211 cites "several former CIA officials"; and 5) page 211 indicates that the Senate Select Committee on Intelligence received information about the program from the "CIA case officer," but states the Committee took no action.

Sterling's team is trying to have it both ways, drawing on Feldstein's amateurish identification of narrative voice to suggest one cannot draw conclusions about sources, then showing Feldstein doing just that based on the clear indications given in the narrative.

Say, Bill Welch? In case you're reading **this**

post, you made almost as stupid an error in your request to preclude the defense's use of narratology at the Jeffrey Sterling trial as the defense did in trying to have it both ways. You try to argue that the typical juror would understand this stuff already. Trust me, I've taught this subject to literature majors and honors students at a good state university, and it is not commonly understood, even among uncommonly smart people.

But even funnier is the way you make this argument.

In addition to inadmissible speculation regarding sources, the defendant also intends to call this expert to testify regarding the fact that *State of War* is written in the "third-person omniscient narrative style." Attachment A at 1-2. The concept of a narrative voice, including the "third-person omniscient" narrative voice, does not require expert explanation. It is a common feature of high school reading curricula. See, e.g., English Standards of Learning in Virginia Public Schools 2 (2010), available at http://www.doe.virginia.gov/testing/sol/standards_docs/english/2010/stds_english9.pdf; English Standards of Learning Curriculum Framework 2010: Grade Nine 12 (2010), available at http://www.doe.virginia.gov/testing/sol/standards_docs/english/review.shtml. Because the concept of "point-of-view" is within the common knowledge and education of the average juror, it is inadmissible and properly excluded.

First, here are the correct links, in case Judge Brinkema wants to see the original references and gets lost by the 404 errors the URLs in the filing pull up.

But what the curriculum document you've linked to—and *you yourself*—are referring to is "point of view," not "third person omniscient" narrative.

The student will read, comprehend, and analyze a variety of literary texts including narratives, narrative nonfiction, poetry, and drama.

e) Explain the relationships between and among elements of literature: characters, plot, setting, tone, point of view, and theme.

i) Explain the influence of historical context on the form, style, and point of view of a written work.

Neither the word, "omniscient," nor the phrase "third person" appears in that curriculum document.

As even Wikipedia will tell you, "point of view" and "narrative voice" **are different things**. Both a first person and a third person narrative can use the same point(s) of view. The points of view (actually, focalization) James Risen used in the chapter in question is generally that of the Russian scientist and the case officer. We don't, for example, get access to the feelings of the "senior CIA officer," who might have been thinking that the "case officer" was being a big wuss about the doctored nuclear blueprints and should just suck it up and go on with the operation; we only get that person's statements. And in spite of the fact that Risen uses some fairly interesting narrative techniques to convey the thoughts of the Russian (as I noted in my last post), this is not told in a first person narrative in the voices of the two: we (generally) get not only the narrator's description of who said and thought what, but also a great deal of background about things like the IAEA, Russian nukes, and Nunn-Lugar that Risen is pretty damn knowledgeable about all by himself.

In other words, in the passage of the filing claiming that this stuff is known to VA's high school freshmen, Welch **makes an error**, incorrectly conflating two aspects of narrative (and frankly, the two that would need to be

distinguished for anyone, government or defense, to make an argument at trial about what the style of Risen's text means about his sources).

Apparently, your average VA juror can be expected to know this stuff, but not a fancy government lawyer with degrees from Princeton and Northwestern.

Now, as I've said, I think this use of narratology in the court room is inappropriate, regardless of whether the defense or the prosecution attempts to use it (and both are trying to do so). I hope the defense responds to this filing by counter-filing that if their expert is precluded, the government should also be prevented from presenting their claims about what Risen's narrative techniques mean, since the lawyers involved are obviously incompetent to do so.

But I will say I'm having a bit of fun watching the debate about it.