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## ARTICLES & ESSAYS

**Breaking Bad Facts: How Intriguing Contradictions in Fiction  
Can Teach Lawyers to Re-Envision Harmful Evidence**

Cathren Koehlert-Page

# Breaking Bad Facts

## How Intriguing Contradictions in Fiction Can Teach Lawyers to Re-Envision Harmful Evidence

Cathren Koehlert-Page\*

### I. Introduction

Inside, the DRIVER's knuckles cling white to the wheel. He's got the pedal flat. Scared, breathing fast. . . .

Oh, by the way, he's wearing a GAS MASK. That, and white jockey UNDERPANTS. Nothing else.

...

The Winnebago comes roaring over a berm and down into a deep gully. Too deep. BAM! The front bumper bottoms out, burying itself. . . .

. . . The Winnie's door kicks open and out stumbles underpants man. He yanks off his gas mask, lets it drop.

He's forty years old. Receding hairline. A bit pasty.<sup>1</sup>

UNDERPANTS MAN, a.k.a., Walter White is "the nerdiest old dude" Jesse Pinkman knows.<sup>2</sup> White teaches high-school chemistry and works an after-school job at the car wash to make ends meet.<sup>3</sup> His students

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\* Assistant Professor of Law, Barry University School of Law. I would like to thank Dean Leticia Diaz for her continued support of our scholarship and her dedication to faculty development and Associate Dean Kelli Murray for her faculty development support as well, Professor Jamila Jefferson-Jones for her input and her dedication to faculty development, Professor Leonard Birdsong for his continued encouragement, Professor Judy Koons for her suggestions given during retention review, Professors Robert Whorf, Khaled Beydoun, and Denitsa Mavrova Heinrich for facilitating a faculty discussion of this article and providing verbal feedback, Professors Khaled Beydoun and Robert Whorf for their written suggestions and verbal feedback, Associate Dean Bobbie Studwell and Professors Terri Day, Stephen Leacock, Glen Peter Ahlers, Susan Bendlin, Seema Mohapatra, Kate Aschenbrenner, and Michael Morley for their verbal feedback, the LWI Writers Workshop, Professors Lou Sirico, Kenneth Chestek, Betsy Lenart, and Rosemary Queenan for their critiques and insights at the workshop, and finally my research assistants, Caitlin Ehinger, Shanna Kay Turner, Matthew Best, Amanda Buschbom, Stacey Schwartz, and DeShayla Strachan for their insight, questions, research, and proofing.

<sup>1</sup> *Breaking Bad: Pilot* (AMC television broadcast Jan. 20, 2008), transcript available at [http://www.pages.drexel.edu/~ina22/splaylib/Screenplay-Breaking\\_Bad-Pilot.PDF](http://www.pages.drexel.edu/~ina22/splaylib/Screenplay-Breaking_Bad-Pilot.PDF).

<sup>2</sup> See *Breaking Bad: Cat's in the Bag...* (AMC television broadcast Jan. 27, 2008); see also *Reviews & Ratings for "Breaking Bad" Cat's in the Bag...* (2008), IMDB (Sept. 21, 2013), <http://www.imdb.com/title/tt1054724/reviews-8>.

<sup>3</sup> For factual detail and dialogue that follows below, see *Breaking Bad: Pilot*, *supra* note 1.

ignore him, laugh at him during class, and make fun of him at his after-school job.<sup>4</sup> His home décor and personal fashion could best be described as New American Pathetic.<sup>5</sup>

Yet, by the end of the hit television series *Breaking Bad*, White is a feared multi-million-dollar meth lord known as Heisenberg.<sup>6</sup> He has killed multiple foes.<sup>7</sup> He has lied.<sup>8</sup> He built an empire, and, despite being chased by the DEA, the cartels, and various murdering sociopaths, he has still left his family a fortune.<sup>9</sup>

The contradiction seems enormous, and, yet, it draws us in.<sup>10</sup> It creates curiosity and somehow not only remains believable but actually breathes a more realistic-seeming life into this fictional character.<sup>11</sup>

By viewing contradictions through this storytelling lens, lawyers faced with seemingly contradictory facts in a trial or an appellate case can craft a more realistic and ethical narrative.<sup>12</sup> In so doing, they can create greater

4 *Breaking Bad: Cat's in the Bag* . . . , *supra* note 2.

5 *Id.*

6 See generally DAVID P. PIERSON, *BREAKING BAD: CRITICAL ESSAYS ON THE CONTEXTS, POLITICS, STYLE, AND RECEPTION OF THE TELEVISION SERIES* (Lexington Books 2014); see also *Breaking Bad: Crazy Handful of Nothin'* (AMC television broadcast Mar. 2, 2008) (showing the birth of Walter White's pseudonym, Heisenberg).

7 See *Breaking Bad: Felina* (AMC television broadcast Sept. 29, 2013) (Walter White kills the members of Jack's White Supremacist Gang, a rival drug cartel holding Jesse hostage); *Breaking Bad: Say My Name* (AMC television broadcast Aug. 26, 2012) (Walter kills Mike Ehrmantraut, a hit man and private investigator); *Breaking Bad: Full Measure* (AMC television broadcast June 13, 2010) (Walter instructs Jesse Pinkman to kill Gale Boetticher, another methamphetamine manufacturer); *Breaking Bad: . . . and the Bag's in the River* (AMC television broadcast Feb. 10, 2008) (Walter White kills Krazy 8, a DEA informer and methamphetamine distributor); see generally Jonathan Holmes, *Every Person Walter White Murdered in Breaking Bad*, RADIO TIMES (Oct. 15, 2015), <http://www.radiotimes.com/news/2015-10-15/every-person-walter-white-murdered-in-breaking-bad>.

8 Caroline Shin, *Walter White's Five Types of Lies on Breaking Bad*, VULTURE (Sept. 20, 2013), <http://www.vulture.com/2013/09/breaking-bad-walter-white-five-types-of-lies.html>.

9 See generally *Breaking Bad: Felina*, *supra* note 7.

10 Cf. Kirsten Acuna, *13 Reasons Why Everyone is Obsessed with Breaking Bad*, BUSINESS INSIDER (Aug. 6, 2013), <http://www.businessinsider.com/why-does-everyone-like-breaking-bad-2013-8> (discussing some of these same contradictions and the popularity of the show); Erik Kain, *Six Reasons Why Breaking Bad is the Best Show on Television*, FORBES (Nov. 21, 2011), <http://www.forbes.com/sites/erikkain/2011/11/21/six-reasons-why-breaking-bad-is-the-best-show-on-television/#7fb3c4582e2b> (discussing the elements that make the show good).

11 Cf. Acuna, *supra* note 10 (discussing some of these same contradictions and discussing the popularity of the show); Kain, *supra* note 10.

12 See MODEL RULES OF CONDUCT r. 3.3 (2013). The rules of professional responsibility require disclosure of negative facts in some instances. See MODEL CODE OF PROF'L RESPONSIBILITY DR 7-102 (1980); see also RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* 171–83 (2013) (discussing managing adverse materials); Quentin Brogdon, *Inoculating Against Bad Facts: Brilliant Trial Strategy or Misguided Dogma?*, 63 TEX. B.J. 443, 444 (2000) (discussing how disclosing harmful evidence enhances credibility); Daniel G. Linz & Steven Penrod, *Increasing Attorney Persuasiveness in the Courtroom*, 8 LAW & PSYCHOL. REV. 1, 17–25 (1984); William J. McGuire & Demetrios Papageorgis, *The Relative Efficacy of Various Types of Prior Belief—defense in Producing Immunity Against Persuasion*, 62 J. ABNORMAL & SOC. PSYCHOL. 327, 327 (1961); L. Timothy Perrin, *Pricking Boils, Preserving Error: On the Horns of A Dilemma After Ohler v. United States*, 34 U.C. DAVIS L. REV. 615, 619–26 (2001) (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence). In one study, the researchers presented two mock juries with two different sets of opening statements. The mock jury was more persuaded by the plaintiff's attorney's opening statement that disclosed harmful evidence than the one that failed to disclose harmful evidence later revealed by the defendant's attorney. Douglas S. Rice & Ellen L. Leggett, *Empirical Study Results Contradict Sponsorship Theory*, 7 NO. 8 INSIDE LITIG. 20, 21 (1993).

logical cohesion and underscore their theory of the case. This article illustrates this story element in fiction examples and then uses examples from case law to show how the concept aids lawyers in overcoming seemingly inconsistent facts. It proposes the next stage in scholarship on seemingly harmful evidence—viewing that evidence through the storytelling lens, which other scholars have applied to other aspects of legal narratives. This article aids judges who are exploring the role of story in law,<sup>13</sup> trial and appellate practitioners faced with seemingly harmful facts,<sup>14</sup> law students learning to craft a persuasive legal narrative for litigation or appellate work, law professors who are teaching these concepts or writing related scholarly articles,<sup>15</sup> and both literary-criticism scholars and fiction writers.<sup>16</sup>

Part two of this article provides a short introduction to Applied Legal Storytelling. Part three provides a brief definition of intriguing contradictions. Part four demonstrates how turning away from clients at the first sight of contradiction can result in miscarriages of justice, such as wrongful convictions. Part five shows how embracing intriguing contradictions results in a more genuine and realistic story. Part six explains how to weave intriguing contradictions into elements of the story. Part seven discusses the process of developing intriguing contradictions. Part eight concludes that lawyers should explore and often embrace seemingly bad facts because they are frequently a part of the client's story and can make the story more believable rather than less.

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<sup>13</sup> See *Old Chief v. United States*, 519 U.S. 172, 189–90 (1997) (explaining that jurors may understand evidence better after hearing a coherent story).

<sup>14</sup> American Jurisprudence has included a similar article in its references for practitioners. See 2 AM. JUR. PL. & PR. FORMS *Appeal & Error Thre XII Refs* (citing to Cathren Koehlert-Page, *Come a Little Closer So that I Can See You My Pretty: The Use and Limits of Fiction Point of View Techniques in Appellate Briefs*, 80 UMKC L. REV. 399 (2011)).

<sup>15</sup> Professors have cited to similar works in law-review articles. See Judith D. Moran, *Families, Law, & Literature: The Story of a Course on Storytelling*, 49 U.S.F. L. REV. 1, 41 (2015) (citing to Koehlert-Page, *supra* note 14); Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 YALE J.L. & HUMAN. 1, 33 n.212 (2014) (citing to Koehlert-Page, *supra* note 14); J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM. & RHETORIC 247, 251–52 (2015) (citing to various Applied Legal Storytelling articles); see also ANNETTE SIMMONS, WHOEVER TELLS THE BEST STORY WINS: HOW TO USE YOUR OWN STORIES TO COMMUNICATE WITH POWER AND IMPACT 199 (2d ed. 2015) (referencing Cathren Koehlert-Page, *Like a Glass Slipper on a Stepsister: How the One Ring Rules Them All at Trial*, 91 NEB. L. REV. 600 (2013)).

<sup>16</sup> A similar article has been used in scholarly literary criticism. See, e.g., Hillora Lang, *Building Character, One Thing at a Time* (unpublished MFA critical essay, Vermont College of Fine Arts MFA Program in Writing for Children and Young Adults) (citing to Koehlert-Page, *Like a Glass-Slipper, supra* note 15).

## II. The Role of Applied Legal Storytelling in Addressing Contradictions

In reconciling seemingly contradictory facts, lawyers can employ a craft that has existed since people began communicating—storytelling.<sup>17</sup> Trial experts, judges, and scholars have advocated for storytelling in legal narratives.<sup>18</sup> As a result, legal scholars have explored using story methods, devices, and traits in legal narratives such as trials and appeals.<sup>19</sup>

Similarly, much has been written and studied regarding harmful or inconsistent testimony.<sup>20</sup> Although some initially argued against disclosing harmful evidence,<sup>21</sup> other scholars have established that data indicates that disclosing harmful evidence typically enhances credibility.<sup>22</sup> From there, various scholars began to focus on techniques for emphasis or de-emphasis of harmful or helpful facts, such as placing information in dependent clauses or in the middle of the section or paragraph.<sup>23</sup>

<sup>17</sup> See generally JOSEPH CAMPBELL, *THE HERO WITH A THOUSAND FACES* 3–4 (2d ed. 1968) (discussing how myths and dreams are one shifting story dating back to prehistoric man and permeating cultures from ancient Iraqis to Eskimos).

<sup>18</sup> See generally ROBBINS ET AL., *supra* note 12 (encouraging attorneys to craft narratives); Linda L. Berger, *The Lady, or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L.J. 275, 275 (2011); James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 LEGAL WRITING 87, 87 (2008) (“Lawyers often act as storytellers . . .”); J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING 53, 60 (2008) (stating that traditional legal modalities are incomplete); Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 SEATTLE U. L. REV. 767, 767–70 (2006) (explaining that lawyers should “systematically and deliberately” incorporate archetypal storytelling methods into their clients’ narratives); see also *Old Chief*, 519 U.S. at 189–90 (explaining that jurors may understand evidence better after hearing a coherent story); Gerry Spence, *How to Make a Complex Case Come Alive for the Jury*, 72 A.B.A. J. 62, 63 (Apr. 1986) (starting with the line, “[o]f course it is all story telling—nothing more”); cf. Derek H. Kiernan-Johnson, *A Shift to Narrativity*, 9 LEGAL COMM. & RHETORIC 81, 81–82 (2012) (explaining the difference between the more character centered storytelling and the broader concept of narrative and calling for clarity in the application of these terms to law).

<sup>19</sup> ROBBINS ET AL., *supra* note 12 (encouraging attorneys to craft narratives); Berger, *supra* note 18, at 275–77; Eyster, *supra* note 18, at 87–90; Rideout, *supra* note 18, at 60 (stating that traditional legal modalities are incomplete); Robbins, *supra* note 18, at 767–70.

<sup>20</sup> See ROBBINS ET AL., *supra* note 12, at 26–27; RICHARD K. NEUMANN, J. LYN ENTRIKIN & SHEILA SIMON, *LEGAL WRITING* 279 (3d ed. 2015); MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* 145 (2d ed. 2006); Brogdon, *supra* note 12, at 444 (discussing how disclosing harmful evidence enhances credibility); Linz & Penrod, *supra* note 12, at 17–25; McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–25 (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence); Rice & Leggett, *supra* note 12, at 21; cf. THOMAS A. MAUET, *TRIAL TECHNIQUES AND TRIALS* 92–93 (9th ed. 2013) (encouraging attorneys to volunteer weaknesses but to do so with care).

<sup>21</sup> See, e.g., Monroe H. Freedman, *Arguing the Law in an Adversary System*, 16 GA. L. REV. 833, 837–38 (1982); Richard Silverman, *Is New Jersey’s Heightened Duty of Candor Too Much of a Good Thing?*, 19 GEO. J. LEGAL ETHICS 951, 958–61 (2006) (contending that New Jersey’s heightened candor standard interferes with zealous advocacy); see also ROBERT H. KLONOFF & PAUL L. COLBY, *WINNING JURY TRIALS: TRIAL TACTICS AND SPONSORSHIP STRATEGY* 21–23, 66–67 (3d ed. 2007) (contending that the damage of introducing a prior conviction is unlikely to be countered by framing).

<sup>22</sup> See BEAZLEY, *supra* note 20, at 145; Brogdon, *supra* note 12, at 443–47; Linz & Penrod, *supra* note 12, at 17–25; McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–25; Rice & Leggett, *supra* note 12, at 20; Kathryn M. Stanchi, *Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy*, 60 RUTGERS L. REV. 381, 395 (2008).

<sup>23</sup> See BEAZLEY, *supra* note 20, at 146–50; NEUMANN ET AL., *supra* note 20, at 280–81; LAUREL CURRIE OATES, ANNE ENQUIST & CONNIE KRONITZ, *JUST BRIEFS* 148–56 (3d ed. 2013) [hereinafter OATES, *JUST BRIEFS*]; LAUREL CURRIE OATES

Rather than reproducing that work or rehashing a largely settled debate, this article endorses the views of the scholars that advocate for disclosure. This article extends their ideas and focuses on viewing harmful testimony through a storytelling lens.

Believable stories often contain an intriguing contradiction that is ultimately coherent and makes the characters, setting, or themes more believable rather than less. By exploring the client's story, the lawyer will often discover that seeming inconsistencies actually support the theory of the case and make the client or witness a more believable "character."

### III. Defining Intriguing Contradictions

In both legal and fiction narratives, an intriguing contradiction is a seemingly contradictory pairing of elements that ultimately turns out to be consistent with the narrative as a whole.<sup>24</sup> If the story also hints at consistency, the contradiction becomes intriguing. It draws the audience in. They ask, "How could these two inconsistent things belong together?" At the same time, they suspect that they might belong somehow and seek an answer. The contradiction hooks the audience. They wait for the storyteller to fulfill the promise of a cohesive explanation—they are not only curious, but they now seek consistency. Thus primed, the audience is more ready to accept the contradiction when the story reveals consistency.<sup>25</sup>

In a legal story, the intriguing contradiction is often evidence that might initially seem to harm the client's case. Some could think this evidence does not fit with either the other evidence, with the legal theory asserted, or with a likable portrayal of the client. However, in both fiction and law, an intriguing contradiction is also ultimately integral to the story. In law, it is a part of the story that supports a legal theory that aids the client.<sup>26</sup>

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& ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK* 271–74, 353–60 (5th ed. 2010) [hereinafter OATES, *LEGAL WRITING HANDBOOK*]; ROBBINS, ET AL., *supra* note 12, at 184–86 (discussing placing the weakest link in the middle); *see also* LINDA H. EDWARDS, *LEGAL WRITING, PROCESS, ANALYSIS, AND ORGANIZATION* 346–51 (5th ed. 2010) (deemphasizing bad facts in brief writing); Stanchi, *supra* note 22, at 390 (mentioning that some advocates encourage placing harmful information in the middle).

<sup>24</sup> Cf. ROBBINS, ET AL., *supra* note 12, at 187–88 (suggesting making adverse material consistent with your client's story).

<sup>25</sup> *See* DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* 82–83 (Farrar, Straus & Giroux 2011) (explaining how last impressions are filtered through first impressions); Michael J. Higdon, *Something Judicious This Way Comes . . . the Use of Foreshadowing as a Persuasive Device in Judicial Narrative*, 44 U. RICH. L. REV. 1213, 1213–17 (2010) (discussing how foreshadowing earlier in the story can help the reader to believe events that happen later in the story); Steven J. Johansen, *Coming Attractions: An Essay on Movie Trailers & Preliminary Statements*, 10 LEGAL COMM. & RHETORIC 41, 44 (2013) (discussing how beginnings prime the audience).

<sup>26</sup> *See* ROBBINS ET AL., *supra* note 12, at 73–86 (discussing choosing a legal theory).

Note that this seemingly inconsistent evidence differs from evidence so conclusive that it cannot possibly support the attorney's legal theory. For instance, imagine that a prosecutor alleges that a murder defendant shot the victim. Yet videotape and eyewitness testimony places the defendant in another state; fingerprints on the weapon belong to another person, the only other person whom eyewitnesses saw entering the room with the victim. At this point, the evidence is not merely inconsistent but likely renders the story impossible. Thus, the story no longer supports the prosecution's legal theory.

In contrast, an intriguing contradiction may initially seem to cast doubt on the story's conclusion. But, ultimately, it is consistent with the attorney's legal theory<sup>27</sup> and the story supporting that theory.

Although initially the seeming inconsistencies raise questions for the audience, a well-drawn, intriguing contradiction ultimately increases believability.<sup>28</sup> It is because of that seemingly inconsistent element that the narrative has unfolded as it has.<sup>29</sup> Rather than hide the inconsistency, the skilled writer burrows into it. In the end, stories become more well-fleshed and believable because of the contradiction. All of the story's elements seem more realistic because the real world has warts—it has its seeming inconsistencies.<sup>30</sup> Life does not come tied up in one neat, little package.

Intriguing contradictions encompass anything that people might consider inconsistent with other parts of the story. The commonality in intriguing contradictions is that some aspect of the story defies expectations yet ultimately remains consistent with the story as a whole after full vetting. People differ in their expectations,<sup>31</sup> so rather than be absolutely universal, an intriguing contradiction will simply defy a large group's expectations.<sup>32</sup>

The contradiction can appear in the full range of story elements. A single image, an object, the setting, or even an entire character can contain

27 Cf. BEAZLEY, *supra* note 20, at 182–83 (discussing pursuing only the stronger legal theories on appeal).

28 See ROBBINS ET AL., *supra* note 12, at 171–80 (discussing managing adverse materials); Brogdon, *supra* note 12, at 443–45 (discussing how disclosing harmful evidence enhances credibility); Linz & Penrod, *supra* note 12, at 17–25 (indicating that psychology evidence suggests that preemptively refuting the opponent increases persuasiveness); McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–26 (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence); Rice & Leggett, *supra* note 12, at 22; Stanchi, *supra* note 22, at 395.

29 Cf. ROBBINS ET AL., *supra* note 12, at 187 (suggesting making adverse material consistent with your client's story).

30 Cf. *id.* at 179–80 (discussing how there will be unpleasant-seeming facts in nearly every case); Stanchi, *supra* note 22, at 398–99 (explaining that people see a two-sided message as balanced).

31 See ROBBINS ET AL., *supra* note 12, at 31–34, 67–68 (discussing how people make assumptions based on their own past experience and how certain “stock structures” help us to fill in the gaps); see also Michael R. Smith, *Linguistic Hooks: Overcoming Adverse Cognitive Stock Structures in Statutory Interpretation*, 8 LEGAL COMM. & RHETORIC 1, 5–10 (2011) (discussing how certain words trigger certain associations in people).

32 See ROBBINS ET AL., *supra* note 12, at 31–34, 67–68; cf. Smith, *supra* note 31, at 9–10 (providing an example where the same language was viewed by different judges as having two different “ordinary” meanings).



an intriguing contradiction. The theme itself may contain seemingly contradictory ideas,<sup>33</sup> such as that the pain we experience is part of what makes life beautiful. Even a legal theory might seem contradictory to some;<sup>34</sup> for instance, the defendant killed accidentally—in self-defense.

The contradiction held inside these story elements can also take many forms. For the sake of ease, we can call some of these contradictions (1) unexpected combinations of traits, (2) lack of absolutes, (3) unexpected consequences, (4) dual symbolism, and (5) hidden properties.

With respect to unexpected combinations, most people simply may not expect the same two traits to appear in the same person, setting, or object.<sup>35</sup> For example, *Breaking Bad*'s Walter White has an unexpected combination of character traits. People do not expect him to be both a family man and murdering drug dealer who poisons a child.<sup>36</sup> White kills Emilio Koyama in self-defense in the first episode, and then crosses the line to murder when he preemptively strangles Krazy 8 to death in the second episode.<sup>37</sup> Eventually, in a later episode, White poisons Jesse's girlfriend's son to make Jesse believe that rival drug lord, Gustavo Fring has poisoned the boy.<sup>38</sup>

However, sometimes the traits might not be so unexpected, but they will also not be absolute—they lack absolutes.<sup>39</sup> Historically, people may have expected victims, particularly domestic-violence victims to fit some one-dimensional stereotype that may have been found in melodrama—pure Pauline.<sup>40</sup> In realistic fiction and in real life, people have more than one dimension. In melodrama, a woman who is overpowered by her husband is a frail wisp. In real life, a woman who is overpowered by her stronger husband might not necessarily be tiny and frail, just less strong.<sup>41</sup> Her comparative physical weakness is not absolute.

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**33** Cf. BEAZLEY, *supra* note 20, at 38 (discussing how two competing policies can coexist).

**34** *Id.*

**35** For more unexpected combinations, see the Eddie Joe Lloyd discussion in section IV, below; the discussion of Walter White in section V(A); the *Life is Beautiful* theme discussion in section VI(D)(1); and the *Weiland v. State* discussion in section VI(D)(2).

**36** See, e.g., *Breaking Bad: End Times* (AMC television broadcast Oct. 2, 2011) (indicating Walter White poisoned Brock); *Breaking Bad: Cat's in the Bag...*, *supra* note 2 (showing Walter's first murder); *Breaking Bad: Pilot*, *supra* note 1 (featuring Walter as both a drug maker and a family man).

**37** See, e.g., *Breaking Bad: Cat's in the Bag...*, *supra* note 2; *Breaking Bad: Pilot*, *supra* note 1.

**38** *Breaking Bad: End Times*, *supra* note 36.

**39** See *infra* the discussion of Kathy Weiland in section V(D)(2).

**40** See, e.g., *Barney Oldfield's Race for a Life* (Keystone Film Company 1913) (a classic melodrama with one dimensional characters).

**41** See, e.g., Initial Brief of Petitioner on the Merits, *Weiland v. State*, 732 So. 2d 1044 (Fla. 1999), 1998 WL 34087061 (No. 91,925) (involving a woman who was less strong than her husband).

Regarding unexpected consequences, the audience may not expect the same action or behavior to have two such different consequences.<sup>42</sup> If a mother protects her son, then the audience might expect that the child will be safe. The story defies their expectations if the mother's actions protect the child initially but also leave him vulnerable in some other way later.

Concerning dual symbolism, the audience might not expect the same object or setting to represent two seemingly different things.<sup>43</sup> For example, they might not expect an object to represent both death and salvation.<sup>44</sup>

Finally, there may be hidden properties in a seemingly damning portion of the story.<sup>45</sup> Initially, if a client knows about evidence found at a crime scene, the client's knowledge may seem incriminating.<sup>46</sup> However, if the same piece of evidence contains DNA that absolves the client, it has hidden properties that defied expectations.<sup>47</sup>

#### IV. The Importance of Exploring the Contradiction for Consistency

Where there is conflict, there is often contradiction.<sup>48</sup> Thus, this seemingly harmful evidence will likely exist in most cases,<sup>49</sup> and rejecting the client without exploring those contradictions can have drastic consequences. For instance, in at least 337 instances in the United States alone, criminal defendants have been convicted and even sentenced to death only to be determined innocent later by DNA or other exculpatory evidence.<sup>50</sup> These incorrect judgments should not ever happen, but, unfortunately, poor representation often plays a role in their occurrence.<sup>51</sup> Lawyers owe their clients more.<sup>52</sup>

42 See the discussion of the mother in *Room* in section VI(A)(1), below; the discussion of the setting in *Room* in section VI(C)(1); and the California-prisons discussion in section VI(C)(2).

43 See the discussion of the tank in *Life is Beautiful* in section VI(B)(1), below; the discussion of the setting in *Room* in section VI(C)(1); and the discussion of the prison setting in section VI(C)(2).

44 See the discussion of the tank in *Life is Beautiful* in section VI(B)(1), below.

45 See the discussion of the bottle in the Eddie Joe Lloyd case in section VI(B)(2), below.

46 *Id.*

47 *Id.*

48 Brogdon, *supra* note 12, at 443 ("Every case has bad facts . . ."); see also ROBBINS ET AL., *supra* note 12, at 96–98 (discussing the conflict in legal stories).

49 See Brogdon, *supra* note 12, at 443 ("Every case has bad facts . . . and the opponent *always* has points to make."); see also ROBBINS ET AL., *supra* note 12, at 92.

50 DNA Exonerations Nationwide, INNOCENCE PROJECT (Mar. 7, 2016 11:46 AM EDT), [http://www.innocenceproject.org/Content/DNA\\_Exonerations\\_Nationwide.php](http://www.innocenceproject.org/Content/DNA_Exonerations_Nationwide.php).

51 *Inadequate Defense*, INNOCENCE PROJECT, [www.innocenceproject.org/causeswrongfulconviction/inadequatedefense](http://www.innocenceproject.org/causeswrongfulconviction/inadequatedefense) (last visited Mar. 16, 2016).

Not only do some clients receive incorrect judgments, but many needy clients are rejected completely due to failure to explore consistency.<sup>53</sup> For example, many cases of elder abuse are not pursued because of the seeming contradictions in their stories.<sup>54</sup> Lawyers may fail to fully explore abuse cases because the clients may have psychological challenges or language barriers that might seem inconsistent with their stories.<sup>55</sup>

Moreover, lawyers owe it to these clients and others to fully explore their stories and to search for consistency within their contradictions.<sup>56</sup> When the first harmful evidence comes to light, a lawyer's instinct may be to disbelieve the client's ultimate assertion. However, after closer inspection, lawyers can often reconcile these contradictions.

To do so, attorneys must examine the story through the client's eyes to determine whether the full story, warts and all, supports a legal position favorable to the client.<sup>57</sup> The client will typically have an assertion upon which the case turns, such as, "I did not kill him" or "It was an accident." If the client's ultimate assertion is true, then all of the other evidence, including the seemingly inconsistent evidence, is a part of the story that supports the assertion. If that assertion supports a legal theory helpful to the client, then inconsistency supports it as well. This full exploration of the inconsistency is more ethical in that the lawyer gives the client the full opportunity for justice and thus fulfills the charge of zealous representation.<sup>58</sup>

**52** Cf. MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5 (2013) (stating that lawyers shall provide competent representation to their clients and commenting that competency includes "inquiry into and analysis of the factual and legal elements of the problem"). Case law indicates that lawyers should investigate all relevant facts. See, e.g., *People v. Boyle*, 942 P.2d 1199 (Colo. 1997) (lawyer failed to discover readily obtainable evidence supporting asylum petition); *In re Guy*, 756 A.2d 875 (Del. 2000) (lawyer neglected to contact any of four potential criminal defense witnesses identified by his client); *In re Rathbun*, 169 P.3d 329 (Kan. 2007) (criminal-defense lawyer failed to contact witnesses or call them at trial).

**53** Cf. Carolyn Grose, *A Persistent Critique: Constructing Clients' Stories*, 12 CLINICAL L. REV. 329, 336–37 (2006) (discussing how "insiders" often reject the narratives of "outsiders" since insiders lack context for understanding outsiders' narratives).

**54** Cf. Bonnie Brandl & Tess Meuer, *Domestic Abuse in Later Life*, 8 ELDER L.J. 297, 299, 307, 309–11 (2000) ("Because most victims are reluctant to acknowledge and most professionals neglect to ask, many key issues that affect the matters presented by clients are overlooked."); cf. Daniel L. Madow, *Why Many Meritorious Elder Abuse Cases in California Are Not Litigated*, 47 U.S.F.L. REV. 619, 620 (2013) (listing factors that seem to suggest contradictions).

**55** See Madow, *supra* note 54, at 620 (discussing how these challenges can impact the clients' credibility).

**56** Cf. MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5 (stating that "lawyer[s] shall provide competent representation to a client" and commenting that competency includes "inquiry into and analysis of the factual and legal elements of the problem"). Case law indicates that lawyers should investigate all relevant facts. See, e.g., *Boyle*, 942 P.2d 1199 (lawyer failed to discover readily obtainable evidence supporting asylum petition); *In re Guy*, 756 A.2d 875 (lawyer neglected to contact any of four potential criminal defense witnesses identified by his client); *In re Rathbun*, 169 P.3d 329 (criminal-defense lawyer failed to contact witnesses or call them at trial).

**57** See BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, JUST BRIEFS, *supra* note 23, at 5, 13; ROBBINS ET AL., *supra* note 12, at 179–80, 189 (discussing seeing the flaws from the client's point of view); Ruth Anne Robbins, *Finding Perspective in the Institution*, THE SECOND DRAFT (Leg. Writing Inst.), Fall 2015, at 20.

**58** See generally MODEL RULES OF PROF'L CONDUCT r. 1.1 (instructing that lawyers provide competent representation to clients); cf. MODEL RULES OF PROF'L CONDUCT Preamble and Scope (advocating zealous advocacy of clients); see also Steven J. Johansen, *This Is Not the Whole Truth: The Ethics of Telling Stories to Clients*, 38 ARIZ. ST. L.J. 961, 961–62 (2006) (explaining

The conviction and later exoneration of Eddie Joe Lloyd illustrates how a lawyer's refusal to fully explore the contradiction can lead to miscarriages of justice.<sup>59</sup> The schizophrenic Eddie Joe Lloyd first became a suspect when he contacted the police, offering to help solve several crimes, including the rape and murder of sixteen-year-old Michelle Jackson.<sup>60</sup> Lloyd ultimately confessed to the crime.<sup>61</sup>

Lloyd's case contained contradictions that seemed to support guilt at a glance. Lloyd's assertion of innocence seemed contradicted foremost by his confession to the crime.<sup>62</sup> His mental illness and interest in discussing the crime seemed more consistent with his guilt than with his innocence.<sup>63</sup> Compounding his confession and his illness was Lloyd's discussion of certain details regarding the crime.<sup>64</sup> For these reasons, Lloyd's own lawyer said that Lloyd was guilty and should die.<sup>65</sup> Lloyd was convicted and served seventeen years.<sup>66</sup>

However, later DNA evidence established that Lloyd could not have been the perpetrator.<sup>67</sup> Lloyd was exonerated only to die two years later.<sup>68</sup>

If Lloyd's first three attorneys had assumed Lloyd's point of view and explored the case fully, they might have found the consistencies within the contradictions.<sup>69</sup> As it turns out, Lloyd had delusions that he had special

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that the truth is the client's individual truth within limits). Intriguing contradictions are more ethical for two reasons. First, the majority of poor and middle class clients do not receive a full exploration of their intriguing contradictions—to fully explore these contradictions in representing the client is to provide more-ethical representation. Second, a story that fully explores the intriguing contradiction is also a more honest story—a more honest story is a more ethical story.

<sup>59</sup> See Eddie Joe Lloyd, INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/Eddie\\_Joe\\_Lloyd.php](http://www.innocenceproject.org/Content/Eddie_Joe_Lloyd.php) (last visited Mar. 16, 2016).

<sup>60</sup> Brandon L. Garrett, FALSE CONFESSIONS, 37 LITIG. 54, 54–56 (2011) (describing how Lloyd contacted the police); Alan Hirsch, *Confessions and Harmless Error: A New Argument for the Old Approach*, 12 BERKELEY J. CRIM. L. 1, 13 (2007) (explaining that Lloyd was a diagnosed schizophrenic); Naseem Stecker, *Of Interest: From the Courtroom to the Newsroom*, 83 MICH. B.J. 36, 36 (Mar. 2004) (identifying Michelle Jackson as the victim).

<sup>61</sup> Garrett, *supra* note 60, at 54–56.

<sup>62</sup> *Id.*; Stecker, *supra* note 60, at 36.

<sup>63</sup> *Cf.* Stecker, *supra* note 60, at 36 (discussing how police “railroad[ed]” this mentally ill man”).

<sup>64</sup> Garrett, *supra* note 60, at 55.

<sup>65</sup> INNOCENCE PROJECT, *supra* note 51.

<sup>66</sup> *Id.*

<sup>67</sup> See Garrett, *supra* note 60, at 56.

<sup>68</sup> Stephen B. Bright, *The Right to Counsel in Death Penalty and Other Criminal Cases: Neglect of the Most Fundamental Right and What We Should Do About It*, 11 J.L. SOC'Y 1, 15 (2009/2010) (discussing the reprimand of the attorney); Scott Ehlerts, *State Legislative Affairs Update*, CHAMPION, June 2006, at 56 (mentioning Lloyd's exoneration and death).

<sup>69</sup> *Cf.* BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, JUST BRIEFS, *supra* note 23, at 5, 13 (advising attorneys to explore point of view); ROBBINS ET AL., *supra* note 12, at 66–67, 189 (advising attorneys to step into all witnesses' points of view to determine whether the story makes sense); Ian Gallacher, *Thinking Like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM. & RHETORIC 109, 123–24 (explaining that a lawyer must empathize with witnesses and clients to properly represent them); see generally Cathren Koehlert-Page, *Come a Little Closer So that I Can See You My Pretty: The Use and Limits of Fiction Point of View Techniques in Appellate Briefs*, 80 UMKC L. REV. 399 (2011) (advising attorneys to explore point of view).

crime-solving powers.<sup>70</sup> Thus, he contacted the police to offer to solve the crime.<sup>71</sup>

Lloyd’s confession was also consistent with his innocence. The police told Lloyd that they could smoke out the real killer if he confessed.<sup>72</sup> Lloyd agreed.<sup>73</sup> The police then fed Lloyd information about the crimes and provided him with details.<sup>74</sup> For instance, Lloyd recounted his exchange with the detective as follows:

“What kind of jeans was she wearing?”  
 I said, “I don’t know.”  
 He said, “What kind do you think?”  
 I said, “Jordache.”  
 He said, “No, Gloria Vanderbilt.”<sup>75</sup>

Then, the detective walked him through a sketch of the garage, and other details.<sup>76</sup> He emphasized to Lloyd, “You want to help us, right?”<sup>77</sup>

Lloyd did know one detail not released to the public—a green bottle left at the crime scene. But later Lloyd said he had “overheard someone at a party store mention a bottle.”<sup>78</sup>

Subsequently, Lloyd had a series of lawyers who failed to explore for consistency within his contradictions.<sup>79</sup> In response to Lloyd’s letter complaining of the lack of assistance, one of Lloyd’s attorneys wrote that Lloyd should not be taken seriously because he was “guilty and should die.”<sup>80</sup>

70 Garrett, *supra* note 60, at 54; INNOCENCE PROJECT, *supra* note 51; *see also* Jodi Wilgoren, *Confession Had His Signature; DNA Did Not*, N.Y. TIMES, Aug. 26, 2002, available at <http://www.nytimes.com/2002/08/26/us/confession-had-his-signature-dna-did-not.html> (mentioning that Lloyd was in a mental hospital when he contacted the police and at the time of his arrest).

71 Garrett, *supra* note 60, at 54; INNOCENCE PROJECT, *supra* note 51; *see also* Wilgoren, *supra* note 70.

72 INNOCENCE PROJECT, *supra* note 51.

73 *Id.*

74 *Id.*

75 Wilgoren, *supra* note 70.

76 Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1085 (2010); Wilgoren, *supra* note 70 (discussing how the interviewing detective provided Lloyd with information about the case).

77 Wilgoren, *supra* note 70 (quoting Lloyd’s memory of the detective’s repeatedly emphasizing Lloyd’s desire to help in order to get his confession).

78 *Id.*; *see also* Garrett, *supra* note 76, at 1085 (discussing the bottle).

79 *See* Garrett, *supra* note 60, at 55 (explaining that Lloyd’s attorney admitted to the jury that the “so-called confession” left him “bewildered,” but that he still provided only a tepid defense); INNOCENCE PROJECT, *supra* note 51.

80 INNOCENCE PROJECT, *supra* note 51.

After sentencing, Lloyd said,

Eddie Lloyd was focused on as a suspect while he was a mental patient and somewhere along the line he was charged and convicted of the crime, a heinous crime, brutal. What I want to say to the court is that, to the family, MJ, to the city of Detroit, to everybody who was involved with the case, I did not kill MJ. I never killed anybody in my life and I wouldn't.<sup>81</sup>

The details of Lloyd's case reveal the consistency within the contradiction. His mental illness, which seemed to suggest a predisposition for crime, actually explained why he would express an interest in the crime despite his innocence. Some might wonder whether he saw himself as a superhero. In fact, his sentencing statement indicates that he intended to stop criminals, quite the opposite of harming others. Thus, the mental illness is part of an unexpected combination. From there, with one exception, the details he revealed were all fed to him by the police, which is more consistent with framing by the police than with Lloyd's guilt. The one exception, the green bottle, turned out to have a possible explanation—Lloyd had overheard someone discussing it.<sup>82</sup> It's possible that triggered Lloyd's delusion. Even Lloyd's confession comported with his delusions and desire to catch the real killer. Ultimately, DNA evidence established that Lloyd was not the killer.<sup>83</sup> His story was not tied in a neat package, but his contradictions were consistent with his assertion.

## V. How Intriguing Contradictions Increase Believability

Because life does not come tied in this neat package, exploring intriguing contradictions in-depth creates a more honest and believable story in both fiction and in law. While previous work on harmful evidence discusses techniques for framing and presenting the evidence,<sup>84</sup> an intriguing contradiction is an organic part of a consistent whole.<sup>85</sup> Although emphasis techniques are immeasurably valuable,<sup>86</sup> a genuine

<sup>81</sup> INNOCENCE PROJECT, *supra* note 59.

<sup>82</sup> Garrett, *supra* note 76, at 1085.

<sup>83</sup> *Id.*

<sup>84</sup> See, e.g., BEAZLEY, *supra* note 20, at 146–50; NEUMANN ET AL., *supra* note 20, at 280–81; OATES, JUST BRIEFS, *supra* note 23, at 148–56.

<sup>85</sup> Cf. ROBBINS ET AL., *supra* note 12, at 187 (suggesting making adverse material consistent with your client's story).

<sup>86</sup> See BEAZLEY, *supra* note 20, at 146–50; NEUMANN ET AL., *supra* note 20, at 280–81; OATES, JUST BRIEFS, *supra* note 23, at 148–56.

story is not simply about techniques. Rather, it is about immersing oneself in the client's viewpoint to find consistency.<sup>87</sup> The seemingly harmful evidence is then reenvisioned.

Rather than paint every client as an angel, the attorney can tell a more genuine story by including those seeming inconsistencies. The attorney is not simply inoculating the jury; in a true story, the warts, the facts that might initially appear problematic, are ideally a part of the story.<sup>88</sup> That is because if the client's ultimate assertion is true, then even the seemingly harmful facts played a role in the client's story in some manner. If the attorney can find that consistency, the attorney can establish a more believable<sup>89</sup> and truthful narrative—which is, thus, more ethical.<sup>90</sup> In real life, things are rarely, if ever, one thing or another.<sup>91</sup> So the audience can begin to doubt when they hear that a person is all bad,<sup>92</sup> that a voyage was without complication, or that a company never made a mistake. By revealing the inconsistency or harmful evidence and weaving it into the larger narrative, both the fiction storyteller and the attorney can establish

**87** See BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, JUST BRIEFS, *supra* note 23, at 12–13 (discussing looking at the case through the client's eyes); ROBBINS et al., *supra* note 12, at 66–67, 187, 189 (discussing stepping into the point of view of clients and witnesses); Gallacher, *supra* note 69, at 123–24 (explaining that a lawyer must empathize with witnesses and clients to properly represent them); Koehlert-Page, *supra* note 69, at 405–10; *cf.* JOHN GARDNER, THE ART OF FICTION: NOTES ON CRAFT FOR YOUNG WRITERS 45 (Vintage Books 1991) (discussing knowing a character so intimately that the writer knows how the character will react once a given situation arises in the story).

**88** *Cf.* OATES, JUST BRIEFS, *supra* note 23, at 12 (providing an example in a sidebar of a seemingly harmful fact that is actually a part of a client's story).

**89** See ROBBINS ET AL., *supra* note 12, at 171–80 (discussing managing adverse materials); Brogdon, *supra* note 12 at 443–47 (discussing how disclosing harmful evidence enhances credibility); Linz & Penrod, *supra* note 12, at 17–25; McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–25 (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence); Rice & Leggett, *supra* note 12, at 21.

**90** *Cf.* MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5 (stating that lawyers shall provide competent representation to their clients and commenting that competency includes “inquiry into and analysis of the factual and legal elements of the problem”). Case law indicates that lawyers should investigate all relevant facts. *See, e.g., Boyle*, 942 P.2d 1199 (lawyer failed to discover readily obtainable evidence supporting asylum petition); *Guy*, 756 A.2d 875 (lawyer neglected to contact any of four potential criminal defense witnesses identified by his client); *Rathbun*, 169 P.3d 329 (criminal defense lawyer failed to contact witnesses or call them at trial). *But see* KLONOFF & COLBY, *supra* note 21, at 78–89; Freedman, *supra* note 21, at 837–38; Silverman, *supra* note 21, at 959; *see also* MODEL RULES PROF'L CONDUCT r. 4.1(a) (2015) (instructing that a lawyer shall not make a false statement of material fact).

**91** See Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 S.D. L. REV. 239, 263 (2012) (cautioning against overselling the case).

**92** See NANCY KRESS, CHARACTERS, EMOTION, AND VIEWPOINT: TECHNIQUES AND EXERCISES FOR CREATING DYNAMIC CHARACTERS AND EFFECTIVE VIEWPOINTS 51 (Writer's Digest Books 2005) (stating that readers tend to distrust one-dimensional characters); CHRISTOPHER VOGLER, THE WRITER'S JOURNEY: MYTHIC STRUCTURE FOR WRITERS, 36–37, 74–75 (2d ed. 1998) (discussing how heroes are more realistic if they are not stereotyped and how antagonists are better if they are humanized); *cf.* ANNE LAMOTT, BIRD BY BIRD: SOME INSTRUCTIONS ON WRITING AND LIFE 45 (Anchor Books 1995) (discussing how no one is perfect); LINDA SEGER, CREATING UNFORGETTABLE CHARACTERS: A PRACTICAL GUIDE TO CHARACTER DEVELOPMENT IN FILMS, TV SERIES, ADVERTISEMENTS, NOVELS & SHORT STORIES 22–23 (Henry Holt & Co. 1990) (discussing the inconsistencies one finds in people and characters); *see also* ORHAN PAMUK, THE NAÏVE AND SENTIMENTAL NOVELIST 62–63 (Harvard Univ. Press 2010) (discussing how Shakespeare helped fictional characters to evolve into multidimensional beings).

greater credibility.<sup>93</sup> In so doing, the lawyer not only fulfills duties of honesty and competency but meets a high ethical standard both regarding honesty and zealous representation.<sup>94</sup>

## A. Fiction

It's the seeming inconsistency that breathes life into the *Breaking Bad* antihero, Walter White. He's not merely one thing or another, but complex and intriguingly contradictory. He has an unexpected combination of character traits. In the beginning of the story, White is a high-school chemistry teacher.<sup>95</sup> He is a conservative dresser who pays little attention to fashion. His overall appearance is a bit nerdy, and even high-school students push him around. Throughout the series, he emphasizes the importance of family.<sup>96</sup> This nerdy high-school chemistry teacher and family man hardly seems like someone one would expect to become a methamphetamine manufacturer, a murderer, and a drug lord.<sup>97</sup>

These contradictions arouse viewers' curiosity and make them want to examine White more closely.<sup>98</sup> The contradictions are intriguing. They are an unexpected combination.<sup>99</sup>

The intrigue springs not just from the contradiction but from the promise of consistency. Viewers tune in to learn just how these contradictions fit together. One of many promises to reveal consistency occurs in the opening scene of *Breaking Bad*. Just after Underpants Man, Walter White, stumbles out of the Winnebago into the desert, he videotapes

<sup>93</sup> Cf. BEAZLEY, *supra* note 20, at 145–55; Brogdon, *supra* note 12, at 444–47 (discussing how disclosing harmful evidence enhances credibility); Linz & Penrod, *supra* note 12, at 17–25; McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–25 (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence); Rice & Leggett, *supra* note 12, at 20.

<sup>94</sup> See MODEL RULES PROF'L CONDUCT r. 1.1 (instructing that lawyers provide competent representation to clients); cf. MODEL RULES PROF'L CONDUCT Preamble and Scope (advocating zealous advocacy of clients); MODEL RULES PROF'L CONDUCT r. 4.1(a) (stating that a lawyer shall not make a false statement of material fact or law); Steven J. Johansen, *This Is Not the Whole Truth: The Ethics of Telling Stories to Clients*, 38 ARIZ. ST. L.J. 961, 993 (2006) (explaining that the truth is the client's individual truth within limits).

<sup>95</sup> For factual characterization that follows below, see *Breaking Bad: Pilot*, *supra* note 1.

<sup>96</sup> See *Breaking Bad: Ozymandias* (AMC television broadcast Sept. 15, 2013) (showing White's love for his family still exists despite his obvious villainy at this point).

<sup>97</sup> See A.O. Scott, *Bad in the Bones, How Walter White Found His Inner Sociopath*, N.Y. TIMES, July 24, 2013, available at [http://www.nytimes.com/2013/07/28/arts/television/how-walter-white-found-his-inner-sociopath.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/07/28/arts/television/how-walter-white-found-his-inner-sociopath.html?pagewanted=all&_r=0) (discussing how White's traits may seem contradictory but are really not surprising on examination).

<sup>98</sup> See Isabella Becarra, *The Unlikely Ingredients in One of Television's Best Shows*, ST. TIMES (Sept. 18, 2013), <http://thesatatetimes.com/2013/09/18/the-unlikely-ingredients-in-one-of-television-s-best-shows/> (discussing some of the shows contrasts and mentioning that the show arouses curiosity).

<sup>99</sup> See *id.*

<sup>100</sup> For factual detail and dialogue that follows below, see *Breaking Bad: Pilot*, *supra* note 1.



himself for his family.<sup>100</sup> Breathless and teary-eyed, he explains, “no matter what it may look like . . . I had all three of you in my heart.”

The scene suggests that something drove this nerdy family man to participate in crime. The audience is unsure why this man is in his underwear in the desert, but the story has promised to show them how.

The story delivers on that promise in the first episode. White is diagnosed with cancer and cannot support his broke family after he is gone. He later accompanies his DEA brother-in-law on a ride-along and spies a former student, Jesse Pinkman, who has become a methamphetamine “cook.” Desperate for money, White conspires to make a batch of the drug with Pinkman.

But even the first episode ends with a question—“Walt . . . Is that you?” Who is Walter White? Is he the nerdy family man who vomited at the desert adventure’s end, someone not fit for crime? Is he simply desperate for money for his family in the next scene where he frantically grasps the tumbling load of cash from the dryer? Or is he an overlord, excited by power? In the final scene, he flips his wife while they are kissing in bed and takes her. She exclaims, “Walt . . . Is that you?”

This dovetailing of contradictions that raise questions, offer promises of answers, provide answers, and pose new questions draws the audience in and gives them what they want—an answer as to how these contradictions could exist in one person.

Viewers must watch the full series to get a consistent answer to these questions. Walter is all of these things.

On close examination, viewers see that the very traits that seem contradictory are the ones that pave the path to White’s life as a drug lord. Because White is a chemistry teacher, he knows how to manufacture methamphetamine. Because others push him around, he feels small and wants to feel big for a change.<sup>101</sup> He wants his own power.<sup>102</sup> Because he seems to put his family over others, he initially justifies his activities as a means of leaving money for his family after his terminal cancer.<sup>103</sup> Each time he winds up putting his family or himself in more danger, he then escapes by taking action that winds up putting himself or his family in greater danger still.<sup>104</sup> Yet, despite the immorality of his actions and the

101 See Meron Wondemaghen, *Walter White: The Psychopath to Whom We Can All Relate?*, in JACOB BLEVINS & DAFYDD WOOD, *THE METHODS OF BREAKING BAD: ESSAYS ON NARRATIVE, CHARACTER AND ETHICS* 123 (McFarland & Co. 2015).

102 See *id.*

103 See *Breaking Bad: Ozymandias*, *supra* note 96 (showing White’s love for his family still exists despite his obvious villainy at this point).

104 *Id.*

105 *Breaking Bad: Felina*, *supra* note 7.

psychological consequences of them, in the end, he leaves a nest egg for his immediate family, frees them from danger, and even frees his partner, Jesse, from danger.<sup>105</sup> Like a real human being, White fits no stereotype, and, yet, also like a real human being, White's behaviors are driven by real motives that ultimately make his story consistent.

The audience believes this consistency not just because it is logical, not just because they have been shown, not just because the consistency is in fact consistent, but because their curiosity drove them to see whether the creators would fulfill the promise of consistency. The audience wanted a consistent answer all along.

In contrast, when a character, setting, or event is presented as being all one way or another, the audience is less likely to believe. For instance, in old melodramas, such as *Barney Oldfield's Race for a Life*, the villain wears a black hat, twirls his mustache, and threatens an innocent maiden by doing something like tying her down to the train tracks.<sup>106</sup> The villain has no redeeming qualities whatsoever.<sup>107</sup> The extremes are part of the fun laughability of it, and perhaps audiences enjoy setting aside reality to join in the certainty of absolutes.<sup>108</sup> But most people are less likely to mistake this story for something real the way they would with contemporary realistic fiction genre work such as *Breaking Bad* or the works, *Room* and *Life is Beautiful*, which are discussed later in this article.

The 1990s movie *Pleasantville* intentionally drives home this kind of lack of believability by placing two contemporary teenagers in the unrealistically idealized, fictional television setting of a *Leave It to Beaver*-style show set in the 1950s.<sup>109</sup> Once transported to Pleasantville, David and his sister are greeted for breakfast by a smiling mother who is fully dressed and pressed; the slender housekeeper serves her trim family an enormous stack of pancakes along with eggs, sausage, bacon, and ham steak. Later, it's on to school and basketball practice where the cheery-faced players make perfect passes and dunks and somehow manage to make long shots all at once.<sup>110</sup> Viewers know that the world of Pleasantville is not real and could not be real; that is part of the humor. Rather, when trying to convey a sense of reality, legal storytellers will need to include contrasts and dimension as opposed to one-note stereotypes.<sup>111</sup>

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<sup>106</sup> *Barney Oldfield's Race for a Life*, *supra* note 40.

<sup>107</sup> *Id.*

<sup>108</sup> *See id.*

<sup>109</sup> *Pleasantville* (New Line Cinema 1998).

<sup>110</sup> *Id.*

<sup>111</sup> In the brief of the petitioner in *Bourke v. Beshear*, 135 S. Ct. 1041 (2015), one of the cases that was consolidated in the landmark gay marriage case, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the attorney included vignettes of each of his clients

## B. Law

To convey this sense of reality in law, lawyers can also include seeming inconsistencies and seemingly harmful evidence.<sup>112</sup> In contrast, trying to present a picture of a flawless client can backfire.<sup>113</sup>

*Weiand v. Florida* reveals how the warts themselves can make the client's story more believable because the client seems more like a real person.<sup>114</sup> In their brief to the Supreme Court of Florida, in the self-defense case of the abused spouse, Kathy Weiand, her attorneys included her flaws along with the flaws in the case and argued that Kathy had had no duty to retreat from her own home. The state accused Kathy of murdering her husband, Todd. Her attorneys revealed a lack of absolutes to paint a picture of a real domestic-violence survivor, psychological consequences and all. Just as Vince Gilligan did not paint Walter White as pure demon, Kathy's attorneys did not paint her as pure angel.<sup>115</sup>

The attorneys began their portrait of Kathy by promising consistency. They stated that Kathy attended a pool-league banquet and that "Todd *demande*d that she return by 4:00 p.m."<sup>116</sup> This first glance of Todd suggests that he may have done something to drive her to her actions, just as our first glance of Walter White suggests that something may have driven him to his. Curious regarding what drove Kathy's actions, the audience reads on.<sup>117</sup>

Just as Gilligan delivered on his promise regarding Walter White, Kathy's attorneys delivered on their promise to show that Kathy's less-angelic actions were more consistent with an abused spouse fighting to survive than with a murderer. The attorneys detailed the history of Todd's

that illustrated diversity and defied stereotypes. For example, Maurice Blanchard and Dominique James had committed to each other in a religious ceremony performed by Maurice's father, a minister. Another couple had adopted children, but neither was the legal parent of both children. A third couple was elderly and was facing the terminal illness of one partner. Brief for Petitioners at 10, *Bourke v. Beshear*, 2015 WL 860741 (U.S. 2015) (No. 14-574).

**112** See ROBBINS ET AL., *supra* note 12, at 171–80 (discussing managing adverse materials); Brogdon, *supra* note 12, at 443–47 (discussing how disclosing harmful evidence enhances credibility); Linz & Penrod, *supra* note 12, at 17–25; McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–25 (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence); Rice & Leggett, *supra* note 12, at 21; cf. BEAZLEY, *supra* note 20, at 146–50; NEUMANN ET AL., *supra* note 20, at 231; F. Barron Grier III, *Effective Representation at Mediation*, 21 S.C. LAW. 14, 17 (Nov. 2009) (discussing how it can be harmful to hide inconsistencies in the mediation process).

**113** See Patten, *supra* note 91, at 263–64; see also *Jackson v. Lo Greco*, 181 So. 561 (La. App. 1938) (involving a woman who lost at trial and on appeal after she exaggerated her injuries).

**114** See Initial Brief of Petitioner on the Merits, *Weiand*, 732 So. 2d 1044, 1998 WL 34087061 (No. 91,925) (including all the harmful evidence alongside the evidence that makes the harmful evidence consistent with the overall theory of the case).

**115** *Id.*

**116** *Id.* (emphasis added).

**117** *Id.*

**118** *Id.*

beatings and their effect on Kathy. Todd abused Kathy when they were dating and throughout the relationship. He beat her more severely when she would try to leave. He used weapons against her.<sup>118</sup>

Just as White was neither all drug lord nor all family man, Kathy was no purest Pauline. Kathy reacted to Todd. She acted out. She drank throughout the relationship, and she drank the day Todd died.<sup>119</sup>

Regarding physical attributes, the lawyers did not paint Kathy as frail Cinderella, but instead showed a real woman who was nonetheless physically weaker than her husband. Although Kathy was the same size as her deceased husband, Todd, she was not as strong as him and had just had a caesarean section. Although Todd had a prosthetic leg, he was able to choke Kathy to unconsciousness and to beat her into submission multiple times.<sup>120</sup>

Most importantly, Kathy's attorneys provided details relevant to their dual theme—Kathy was too scared to leave and too scared to stay. They mentioned that she did not leave the house. She did not retreat because her child was there, because Todd escalated the violence upon her attempts to leave, and because Todd threatened to destroy her things.<sup>121</sup>

Thus, in the same manner that Gilligan, the creator of *Breaking Bad*, dovetailed between contradictions, promises for consistency, and answers to questions, Kathy's attorneys did as well.

Just as Walter White's contradictions are ultimately consistent and believable, so are Kathy Weiland's. It seems realistic that Todd might be typically stronger than Kathy but that he was not so unstoppable that she could not kill him. Given the abuse, it makes sense that she would drink and get angry.

That she did not retreat was at the heart of the petition to the court; she should not have to retreat from her own home, leave her child behind with an abuser, or subject herself to greater risk while fleeing.<sup>122</sup>

In Kathy Weiland's case, the audience may be more likely to find her contradictions forgivable once the consistency was revealed. Walter White did not kill cancer—he hurt innocent people. In contrast, Kathy killed her abuser—someone who might even hurt her child.

This approach was successful, and the Supreme Court of Florida overruled its previous holding requiring that co-occupants must retreat.<sup>123</sup>

In contrast, hiding flaws in a legal case can beg believability just as the ideal pictures in melodrama or *Pleasantville* beg believability.<sup>124</sup> For

119 *Id.*

120 *Id.*

121 *Id.*

122 *Id.*

123 *Weiland*, 732 So. 2d at 1051–52.

instance, during the parental termination trial, *In the Interest of R.D.G.*, the toddler, R.D.G., was limp, with no muscle tone and could not wrap his legs around a person when held like most children his age; he should have been crawling but was not.<sup>125</sup> However, the father testified that R.D.G. could outrun him in his walker; he could run from one end of the trailer house to the other before he could catch him.<sup>126</sup> In failing to acknowledge the flaws and presenting such a fantastical picture, the father's trial attorney destroyed believability. The likelihood that an infant in a walker could outrun an adult is slim to none; that an infant who was so developmentally delayed did so seems even less credible. If instead there had been some other explanation for the child's condition, the father might have seemed more credible.

## VI. Weaving Intriguing Contradictions Throughout the Story

If the seeming contradictions are part of an organic whole, then they can be woven throughout the story. They can be revealed in the characters—clients and witnesses—and infused in symbolic objects or images and in settings. They may even be inherent in the theme.

### A. In Characters

Overall, the audience must believe the characters to believe the story. Believable characters are multi-dimensional and have seeming contradictions that are nonetheless consistent with the whole.<sup>127</sup>

#### 1. Fiction

One such intriguingly contradictory character is Ma in the novel *Room* by Emma Donoghue. Ma is a fully fleshed and seemingly contradictory yet consistent character. Ma and her son, Jack, are kidnap victims who later escape and must integrate into the world outside captivity.<sup>128</sup> The traits that allowed Ma to protect her son in captivity are also the traits

<sup>124</sup> See Patten, *supra* note 91, at 263–64; see also Jackson, 181 So. 561 (involving a woman who lost at trial and on appeal after she exaggerated her injuries); Michael N. Burt, *The Importance of Storytelling at All Stages of a Capital Case*, 77 UMKC L. REV. 877, 880 (2009) (cautioning that exaggeration or melodrama can “doom the storyteller”).

<sup>125</sup> Appellee's Brief at 17, *In the Interest of R.D.G.*, 2001 WL 118220 (Tex. Ct. App. Feb. 13, 2001) (No. 06-00-00030-CV).

<sup>126</sup> *Id.*

<sup>127</sup> Another example of an intriguingly contradictory character is the murder-solving Miss Marple, the protagonist of a number of Agatha Christie novels. The elderly woman is often overlooked by detectives and criminals. For that same reason, people are not careful about what they say around the observant Miss Marple, and she solves mysteries. See AGATHA CHRISTIE, *THE MURDER AT THE VICARAGE* (Dodd, Mead & Co. 1930); Kathy Mezei, *Spinsters, Surveillance, and Speech: The Case of Miss Marple, Miss Mole, and Miss Jekyll*, 30 J. MOD. LITERATURE 103 (2007).

that later lead others to declare her an unfit mother outside of captivity, which in some ways she is.<sup>129</sup> Her traits have unexpected consequences.

When the novel begins, Ma and Jack live in captivity in a single room.<sup>130</sup> Years before, “Old Nick” kidnapped Ma, imprisoned her, and impregnated her.<sup>131</sup> She gave birth to Jack, and Old Nick continues to imprison them both.<sup>132</sup>

Ma protects Jack from the reality of kidnapping and protects him from Old Nick. She tells Jack that the room in which they are imprisoned is the whole world.<sup>133</sup> Thus, Jack does not ask dangerous questions regarding Old Nick’s rules and accepts his situation as normal and enjoys simple pleasures.

Ma ensures that Jack is nourished. It seems that Nick does not provide them with proper food.<sup>134</sup> Perhaps that is why Ma has fed Jack breastmilk until a late age.<sup>135</sup>

Not having any contact with the outside world, Jack’s only social connection is Ma.<sup>136</sup> She and Jack are more intimately bonded than the average parent and child.<sup>137</sup>

However, when Ma and Jack escape from Room, the world perceives their bond as unnatural.<sup>138</sup> Family members, the press, and even authorities criticize Ma’s parenting practices.<sup>139</sup> Ma’s mother disapproves of Ma’s breastfeeding at Jack’s late age.<sup>140</sup> The press first questions whether Ma should have resented Jack and then suggests Ma should have asked Old Nick to give Jack up for adoption so that he could be free.<sup>141</sup> Ma’s

128 EMMA DONOGHUE, *ROOM* (Little, Brown and Co. 2010).

129 *See id.* at 231–38, 248–49, 253–55 (describing an interview with a reporter who tries to characterize Ma as controlling or pathological and criticizes her for not relinquishing Jack upon birth and Ma’s suicide attempt, which resulted in her temporarily inability to care for Jack).

130 *Id.* at 14, 93 (explaining to Jack that Ma was kidnapped when she was nineteen, although at the start of the novel Ma admits to Jack that she was approaching her twenty-seventh birthday).

131 *Id.* at 1–5, 93.

132 *Id.* at 93 (explaining to Jack that Ma was kidnapped when she was nineteen, although at the start of the novel Ma admits to Jack that she was approaching her twenty-seventh birthday).

133 *Id.* at 8–12 (demonstrating that Jack believes the things he sees on television are not real and only the encounters that occur in the room are real to him).

134 *Id.* at 71–72.

135 *Id.* at 3, 35–36, 39, 214–15, 233.

136 *Id.* at 300.

137 *See generally id.* The entire first portion of the novel prior to Jack and Ma’s escape reveals that they are one another’s only social connection. Jack and Ma are imprisoned inside the shed and have no contact with the outside world. Old Nick visits only at night. A commonly held belief among literary theorists is that the work as a whole must be read to fully understand certain themes. Each detail and artistic nuance matters, which is why the writer writes the whole novel.

138 *See generally id.*

139 *Id.* at 248–49 (describing how Ma’s experiences combined with the stress of a disastrous interview and having to repeatedly defend her decisions regarding Jack caused Ma to break one of her vital rules and overdose).

140 *Id.* at 214–15.

father rejects Jack because he is Nick's child and does not accept Ma's intense bond with him.<sup>142</sup> Ma's mother questions whether Ma should live on her own with custody of Jack.<sup>143</sup>

Both Ma and Jack also have trouble adjusting to the world outside of Room after having to learn to survive within it.<sup>144</sup> Jack is not used to private spaces behind closed doors.<sup>145</sup> He cannot be alone.<sup>146</sup> He does not want his own room apart from Ma; he does not want to throw anything away.<sup>147</sup> As for Ma, she reacts to all the criticism—to her father's rejection of Jack<sup>148</sup>—by taking too many pills.<sup>149</sup>

Yet the same traits that plagued Jack and Ma outside of Room are the traits that saved them. It is because Ma was so intimately connected to Jack, because she lied to him inside Room, that she was able to protect him and ultimately escape.<sup>150</sup> The same traits that make her an unusual mother in the world outside of Room are those that made her a good mother within it and that allowed the two to break free.<sup>151</sup> There is consistency within the contradiction.<sup>152</sup>

The seeming contradiction also makes Ma believable. Remaining alive after being kidnapped, raising a son, and escaping are all extraordinary events. Thus, it would take unusual measures to survive. Moreover, were Ma and Jack to exit Room untouched by their time there, that would likely seem even more strange and unbelievable than their intimacy.

## 2. Law

Similarly, legal clients, opponents, or other individuals who are part of the client's narrative may seem to be walking contradictions as well.<sup>153</sup> For instance, the paranoid schizophrenic Eddie Joe Lloyd was obsessed with discussing the details of the murder.<sup>154</sup> He even confessed.<sup>155</sup> He might seem an unlikely crime-solver and a more likely criminal.<sup>156</sup> However, it was Lloyd's mental illness that led him to believe that he had special crime-solving abilities and prevented him from seeing that he was being framed by the police for a crime from which he was later exonerated.<sup>157</sup> All

141 *Id.* at 232–33, 237.

142 *Id.* at 213, 225–27.

143 *Id.* at 300 (questioning whether it is a good idea for Ma to live on her own with Jack).

144 *Id.* at 301–07.

145 *Id.* at 263.

146 *Id.* at 256–57.

147 *Id.* at 300, 304–05.

148 *Id.* at 213, 225–27, 231–38, 248–49, 253–55, 300–11.

149 *Id.* at 248–49.

150 *See id.* at 85.

151 *See id.* at 118–25.

152 *See id.*

153 *See generally* ROBBINS ET AL., *supra* note 12, at 88–96 (discussing how the clients and other individuals in the case are characters in the legal story and discussing the client's weaknesses).

154 INNOCENCE PROJECT, *supra* note 51; Garrett, *supra* note 50, at 54, and note 76, at 1084–85; *see generally* Wilgoren, *supra* note 70.

155 Garrett, *supra* note 60, at 54.

156 Wilgoren, *supra* note 70 (explaining that Lloyd was involuntarily committed to the mental hospital for evaluation after being in a violent dispute).

the traits that made Lloyd seem guilty to his attorneys and to the court were the same traits that explained his behavior, supported his story, and supported his assertion of innocence, which was later proved by DNA evidence.

## B. In Symbolic Objects and Images

Like characters and clients such as Lloyd, an image,<sup>158</sup> a single item, or an endowed object may also hold within it a contradiction.<sup>159</sup> These endowed objects are items that represent story themes and reveal character change.<sup>160</sup> An endowed object can contain an intriguing contradiction and can further reinforce believability.<sup>161</sup>

### 1. In Fiction

An *endowed object* is a single item that has symbolic resonance throughout the story, and it is typically also what Professor James Parry Eyster describes as an obtuse object, an object that seems out of place in some way.<sup>162</sup> The toy tank owned by Guido's son, Joshua, in the Italian movie *Life is Beautiful* is such an object, and it has dual symbolism that is intriguingly contradictory.

Early in the movie, during an ordinary family scene in what seems to be the culmination of a romance vignette, Guido, who is Jewish, and his non-Jewish wife are married. The audience then meets their son, little Joshua, who plays with his toy tank and refuses to take a shower.<sup>163</sup>

<sup>157</sup> Garrett, *supra* note 50, at 54.

<sup>158</sup> The image of Jesus on the cross is a believable intriguing contradiction, one which originally inspired this article. Studies show that when we are upright with our arms spread wide we are viewed as being in a power pose. Amy Cuddy, *Your Body Language Shapes Who You Are*, TEDGLOBAL (Jun. 2012), [http://www.ted.com/talks/amy\\_cuddy\\_your\\_body\\_language\\_shapes\\_who\\_you\\_are](http://www.ted.com/talks/amy_cuddy_your_body_language_shapes_who_you_are) (discussing how standing with one's arms spread out is a power pose). This dominant pose echoes throughout the animal kingdom. *Id.* To make oneself bigger is to appear more powerful. *Id.* Jesus on the cross is upright, and his arms are spread wide. He is in a power pose—being tortured to death. This image symbolizes the message of the gospels. In sacrificing himself for others, he becomes strong and lives beyond death. See generally *John* 20:26–31 (King James); *Luke* 23:26–43 (King James); *Mark* 16:15–19 (King James); *Matthew* 28:18 (King James). For specific images, see Scot Aaron, *Jesus on the Cross – Pictures of Paintings*, 2SCOT.COM, <http://2scot.com/jesus-on-the-cross-pictures.html> (last visited Apr. 8, 2016); Antonia Blumberg, *Jesus's Crucifixion in Art Illustrates One of the Most Famous Biblical Moments*, HUFFINGTON POST (Apr. 17, 2014), [http://www.huffingtonpost.com/2014/04/17/jesus-crucifixion-art\\_n\\_5168763.html](http://www.huffingtonpost.com/2014/04/17/jesus-crucifixion-art_n_5168763.html).

<sup>159</sup> See Eyster, *supra* note 18, at 102–05; see also Cathren Koehlert-Page, *Like a Glass Slipper on a Stepsister: How the One Ring Rules Them All at Trial*, 91 NEB. L. REV. 600, 636–38 (2013). The ring in *The Lord of the Rings* is an endowed object that is at the heart of Frodo's quest—he must keep it to complete his journey. However, it has the power to turn him dark, and the culmination of his quest is to destroy the ring. *The Lord of the Rings: The Fellowship of the Ring* (New Line Cinema 2001).

<sup>160</sup> See Koehlert-Page, *supra* note 159, at 624.

<sup>161</sup> See ROBBINS ET AL., *supra* note 12, at 171–80 (discussing managing adverse materials); Brogdon, *supra* note 12 at 443–47 (discussing how disclosing harmful evidence enhances credibility); Linz, *supra* note 12, at 17–25; McGuire & Papageorgis, *supra* note 12, at 327; Perrin, *supra* note 12, at 619–25 (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence); Rice & Leggett, *supra* note 12, at 20–21.

<sup>162</sup> See Eyster, *supra* note 18, at 105.



The movie takes a sharp turn when the Nazis take Guido, Joshua, and Guido's uncle to a concentration camp. Guido's wife, Dora, who is not Jewish, insists on getting on the train to join her family. To protect his son from the horror of the camp and save his life, Guido tells him that they are playing a game, and his uncle chimes in to tell Joshua that the game's prize is a tank.

Joshua protests that he already has a tank.

"This one is a real tank," says Guido.

This prize motivates Joshua to follow the rules of Guido's game, and these rules keep Joshua hidden and safe inside the camp. The rules also shield Joshua from the camp's horror, like the mass grave that Guido stumbles upon.

In the end, chaos ensues during the camp's liberation. Guido tells Joshua to hide from the Nazis. Joshua ducks into a cabinet. Unbeknownst to him, the Nazis shoot Guido. When Joshua steps out of the cabinet, an American driving a tank rescues Joshua. Joshua, not realizing that his father is dead, is excited to see the tank and believes that he has won the contest.

Aside from being endowed objects that convey the theme, the two tanks are also part of an intriguing contradiction. The first tank is a child's toy. It represents play, innocence, and perhaps a bit of rebellion on the part of this boy who refuses to shower. However, the toy tank itself is contradictory because it represents a war machine. A real tank is used for killing. A tank also seems unstoppable with its all-terrain capabilities. Still, with its heavily armored shell, the tank also protects those inside. The real tank's power seems quite a contrast to small, innocent Joshua who is not only a child but also a half-Jewish child in a country taken over by the Nazis. However, just as the heavily armored shell protects the soft-skinned souls inside it, the promise of a tank protects Joshua within the camp and helps him to remain hidden. When the real tank finally arrives, it is there not to destroy but to rescue. Joshua experiences elation not because he is being rescued but because he believes that he has successfully won the contest.

Thus, initially viewers are intrigued by this humorously contradictory idea of a symbol of destruction as a child's prize. They tune in to see the promise of consistency fulfilled, and, there is consistency within the contradiction. Joshua does have a toy tank, a common toy during that era. Not only is the tank humorously contradictory, but the seemingly contradictory combination of tragedy and comedy drives home the bittersweet

theme. The tank is a symbol of both destruction and liberation, and Joshua's father dies. Yet, in light of the "game," Joshua does not know what the audience does. It makes sense that he thinks he has won a prize. It makes sense that the tank is there. It is a time of war, and camps were liberated by tanks at the end of the war. It is logically coherent, and the contrasts make the story more fully fleshed and believable.

## 2. Law

Likewise, these seemingly contradictory images or objects appear in legal stories as well. For example, in the Eddie Joe Lloyd case, the green bottle at the murder scene was one such contradictory object with hidden properties.<sup>164</sup> It would seem to damn him; yet it ultimately was the key that unlocked his cell doors. The bottle illustrates why attorneys must take a hard look at seemingly harmful evidence to determine what helpful contradictions are hidden within it.

Initially, the bottle seemed harmful. It was stained with semen.<sup>165</sup> Moreover, it was the one correct detail in Lloyd's description of the scene, so prosecutors used it to convict him.<sup>166</sup>

However, the bottle contained contradictions—hidden properties. Lloyd's knowledge of the bottle was incriminating since this information had been withheld from the public.<sup>167</sup> But later Lloyd said he had "overheard someone at a party store mention a bottle."<sup>168</sup> It turns out that search party members may have known about the bottle.<sup>169</sup> Lloyd's contradictory statement might seem self-serving. However, after Lloyd had served seventeen years in prison, tests established that the DNA on the bottle was not Lloyd's.<sup>170</sup> Thus, the bottle had hidden properties.

Lloyd was exonerated and died two years later.<sup>171</sup>

The bottle is an intriguing contradiction that draws the audience into the story, establishes credibility, and ultimately proves Lloyd's case. Initially, Lloyd's knowledge of the bottle is suspect. However, his statement regarding overhearing about the bottle contradicts this suspicion. When his statement is viewed in conjunction with his schizophrenia,<sup>172</sup> his offers to help solve the crime,<sup>173</sup> and his inability to accurately provide other details,<sup>174</sup> questions arise. Did Lloyd actually see or overhear something about the crime that got twisted in his confused mind and led him to

164 INNOCENCE PROJECT, *supra* note 51; *see also* Garrett, *supra* note 60, at 54, 55, 56, 58; Garrett, *supra* note 76, at 1085; Wilgoren, *supra* note 70.

165 INNOCENCE PROJECT, *supra* note 59.

166 *Id.*

167 *Id.*

168 Wilgoren, *supra* note 70.

169 *Id.*

170 *Id.*

171 *Id.*

172 Jeremy W. Newton, *False Confession: Considerations for Modern Interrogation Techniques at Home and War*, 9 J. L. & SOC. CHALLENGES 63, 64–65 (2008).

173 INNOCENCE PROJECT, *supra* note 52.

believe that he was a crime-solver? When these questions arise, it is time to inspect the bottle more closely.

On closer inspection, the bottle may provide a logical explanation for the whole case—Lloyd may have overheard “someone at a party store” mention the bottle, and he formed a delusion about the case. That delusion was incriminating. Yet, if his ultimate assertion of innocence is true, then the bottle must be consistent with his story overall. In fact, it was consistent—the same object that was used to convict Lloyd holds the keys to his salvation, the DNA evidence that cleared him of the crime.<sup>175</sup>

Like the tank, which was a symbol of both destruction and salvation, the bottle both damned Lloyd and saved him.

### C. Settings

Objects like the bottle may belong to a larger setting, and even the setting itself may contain contradictions.<sup>176</sup> Exploring contradictions in the settings also establish greater genuineness and believability.

#### 1. Fiction

For instance, the initial setting for the book, *Room*, is an intriguing contradiction that creates a more fully fleshed and believable story. Room is a single room in which Old Nick holds Jack and his mother captive.<sup>177</sup> It is small and cramped and serves as a prison, yet Jack personifies the various items in his room—Wardrobe, Bath, Toothbrush—and turns them into friends.<sup>178</sup> Thus, Room is small, yet it also fosters great intimacy between mother and child; it has both unexpected consequences and dual symbolism.<sup>179</sup>

Therefore, Room itself is an intriguing contradiction that helps readers to believe. It is both prison and friend. While it is suffocating, it fosters intimacy. If it were merely all bad or all good, readers might be less inclined to see Room as a real place. Real settings are neither all one thing nor another. The reality of the setting helps breathe reality into the characters; real people live in real places.

174 See Garrett, *supra* note 76, at 1085 (discussing how police fed him details); see also Wilgoren, *supra* note 70.

175 See Garrett, *supra* note 76, at 1085 (discussing how police fed him details); see also Wilgoren, *supra* note 70; see also INNOCENCE PROJECT, *supra* note 52.

176 See e.g., PHILIPP MEYER, THE SON 110–11 (HarperLuxe 2013) (describing harsh Texas landscapes that also have something pretty, soft, or sweet like wildflowers, bunnies, or berries, all of which belong in this wild country fueled by water and sun).

177 DONOGHUE, *supra* note 128, at 16.

178 See, e.g., *id.* at 5–14.

179 See generally *id.*

The curiosity around the contradiction further fortifies belief. Readers stick with the story because they want to see how Room is two seemingly contradictory things at once. So primed, they want to believe and accept the logical explanation provided them.<sup>180</sup>

## 2. Law

Just as Room was both prison and friend, prison itself can be both a means of keeping society safe and of spreading greater harm. Society sends criminals to prison in part to protect itself. The average person might believe that we are all safer as long as all criminals are in prison. However, in *Brown v. Plata*,<sup>181</sup> both the trial and the appellate attorneys for the plaintiffs and for the intervenors, the Correctional Peace Officers Association of California, showed how releasing 46,000 prisoners was actually safer for society.

At the end of the first decade of the twenty-first century, California prisons were at 180 to 200 percent of their capacity.<sup>182</sup> Two categories of plaintiffs sued for ongoing violations of the Cruel and Unusual Punishment clause of the Eighth Amendment.<sup>183</sup> After years of litigation, the Ninth Circuit convened a three-judge court to determine whether to issue a release order<sup>184</sup> and the correctional officers' association intervened on behalf of the prisoner plaintiffs.<sup>185</sup> The attorneys for the plaintiffs and intervenors showed that overcrowded prisons spread disease and lead to greater recidivism, putting society at a greater risk of crimes. They demonstrated that release orders could potentially decrease recidivism.

The attorneys demonstrated that crowded prisons spread disease. For example, the plaintiff's attorneys and intervenor's attorneys examined various correctional officers on direct. An officer in Folsom State Prison, Gary Benson, testified regarding disease conditions.<sup>186</sup> While inmates are waiting to be admitted to the urgent care facility in Folsom, the prison must keep up to fifty of them in a holding cage that is twelve feet by twenty feet.<sup>187</sup> Inmates entered with staph infections that bled and oozed pus.<sup>188</sup>

<sup>180</sup> See *supra* discussion on priming accompanying note 25.

<sup>181</sup> 563 U.S. 493 (2011).

<sup>182</sup> Transcript of Trial, 35:13–15, (Nov. 18, 2008), *Coleman v. Schwarzenegger*, 2010 WL 99000 (E.D. and N.D. Cal. Jan. 12, 2010) (Nos. CIV S-90-0520 LKK JFM P, C01-1351 TEH), available at 2008 WL 8633587.

<sup>183</sup> *Brown v. Plata*, 563 U.S. 493 (2011).

<sup>184</sup> See *id.*

<sup>185</sup> See Transcript of Trial, 33:11–15 (Nov. 18, 2008), *Coleman*, 2010 WL 99000; Brief for Appellee Intervenor California Correctional Peace Officers' Ass'n, *Brown*, 563 U.S. 493 (No. 09-1233), available at 2010 WL 4253495.

<sup>186</sup> See Transcript of Trial, 586:4–5, 601:14–606:4, 610:22–611:2, 613:11–18 (Nov. 20, 2008), *Plata v. Schwarznegger*, 2010 WL 99000, available at 2008 WL 8633594.

These infections marked inmates' faces, calves, stomachs, forearms, and buttocks.<sup>189</sup> The inmates also sat on shower benches while waiting to shower.<sup>190</sup>

Officer Benson himself contracted a staph infection that was resistant to most types of antibiotics.<sup>191</sup> Benson testified that this infection has increased in the free community.<sup>192</sup>

Staph was not the only health problem. Officer Ruben Leija testified that at one point over half of 340 inmates had what was either a gastrointestinal infection or the flu.<sup>193</sup> Moreover, Officer Eric Adelman testified that prisoners had viruses, ailments, and disease.<sup>194</sup> Officers were exposed to HIV and hepatitis incidents had occurred in the prison.<sup>195</sup> The risk was multifaceted.<sup>196</sup>

The logical conclusion is that infections that can affect people who work inside the prison and travel out into the community can also affect people in the community. Thus, prison, which is designed to protect the community from the inmates, posed a threat of illness to the community from the inmates as a result of overcrowding.

Moreover, the attorneys showed that pilot early-release programs reduced recidivism. For example, in San Francisco, the jail system compared a pilot early release group of prisoners to a similar group of nonparticipants.<sup>197</sup> The nonparticipants were rearrested at a rate of sixty-eight percent and convicted at a rate of twenty percent.<sup>198</sup> In contrast, the early-release participants were rearrested at a rate of thirty-six percent and convicted at a rate of five percent.<sup>199</sup> Almost none of their crimes were violent crimes.<sup>200</sup> Thus, more confinement did not keep society more safe from more new crimes—in this instance, the opposite seemed to be true.

As result of the handling of this seeming contradiction, the trial court ordered the state to release as many as 46,000 prisoners; the Supreme Court of the United States upheld this ruling.<sup>201</sup>

Just as the prison, Room, seemed an unlikely place to foster intimacy, actual prison seems an unlikely place to cause greater safety risks to the outside world. Both locales had unexpected consequences. Both have a

<sup>187</sup> See *id.* at 596:9–15, 608:11–25.

<sup>188</sup> See *id.* at 601:14–24.

<sup>189</sup> See *id.* at 604:19–24.

<sup>190</sup> See *id.* at 604:15–18.

<sup>191</sup> See *id.* at 605:1–14.

<sup>192</sup> See *id.* at 611:23–612:16.

<sup>193</sup> See Trial Tr. 721:4–10 (Nov. 21, 2008), *Coleman*, 2010 WL 99000, available at 2008 WL 8633596.

<sup>194</sup> See Trial Tr. 510:17–20 (Nov. 20, 2008), *Coleman*, 2010 WL 99000, available at 2008 WL 8633591.

<sup>195</sup> See *id.* at 510:20–21.

<sup>196</sup> See *id.* at 510:22.

<sup>197</sup> See Trial Tr. 2801:25–2802:17, 2803:14–2804:1 (Dec. 19, 2008), *Coleman*, 2010 WL 99000, available at 2008 WL 8652725.

<sup>198</sup> See *id.* at 2803:19–25.

<sup>199</sup> See *id.* at 2803:19–2804:1.

<sup>200</sup> See *id.* at 2804:2–4.

<sup>201</sup> *Brown*, 563 U.S. 493.

dual symbolism for people as well. Room represents both the trauma of kidnapping and the intimate bond between parent and child. Prison represents two contradictory goals of vengeance and rehabilitation and offers safety that can at times be illusory.

## D. Theme

Seemingly contradictory themes are often more plausible as well. However, often the theory of the case and the theme can accommodate a contradiction that aids the message or the client.<sup>202</sup>

### 1. Fiction

In *Life is Beautiful*, the tank is tied to a bittersweet ending that drives home the dual theme. The humorous contradiction regarding a symbol of destruction as a child's prize is part of the joke Guido set in motion. The tank, which begins as a joke, is the vehicle for Guido's love of his son. Feeling that love, we also feel remorse when Guido dies. But that remorse is mixed with the gladness that Guido managed to protect Joshua—so much so that Joshua knows only joy when he sees the tank. It is somehow heartbreaking, funny, and uplifting all at once. Just like life, it is beautiful and full of contradiction.

The horror, grief, suffering, evil, and disgustingness of our existence are all parts of our existence. That we endure and still find love, hope, and laughter is what makes life all the more beautiful because of the horror not in spite of it. Thus, the theme, which has an unexpected combination of traits, is contradictory yet consistent.

### 2. Law

Likewise, the theme in *Weiland v. State* melds seemingly contradictory ideas, which are an unexpected combination of traits. In that case, Kathy Weiland shot her husband accidentally in self-defense because she was too afraid to leave and too afraid to stay.

However, examination of Kathy's story reveals that she was defending herself by trying to scare her husband away. Throughout the relationship, Kathy faced worse abuse each time she tried to leave.<sup>203</sup> Kathy Weiland was attempting to leave Todd when he attacked her. He choked her to unconsciousness. She came to, grabbed a knife, and chased him to the bathroom. They agreed to a truce. But then Todd attacked her again. Again, she

202 Cf. BEAZLEY, *supra* note 20, at 38 (discussing how two competing policies can coexist); see generally Mary Ann Becker, *What Is Your Favorite Book?: Using Narrative to Teach Theme Development in Persuasive Writing*, 46 GONZ. L. REV. 575, 576 (2011) (discussing using story to understand theme and theory of the case); Steven Lubet, *Story Framing*, 74 TEMP. L. REV. 59, 59–60 (2001) (discussing theory of the case).

203 Initial Brief of Petitioner on the Merits, *Weiland*, 732 So. 2d 1044, 1998 WL 34087061.

chased him away, and, again, he attacked her. He swung a towel rod at her face. She tried to block the blow, and he struck her wrist with the bar. She grabbed a gun, and he ran to the bedroom. After attacking Kathy each time she tried to leave and renegeing on his truces, Todd's retreat likely seemed unconvincing.<sup>204</sup>

Kathy attempted to stop his pursuit by scaring rather than killing her husband. Kathy shot at the bedroom wall. She did not intend to hurt him. In fact, based on the bullet's trajectory, If Todd had been sitting elsewhere or if he had been standing, he would not have been hit. Thus, Kathy shot her husband accidentally in self-defense because she was too afraid to leave and too afraid to stay.<sup>205</sup>

Just as horror seems an unexpected combination with beauty in *Life is Beautiful*, the concept of self-defense seems an unexpected combination with the concept of an accident or mistake. Both narratives had two seemingly contradictory themes that were ultimately consistent.

### E. Conclusion Regarding Weaving Contradiction into the Story

Ultimately, in well-drawn stories, the characters, the objects and symbols, the setting, and theme are all aligned. Often each of these elements contains contradiction. By shining a light on these inconsistencies and exploring them more deeply, attorneys can build a more genuine and believable case.

## VII. Establishing a Genuine Intriguing Contradiction

Developing an intriguing contradiction that establishes a truthful story involves deep exploration of the contradiction. My students often want me to provide a step-by-step guide to legal skills, and I empathize with that desire. I started off this article thinking I would tell readers something like, "The intriguing contradiction has three traits, x, y, z to the nth power, and it is introduced first in the opening statement and then appears next at . . . . In writing, you bury it in a dependent clause in the middle of the paragraph and later contrast it to other facts." This kind of formula misses the point of intriguing contradictions, and to prescribe this formula would be to overlook the immersive<sup>206</sup> and recursive nature of storytelling.<sup>207</sup>

204 *Id.*

205 *Id.*

206 See, e.g., ROBERT OLEN BUTLER, FROM WHERE YOU DREAM 13 (Grove Press 2005) ("Art comes from your unconscious. It comes from the white hot center of you."); see also Janet Burroway, *Introduction*, in ROBERT OLEN BUTLER, FROM WHERE YOU DREAM 2 (Grove Press 2005) ("And it is in the realm of the unconscious rather than that of technique or intellect that the writer seeks fictional truth").

The process itself is more amorphous and will vary from story to story. It involves repeatedly examining the client's story until the legal storyteller can see it in all its details through the client's eyes and match it to a legal theory.<sup>208</sup> From there, some of the tools in the storyteller's toolkit will likely be helpful, but those are subjects of other articles. Nonetheless, using structure to reveal contrasts will aid the storyteller in conveying a believable and ultimately consistent intriguing contradiction.

## A. Notes about Technique

While readers should explore the many great articles on technique in telling a client's story,<sup>209</sup> this article does not seek to reproduce all of the instruction found there. Instead, I encourage advocates to fully explore the story as discussed below and to dive into the client's point of view.<sup>210</sup>

Nonetheless, I also encourage advocates to explore the wealth of materials that discuss technique.<sup>211</sup> These articles cover such issues as establishing point of view,<sup>212</sup> placing contrasting information alongside helpful information to create contrast,<sup>213</sup> using structure of documents, sections, and paragraphs to create emphasis or de-emphasis,<sup>214</sup> using

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**207** See JOHN C. DERNBACH ET AL., *A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD* 214–16 (5th ed. 2013) (explaining that legal writing is recursive rather than linear); Cara Cunningham & Michelle Streicher, *The Methodology of Persuasion: A Process-Based Approach to Persuasive Writing*, 13 *LEGAL WRITING* 159, 162–64 (2007) (discussing how drafting a brief is a recursive process and how the facts are written in tandem with the argument); Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 *U. DET. MERCY L. REV.* 207, 213 (2009) (explaining that while students may view legal writing as linear it is recursive).

**208** See BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, *JUST BRIEFS*, *supra* note 23, at 12–13 (advising attorneys to explore point of view); ROBBINS ET AL., *supra* note 12, at 46, 66–67, 73–86, 189 (discussing seeing through the client's point of view and choosing a legal theory); see generally Koehlert-Page, *supra* note 69 (discussing point of view).

**209** See generally ROBBINS ET AL., *supra* note 12 (outlining many helpful storytelling techniques for lawyers); Berger, *supra* note 18; Bruce Ching, *Argument, Analogy, and Audience: Using Persuasive Comparisons While Avoiding Unintended Effects*, 7 *J. ALWD* 311 (2010); Johansen, *supra* note 25; Koehlert-Page, *supra* note 59; Koehlert-Page, *supra* note 159, at 603; Ralph, *supra* note 15; Rideout, *supra* note 18; Robbins, *supra* note 18; Rita Williams–Garcia, Professor, Vt. Coll. of Fine Arts, *Objects, Artifacts, and Stuff* (Winter 2011) (discussing endowed objects); Kimberly Winters, *The Things Stories Carry: How a Rope, a Loop of Red Thread, a Song-less Canary, and Other Collected Objects Can Reveal the Heart of a Story* (Fall 2004) (unpublished critical thesis, Vermont College/Union Institute & University) (on file with author).

**210** See generally Koehlert-Page, *supra* note 69 (discussing techniques for exploring and conveying point of view and citing to additional sources); see also BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, *JUST BRIEFS*, *supra* note 23, at 12–13 (advising attorneys to explore point of view); ROBBINS ET AL., *supra* note 12, at 189.

**211** See generally Koehlert-Page, *supra* note 69 (discussing point of view).

**212** See generally *id.* (discussing point of view); see also Ralph, *supra* note 15, at 32–33.

**213** See generally Koehlert-Page, *supra* note 69 (discussing point of view techniques); see also BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, *JUST BRIEFS*, *supra* note 23, at 12–13 (advising attorneys to explore point of view); Ralph, *supra* note 15.

**214** See BEAZLEY, *supra* note 20, at 146–50, 183–93; NEUMANN ET AL., *supra* note 20, at 280–81; OATES, *JUST BRIEFS*, *supra* note 23, at 13–19, 148–56.

**215** See BEAZLEY, *supra* note 20, at 146–50, 183–93; NEUMANN ET AL., *supra* note 20, at 280–81; OATES, *JUST BRIEFS*, *supra* note 23, at 13–19, 148–56.



sentence structure and word choice for emphasis,<sup>215</sup> burrowing into the details,<sup>216</sup> showing rather than telling,<sup>217</sup> and so on. This background aids the editing stage as the writer critiques his or her own work; it helps in identifying writing flaws.<sup>218</sup> Likewise, much of this work helps in the trial-preparation stage as the attorney develops the trial notebook, outlines questions, and practices examination.

Nevertheless, these techniques are tools rather than end goals. Ultimately, the storyteller must ask, “If it happened this way, how would everything unfold down to the smallest details?” Thus, Pulitzer Prize winner, Robert Olen Butler cautions that the source of these flaws is “bad from-the-head writing” as opposed to from-the-heart writing or “dream-storming,” as he calls it.<sup>219</sup> Focusing solely on technique can result in a contrived story.<sup>220</sup> Instead, technique should inform the story, but it should not replace the vivid dream described by Butler.<sup>221</sup> Moreover, an intriguing contradiction is not a technique or an invention, but a naturally occurring part of the story.

## B. The Difference Between Developing an Intriguing Contradiction and De-Emphasizing Harmful Evidence

While there is a wealth of scholarship written about de-emphasizing harmful facts,<sup>222</sup> de-emphasis is not the same as re-envisioning an intriguing contradiction. I agree that writers can de-emphasize information by placing it in a dependent clause, in a longer sentence, or in the middle of the paragraph, section, or narrative as a whole.<sup>223</sup> However, the idea behind an intriguing contradiction is not to universally de-emphasize

216 See OATES, JUST BRIEFS, *supra* note 23, at 15 (discussing how details create a more vivid picture); ROBBINS ET AL., *supra* note 12, at 59–64, 171–80 (explaining that investigation of details is necessary to determine relevant facts and discussing managing adverse facts); Eyster, *supra* note 18, at 94, 100, 105 (encouraging attorneys to seek out physical details); Cathren Koehlert-Page, *A Look Inside the Butler’s Cupboard: How the External World Reveals Internal State of Mind in Legal Narratives*, 69 N.Y.U. ANN. SURV. AM. L. 441, 456 (2014); Koehlert-Page, *supra* note 69, at 419–20 (discussing including detailed play-by-plays).

217 See ROBBINS ET AL., *supra* note 12, at 241 (urging writers to show rather than tell); Patten, *supra* note 91, at 262 (advising lawyers to let the facts do the arguing).

218 See BUTLER, *supra* note 206, at 13, 114–16; *see also* Burroway, *supra* note 206, at 2.

219 See BUTLER, *supra* note 206, at 13, 85, 114–16; *see also* Burroway, *supra* note 206, at 2.

220 See BUTLER, *supra* note 206, at 13, 114–16; *see also* Burroway, *supra* note 206, at 2.

221 See BUTLER, *supra* note 206, at 13, 114–16; *see also* Burroway, *supra* note 206, at 2.

222 See BEAZLEY, *supra* note 20, at 146–50, 183–84; NEUMANN ET AL., *supra* note 20, at 280–81; OATES, JUST BRIEFS, *supra* note 23, at 13–19, 148–56.

223 See BEAZLEY, *supra* note 20, at 146–50, 183–93; EDWARDS, *supra* note 23, at 209–11 (deemphasizing bad facts in brief writing); NEUMANN ET AL., *supra* note 20, at 231; OATES, JUST BRIEFS, *supra* note 23, at 14–19, 108–16; OATES, THE LEGAL WRITING HANDBOOK, *supra* note 23, at 633–35; ROBBINS ET AL., *supra* note 12, at 184–86 (advising writers to put the weakest link in the middle); *see also* Stanchi, *supra* note 22, at 390 (mentioning that some advocates encourage placing harmful information in the middle).

it, but to re-envision it—to determine how it is an integral part of the larger whole.<sup>224</sup>

Re-envisioning the evidence is the goal. De-emphasis and other such techniques are simply one means of reaching the goal. The attorney should focus on how those techniques present the overall picture that they are trying to portray rather than just blindly applying the techniques. None of that is to say that de-emphasis does not have a place in the editing phase for written work or even the editing of the order of questions and witnesses.

Still, rather than de-emphasize Eddie Joe Lloyd's schizophrenia, an attorney would want to shine a light on it. To some, this evidence might initially suggest that Lloyd could be so disturbed that he's capable of murder. However, Lloyd's schizophrenia actually provides the explanation regarding why Lloyd was so interested in the crime—he was deluded and believed that he had special crime solving powers.

Studies indicate that re-envisioning evidence such as Lloyd's schizophrenia may be the best strategy in many instances. Some studies on disclosure of negative information at trial call this disclosure "inoculation" or "stealing thunder."<sup>225</sup> While these studies indicate that this preemptive disclosure can create believability, it typically only establishes greater believability if it is refuted.<sup>226</sup> If not, it weakens the case.<sup>227</sup> In some instances, the disclosure and refutation only marginally increased credibility.<sup>228</sup> Re-envisioning the evidence goes beyond mere refutation.<sup>229</sup>

Re-envisioning the evidence is not the same as merely providing a refutation. For instance, in Eddie Joe Lloyd's case, a refutation might be that just because Lloyd is a schizophrenic that does not make him a killer.<sup>230</sup> However, re-envisioning the evidence means showing that Lloyd's schizophrenia caused his interest in the crime in the first place; he believed he had special crime-solving abilities. The police then played on that belief, fed him information, and told him that his confession could "smoke out the real killer."<sup>231</sup>

<sup>224</sup> Cf. ROBBINS ET AL., *supra* note 12, at 174–77, 187 (discussing directly managing adverse material as opposed to ignoring it or indirectly managing it and recommending making the adverse material consistent with your client's story where possible); Stanchi, *supra* note 22, at 397 (presenting studies that show that refuting a two-sided message is effective).

<sup>225</sup> See Brogdon, *supra* note 12, at 446; Stanchi, *supra* note 22, at 415.

<sup>226</sup> See ROBBINS ET AL., *supra* note 12, at 173–76; Stanchi, *supra* note 22, at 415–26.

<sup>227</sup> See ROBBINS ET AL., *supra* note 12, at 173–76; Stanchi, *supra* note 22, at 415–26.

<sup>228</sup> ROBBINS ET AL., *supra* note 12, at 173–76; Stanchi, *supra* note 22, at 415–26.

<sup>229</sup> Cf. Perrin, *supra* note 12, at 627–28 (advising that weaknesses should be woven into the story).

<sup>230</sup> Cf. Christopher Slobogin, *An End to Insanity: Recasting the Role of Mental Disability in Criminal Cases*, 86 VA. L. REV. 1199, 1247 (2000).

<sup>231</sup> INNOCENCE PROJECT, *supra* note 51; Wilgoren, *supra* note 70.

Similarly, Kathy Weiland's attorneys re-envisioned her evidence. While the fact that she did not leave the house was initially damning, her attorneys showed that it was because she was afraid for herself and her baby that she did not leave.

Nonetheless, attorneys still must carefully present this information so that the audience sees this new vision. Attorneys should study the story-craft articles and books listed in Chris Rideout's Applied Legal Storytelling bibliography<sup>232</sup> and become familiar with concepts such as foreshadowing,<sup>233</sup> point of view,<sup>234</sup> objective correlative,<sup>235</sup> and story structure.<sup>236</sup> The section below on using structure to frame contrasts also aids in handling this information.

Moreover, at times, some aspect of the contradiction might be emphasized over some other aspect. For instance, in *Breaking Bad*, the number of scenes of Walter making drugs, plotting, hiding, engaging in violence outweigh the number of domestic scenes where he is taking care of his family.<sup>237</sup>

Additionally, one type of intriguing contradiction, the lack of absolutes, may strongly lend itself to techniques for de-emphasis. A lack of absolutes is less likely to provide an overall explanation that shores up the client's story. Rather, a client or witness simply seems like a more believable person if he or she is neither all angel nor all devil. A setting seems more realistic if it is neither Utopia nor Hades. And an event seems more plausible if it was neither without a wrinkle nor all disaster.

Kathy Weiland's physical characteristics exemplify this lack of absolutes. She was not entirely frail in comparison to her husband,<sup>238</sup> which makes her believable. But she was not so strong or big that she could overpower him. The attorneys would not want to emphasize her physical size to the exclusion of her weaknesses, such as her recent surgery. At the same time, including her physical size makes her case seem realistic. Her size can be de-emphasized in contrast to her weaknesses.

232 See Rideout, *supra* note 15.

233 See generally Michael J. Higdon, *Something Judicious This Way Comes . . . The Use of Foreshadowing as a Persuasive Device in Judicial Narrative*, 44 U. RICH. L. REV. 1213 (2010).

234 See generally Koehlert-Page, *supra* note 69.

235 See generally *id.* at note 216.

236 See generally Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEGAL WRITING 127 (2008); Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459 (2001).

237 See *Breaking Bad* (AMC television series 2008–2013).

238 See Initial Brief of Petitioner on the Merits, *Weiland*, 732 So. 2d 1044, 1998 WL 34087061.

### C. Process of Developing Intriguing Contradictions

De-emphasis techniques aside, the re-envisioning process involves diving into the client's story over and over to explore the contradiction and the consistencies within it. Attorneys should fully immerse themselves in their client's story, warts and all.<sup>239</sup> Novelist Anne Lamott advises, "Any plot you impose on your characters will be onomatopoeic . . . don't worry about plot. Worry about characters. Let what they say or do reveal who they are and be involved in their lives . . ." <sup>240</sup> For example, *Breaking Bad* creator Vince Gilligan explains that he followed the natural consequences of White's actions.<sup>241</sup> Thus, sometimes the story led to unintended places.<sup>242</sup>

Another consequence of White's foray into the drug world is that he kills a man, the drug dealing "Krazy 8."<sup>243</sup> That consequence continues to follow White throughout the series leading to the death of methamphetamine distributor, Tuco Salamanca; the Tuco's cartel family is not happy.<sup>244</sup> The other alliances and choices Walter makes to deal with Tuco's family sets off a chain reaction that is believable but that also fuels the entire series.<sup>245</sup>

Still, it is tempting to shy away from harmful information or consequences in storytelling. I admit that in my own fiction writing I often want to get my protagonist out of the situation now and get to a pre-planned plot point. I can fall into all that I "know" about writing. I can turn to craft books and writing texts and try to impose structure or technique onto my story. When I do so, I engage in the "bad from the head writing."<sup>246</sup> Such storytelling is not genuine and falls flat.<sup>247</sup>

<sup>239</sup> See generally Koehler-Page, *supra* note 69 (discussing techniques for exploring and conveying point of view and citing to additional sources); see also BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, JUST BRIEFS, *supra* note 23, at 12–13 (advising attorneys to explore point of view); ROBBINS ET AL., *supra* note 12, at 189.

<sup>240</sup> LAMOTT, *supra* note 92, at 54.

<sup>241</sup> See Chris Harvey, *No Bad Deed Goes Unpunished: As His Emmy-Winning Drama Breaking Bad Approaches its Climax, Vince Gilligan Tells Chris Harvey How the Ending Kept Him Awake at Night*, DAILY TELEGRAPH (Sept. 28, 2013), available at 2013 WLNR 24302105; Paul MacInnes, *Breaking Bad Creator Vince Gilligan: The Man Who Turned Walter White from Mr. Chips into Scarface*, GUARDIAN (May 18, 2012), available at <http://www.theguardian.com/tvandradio/2012/may/19/vincegilliganbreakingbad>.

<sup>242</sup> Cf. Harvey, *supra* note 241; MacInnes, *supra* note 241.

<sup>243</sup> *Breaking Bad: . . . and the Bag's in the River*, *supra* note 7.

<sup>244</sup> *Breaking Bad* (AMC television series) (2008–2010) (chain of consequences); *Breaking Bad: Caballo Sin Nombre* (AMC television series Mar. 28, 2009) (cartel cousins assigned to kill Water White); *Breaking Bad: Grilled* (AMC television broadcast Mar. 15, 2009) (death of Tuco); *Breaking Bad: . . . and the Bag's in the River*, *supra* note 7.

<sup>245</sup> See *Breaking Bad* (AMC television series) (2008–2013).

<sup>246</sup> See BUTLER, *supra* note 206, at 13, 114–16; see also Burroway, *supra* note 206, at 2.

<sup>247</sup> See BUTLER, *supra* note 206, at 13, 114–16; see also Burroway, *supra* note 206, at 2.

Instead, exploring the results of actions or the consequences of character traits leads to a more believable story.<sup>248</sup> Thus, Butler instructs storytellers to dive back into the dream.<sup>249</sup> He explains that the fault of an initial exploration of the dream that falls short is not that the writer engaged in a dream but that the writer failed to fully explore the dream and take in all the details.<sup>250</sup>

Similarly, lawyers should explore details and not shy away from the warts or problems in the client's story.<sup>251</sup> They should red flag and then explore seeming inconsistencies and explore them.<sup>252</sup> They may find hidden treasure in this expedition. The attorney should ask questions, perform investigations, and shine a continued light on the contradiction and the consistencies within it until the attorney grasps a genuine story from the client's point of view.<sup>253</sup>

All of the details regarding the inconsistency itself must be explored, but the attorney must also step into the client's viewpoint.<sup>254</sup> When the client is mentally ill like Lloyd or a poor communicator, it may be more difficult to understand the client's perspective. Lawyers representing the mentally ill, abused or neglected persons, or even clients with more garden-variety psychological challenges should familiarize themselves with the special dynamics that can cloud their client's account.<sup>255</sup> Moreover, witnesses can help fill in the missing details. For instance, in the Lloyd case it might have been helpful to talk to Lloyd's therapists.

Through this process, the attorney can think of the source of the confusion. Confusion can arise when we misunderstand a person's terms.<sup>256</sup> Additionally, we may miss causes for a person's behavior or for other events in the case.<sup>257</sup>

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**248** See LAMOTT, *supra* note 92, at 45 ("As soon as you start protecting your characters from the ramifications of their less-than-lofty behavior, your story will start to feel flat and pointless . . .").

**249** See BUTLER, *supra* note 206, at 13, 114–16; *see also* Burroway, *supra* note 206, at 2.

**250** See BUTLER, *supra* note 206, at 13, 114–16; *see also* Burroway, *supra* note 206, at 2.

**251** Cf. ROBBINS ET AL., *supra* note 12, at 174–80 (discussing directly managing adverse material as opposed to ignoring it or indirectly managing it).

**252** Cf. ROBBINS ET AL., *supra* note 12, at 59–72 (discussing investigating the case and asking questions).

**253** See BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); ROBBINS ET AL., *supra* note 12, at 59–72 (discussing investigating the case and asking questions).

**254** See BEAZLEY, *supra* note 20, at 146–50 (advising attorneys to use point of view); OATES, JUST BRIEFS, *supra* note 23, at 12–13 (advising attorneys to explore point of view); ROBBINS ET AL., *supra* note 12, at 189 (advising attorneys to explore the client's point of view).

**255** See, e.g., Brandl & Meuer, *supra* note 54, at 305 (explaining the dynamics of elder abuse).

**256** Cf. Vern R. Walker, *Theories of Uncertainty: Explaining the Possible Sources of Error in Inferences*, 22 CARDOZO L. REV. 1523, 1529 (2001) (discussing sources of inconsistency).

**257** Cf. *id.*

Each time the story falls short, the attorney must dive back in and further explore the details. In so doing, attorneys must see through the client's eyes.

After the client's point of view and the details are explored, the attorney must determine whether these reveal a consistency within the whole narrative and whether the narrative fits a helpful legal theory.<sup>258</sup> Then, the attorney should develop a narrative that reveals that consistency.

#### D. Using Structure to Frame Contrasts

Although this article is not about prescribing techniques, one technique is particularly helpful to crafting intriguing contradictions: using structure to frame contrasts. The writer can plant suggestions for the reader by placing contrasting facts side-by-side in the right order.<sup>259</sup>

##### 1. Fiction

In fiction, writers may place two events or images in succession, and audience will likely connect the two. For example, just after the khaki pants fall from the sky in the opening of the *Breaking Bad* pilot, the Winnebago careens through the desert. Likely, most viewers see the Winnebago as having some connection to the pants. Then when they see White in his underwear, they get further confirmation of this connection.

##### 2. Law

Readers are likely to make similar connections after reading this passage from the brief for Kathy Weiland: "A paramedic suggested the police take photographs before the scene was disturbed. Four or five paramedics treated Todd. They repeatedly moved Todd, seeking sufficient room to work, leaving blood on the hallway and living room floors. They were concerned with Todd, not with preserving the scene."<sup>260</sup>

While the scene may have seemed incriminating and devoid of exculpatory evidence, readers likely conclude that the paramedics disturbed the scene and possibly destroyed exculpatory evidence. They probably connect the paramedic's suggestion to moving Todd and read in a cause and effect. This contrast ultimately takes the sting out of the contradictory physical evidence that could implicate Kathy—readers might wonder how

258 See OATES, JUST BRIEFS, *supra* note 23, at 12–13 (advising attorneys to explore point of view); ROBBINS ET AL., *supra* note 12, at 46, 66–67, 73–86, 189 (discussing seeing through the client's point of view and choosing a legal theory); Koehlert-Page, *supra* note 69, at 409 (discussing point of view); cf. BEAZLEY, *supra* note 20, at 182–83 (discussing pursuing only the stronger legal theories on appeal).

259 BEAZLEY, *supra* note 20, at 148–49 (dubbing these contrasts "pointillism").

260 Initial Brief of Petitioner on the Merits, *Weiland*, 732 So. 2d 1044.

much they can rely on the physical evidence if the officials on the scene were careless.

Similarly, in *Scott v. Harris*, the defense attorney for Deputy Timothy Scott used structure to plant the suggestion that Deputy Scott's only reasonable choice was to wreck Victor Harris's car.<sup>261</sup> In that case, the plaintiff sued the county deputy and others for excessive force after the officer rammed the plaintiff's car from behind.<sup>262</sup> The attorneys described the long chase, which began when Harris sped at seventy-three miles per hour.<sup>263</sup> Multiple officers pursued the fleeing Harris.<sup>264</sup> Ultimately, Deputy Scott led the chase.<sup>265</sup> Attempting to stop Harris before others were injured,

Scott intended to employ a . . . maneuver, which causes the fleeing vehicle to spin to a stop. Although permission was granted, he became concerned that the vehicles were moving too quickly to safely execute the maneuver. Instead he picked a moment when no motorists or pedestrians appeared to be in the immediate area, and made contact with Harris's vehicle by using his push bumper. As Scott explained,

"[A]s I made the attempt to start this [maneuver], I realized I wasn't going to be able to do it, but there was either a - a red light or a vehicle ahead of us and I needed to get that car stopped now while there was nobody around, so I decided to make direct contact with his vehicle with my push bumper."

As Scott further testified, his intent was to stop the pursuit, "not for the vehicle to wreck." Moments later, Harris lost control of his car and swerved off the side of the road and rolled down an embankment before coming to a complete stop. Harris was not wearing a seatbelt, and he was severely injured when his car rolled down the embankment.<sup>266</sup>

If structured differently, the fact that Harris's car swerved and rolled down the embankment might seem to contradict the idea that Deputy Scott's intent was to stop the vehicle and protect others. However, the structure highlights Deputy Scott's interpretation of this contrast. The chase itself primes the readers to want someone to stop the car and protect the public. After planting that idea, the brief shows that Scott

<sup>261</sup> See *Scott v. Harris*, 550 U.S. 372, 374 (2007); Brief for Petitioner at 4–5, *Scott v. Harris*, 2006 WL 3693418 (U.S. Dec. 13, 2006).

<sup>262</sup> *Scott*, 550 U.S. at 374.

<sup>263</sup> *Scott*, 550 U.S. at 374; Brief for Petitioner at 4–5, *Scott*, 2006 WL 3693418.

<sup>264</sup> *Scott*, 550 U.S. at 374; Brief for Petitioner at 4–5, *Scott*, 2006 WL 3693418.

<sup>265</sup> *Scott*, 550 U.S. at 374; Brief for Petitioner at 4–5, *Scott*, 2006 WL 3693418.

<sup>266</sup> Brief for Petitioner at 4–5, *Scott*, 2006 WL 3693418 (citations omitted).

intended to do just that, but then could not. Others could soon be injured at the red light. The swerving and rolling of the car comes last in this thread, right after Scott realized that he had to stop the car before the red light. If instead, the chain of events started with the swerving and rolling of the car, some readers might focus more on Harris's injuries and Scott's failures.

## VIII. Conclusion

Thus, while it may seem that Deputy Scott, Kathy Weiland, or Eddie Joe Lloyd “broke bad,” their seemingly inconsistent facts were often integral to the story.<sup>267</sup> These seemingly negative facts can ultimately make the story more genuine rather than less. By using intriguing contradictions, lawyers can draw the audience in, prime them, and establish a more truthful and realistic narrative while creating greater logical cohesion and underscoring their theory of the case.

The process of developing an intriguing contradiction is not some technical crafting of a device; rather, it involves fully exploring the client's story and re-envisioning those seemingly harmful facts to determine how they are integral.

In so doing, lawyers break the bad facts.

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<sup>267</sup> Cf. ROBBINS ET AL., *supra* note 12, at 187 (suggesting making adverse material consistent with your client's story).