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Breaking Bad Facts: What Intriguing Contradictions in Fiction Narratives Can Teach Lawyers About Coping with Harmful Evidence

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Breaking Bad Facts: What Intriguing Contradictions in Fiction Narratives Can Teach Lawyers About Coping with Harmful Evidence
By Cathren Koehlert-Page

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1 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 Judy Koons for her suggestions given during retention review, Professor Leonard Birdsong for his continued encouragement, 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 LW1 Writers Workshop, Professors Lou Sirico, Kenneth Chestek, Betsy Lenart, and Roesmary Queenan for their critiques and insights at the workshop, and finally my research assistants, Caitlin Ehinger, Shanna Kay Jones for her input and providing proofing.
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.²

UNDERPANTS MAN, aka, Walter White is “the nerdiest old dude” Jesse Pinkman knows.³ His students ignore him and whisper and laugh during class. Later, they make fun of him at his after school job the car wash where he is forced to stay late.⁴ His home décor and personal fashion could best be described as New American Pathetic.⁵

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³ See AMC, Characters, Jessie Pinkman http://www.amc.com/shows/breaking-bad/cast/jesse-pinkman (last accessed June 18, 2014). See also Breaking Bad: Cat’s in the Bag... (AMC).
⁴ Id.
⁵ See id.
And by the end of the hit television series, Breaking Bad, White is a feared multimillion dollar meth lord known as Heisenberg.\(^6\) He has killed multiple foes.\(^7\) He has lied.\(^8\) He built an empire, and, despite being chased by the DEA, the cartels, and various other murdering sociopaths he has still managed to leave money for his family.\(^9\)

The contradiction seems enormous, and, yet, it draws us in.\(^10\) It creates curiosity and somehow not only remains believable but actually breathes a more realistic seeming life into this fiction character.\(^11\)

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 trial narrative.\(^12\) In so doing, they can create greater logical cohesion and underscore their theory of the case.

Part two of this article provides a short introduction to applied legal storytelling. Part three provides a brief definition of intriguing contradictions. Part four explains how embracing intriguing contradictions results in a more genuine and realistic story. Part five of this article explains how to weave intriguing contradictions into

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\(^6\) See generally David P. Pierson, Breaking Bad: Critical Essays on the Context, Politics, Style and Reception of the Television Series (Lexington Books 2013); See also Breaking Bad: Crazy Handful of Nothin (AMC) (showing the birth of Walter White’s pseudonym, Heisenberg).

\(^7\) See Breaking Bad: Pilot (AMC) (showing a glimpse of White’s darker side in him gassing two drug dealers and subsequently disposing of the body via hydrofluoric acid in the first episode).


\(^9\) See generally Breaking Bad: Felina (AMC).


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

elements of the story. Part six discusses the process of developing intriguing contradictions. Part seven 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.

II. The Role of Applied Legal Storytelling in Addressing Contradictions

In reconciling seemingly contradictory facts, lawyers can turn to a craft that has existed since people began communicating—storytelling. Much has been written and studied regarding harmful or inconsistent testimony. Although some initially argued against disclosing harmful evidence, other scholars have already established that data indicates that disclosing harmful evidence typically enhances credibility. Additionally, various other works on harmful evidence have focused on various techniques such as placing information in dependent clauses or in the middle of the section or paragraph. Rather than reproducing that work or rehashing a debate that is largely settled, this article endorses many of the views of the scholars that advocate for disclosure. This article extends their ideas and focuses on viewing harmful testimony through a storytelling lens. Although in a few instances, studies have found that certain types of disclosures were not helpful,

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14See Robbins, supra n. 12 at 26-27; Richard K. Neumann, Jr. and Sheila Simon, Legal Writing 229 (2011); Mary Beth Beazley, A Practical Guide to Appellate Advocacy 145 (Aspen 2006); Perrin, supra n. 12 at 619-25 (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); Brogdon, supra n. 12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n. 12; Linz & Penrod, supra n. 12 at 17-25 (1984); McGuire, supra n. 12; cf Thomas A. Mauet, Fundamentals of Trial Techniques 82-83 (1992) (encouraging attorneys to volunteer weaknesses but to do so with care).
16See Perrin, supra n. 12 at 619-25); Brogdon, supra n. 12 at 443-445; Rice & Leggett, supra n. 12 at 20 (1993); Linz & Penrod, supra n. 12 at 17-25; McGuire, supra n. 12 at 327; Beazley, supra n. 14 at 145; Kathryn M. Stanchi, Playing with Fire: The Science of Confronting Adverse Material in Legal Advocacy, 60 Rutgers L. Rev. 381, 395 (2008).
17See Robbins, supra n. 12 at 184-6 (discussing placing the weakest link in the middle); Neumann, supra n. 14 at 231; Beazley, supra n. 14 at 146-150; Laurel Currie Oates, Anne Enquist, and Connie Krantz, Just Briefs 108-16 (Wolters Kluwer); Laurel Currie Oates and Anne Enquist, The Legal Writing Handbook 663-5 (Aspen 2006); see also Stanchi, supra n. 16 at 390 (mentioning that some advocates encourage placing harmful information in the middle); Linda H. Edwards, Legal Writing and Analysis 209-11 (2003) (deemphasizing bad facts in brief writing).
but, this article applies a storytelling framework to those types of disclosures to address this issue. Moreover, typically well-handled disclosure is effective.

As trial experts, judges, and scholars advocate for storytelling in legal narratives, the application of storytelling techniques has been explored by scholars. Scholars have advocated using a variety of story methods, devices, and traits, such as obtuse objects, metaphor, the hero’s journey, and movie storyboarding in legal narratives such as trials and appeals. Thus, skills scholars, skills professors, practitioners, and even judges largely accept modeling the legal narratives after story provided that accuracy and legal writing conventions are maintained.

Therefore, lawyers can approach their legal narratives in the manner that good storytellers do. Good 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 supports the theory of the case and make the client or witness a more believable “character.”

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19 There is no absolute formula or perfect way to handle evidence and no guarantee of outcomes. While the approach advocated in this article is a good one, people vary in their interpretations of even the best stories. That issue is explored later in this article.

20 Stanchi, supra n.16 at 415-24; Howard, supra n.18 at 61-62; Klonoff, supra n.18 at 755; Rice & Leggett, supra n.12 at 20-22; Williams, supra n.18 at 597.


22 ROBBINS, supra n.12 (encouraging attorneys to craft narratives); Berger, supra n.21 at; Eyster, supra n.21 at; Rideout, supra n.21 at 60(stating that traditional legal modalities are incomplete); Robbins, supra n.21.

23 See, e.g., ROBBINS, supra n.12 (encouraging attorneys to craft narratives); Berger, supra n.21 at; Eyster, supra n.21 at; Rideout, supra n.21 at 60 (stating that traditional legal modalities are incomplete); Robbins, supra n.21; Old Chief, 519 U.S. 172, 189; 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, 478-80 (2001) (discussing two parties’ competing truths); see also Kenneth D. Chestek, *Judging By the Numbers: An Empirical Study of the Power of Story*, 7 J. Ass’n Legal Writing Dirs. 1, 18-22 (2010); Cathren Koehler-Page, *Come a Little Closer So I Can See You My Pretty: The Use and Limits of Fiction Techniques for Establishing an Empathetic Point of View in Appellate Briefs*, 80 UmKC L. Rev. 399 (2012) (analyzing the use of effective storytelling techniques in the McVeigh trial); Amy Cuddy, *Your Body Language Shapes Who You Are*, TedGlobal 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); Eyster, supra n.21.
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. These contradictions draw the audience in and create curiosity. In a legal story, the intriguing contradiction is some piece of evidence that some might initially judge as harmful to the client’s case. Some could think this evidence does not fit in 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 an integral part of the story. In law, it is a part of the story that supports a legal theory that aids the client.

Note this seemingly inconsistent evidence differs from evidence that it so conclusive that it cannot possibly support the attorney’s legal theory. For instance, imagine that a prosecutor alleges that a defendant stabbed a person to death. 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 goes beyond mere inconsistency. Rather the evidence likely renders the story impossible. Thus, the story no longer supports the prosecution’s legal theory. So the prosecution must either determine whether another story supports the legal theory or abandon the 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 and the story supporting that theory.

Although initially the seeming inconsistencies raise questions for the audience, a well-drawn intriguing contradiction ultimately increases believability. It is because of that very element that seems inconsistent that the narrative has unfolded as it has. Rather than hiding the inconsistency, the skilled writer burrows into it. In the end, stories become more well-fleshed and believable because of the

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24 Cf. ROBBINS, supra n.12 at 187 (suggesting making adverse material consistent with your client’s story).
25 See ROBBINS, supra n.12 at 73-86 (discussing choosing a legal theory).
26 Compare ANN. MOD. RULES OF PROF’L CONDUCT R. 3.3 (creating a duty of candor towards the tribunal), with ANN. MOD. RULES OF PROF’L CONDUCT s. 1.1 (instructing that lawyers provide competent representation to clients), and ANN. MOD. RULES OF PROF’L CONDUCT PREAMBLE AND SCOPE (advocating zealous advocacy of clients).
27 Cf. BEAZLEY, supra n.14 at 182-183 (discussing pursuing only the stronger legal theories on appeal).
28 See ROBBINS, supra n.12 at 171-80 (discussing managing adverse materials); Perrin, supra n.12 at 619-25 (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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz & Penrod, supra n.12; McGuire, supra n.12; Stanchi, supra n.16 at 395.
29 Cf. ROBBINS, supra n.12 at 187 (suggesting making adverse material consistent with your client’s story).
contradiction. All of the elements of the story seem more realistic because the real world has warts—it has its seeming inconsistencies.30 Life does not come tied up in one neat little package.

“Intriguing contradiction” is a broad term that encompasses anything that people are likely to consider to be inconsistent with other parts of the story. The commonality in intriguing contradictions is that some aspect of the story defies expectations. People differ in their expectations.31 Thus, rather than being absolutely universal, an intriguing contradiction is simply something that a large number of people might not expect to see present in combination with other elements of the story.32

The contradiction can appear in the full range of story elements. A single image, an object, the setting, an entire character, the first line of story, or even an entire narrative can contain an intriguing contradiction. The theme itself may contain seemingly contradictory ideas,33 such as that the pain we experience is part of what makes life beautiful. Even a legal theory might seem contradictory to some;34 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. For example, people do not expect Walter White to be both a family man and murdering drug dealer who poisons a child. However, sometimes the traits might not be so unexpected, but they will also not be absolute—they lack absolutes. So a woman who is overpowered by her stronger husband might not necessarily be tiny and frail, just less strong. Regarding unexpected consequences, the audience may not expect the same action or behavior to have two such different consequences. So they might not expect that a mother’s protection of her child to later leave him vulnerable. Concerning dual symbolism, the audience might not expect the same object or setting to represent two seemingly different things. For example, they might not expect an object to represent both death and salvation. Finally, there may be hidden properties in a seemingly damning

30 Cf. ROBBINS, supra n.12 at 179-80 (discussing how there will be unpleasant seeming facts in nearly every case); Stanchi, supra n.16 at 399 (explaining that people see a two-sided message as balanced).
31 See ROBBINS, supra n.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: JALWD 1 (2011) (discussing how certain words trigger certain associations in people).
32 See ROBBINS, supra n.12 at 31-34, 67-68 and Smith, supra n.31.
33 Cf. BEAZLEY, supra n.14 at 38 (discussing how two competing policies can coexist).
34 Cf. BEAZLEY, supra n.14 at 38 (discussing how two competing policies can coexist).
portion of the story. For instance, a client’s knowledge of an object found at a crime scene may seem incriminating until DNA on that same object absolves the client.

IV. Turning Towards Intriguing Contradictions in Legal Narratives Rather than Away

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 either discusses techniques for framing and presenting the evidence, an intriguing contradiction is an organic part of a consistent whole. Although these techniques are immeasurably valuable, a genuine story is not simply about techniques. Rather, it is about immersing oneself in the client’s point of view to find consistency.

First, the attorney should not turn away at the first seemingly contradictory evidence. Rather, the attorney should take a closer look at the story through the client’s eyes to determine whether the full story, warts and all, supports a legal position favorable to the client. The client will typically have an alternative assertion upon which the case turns, such as, “I did not kill him,” or “My step-father molested me. If the client’s ultimate assertion is true and is supported by a legal theory, then the seeming inconsistencies will likely be an integral part of a consistent whole.

From there, rather than painting every client as an angel, the attorney can tell a more genuine story by including those seeming inconsistencies. The attorney is not simply eating crow or inoculating the jury; in a true story, the warts, the facts that might initially appear problematic, are ideally a part of the story. If the attorney

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35 See, e.g., See NEUMANN, supra n.14 at 231; BEAZLEY, supra n.14 at 146-150; OATES, supra n.17 at 108-16.
36 Cf. ROBBINS, supra n.12 at 187 (suggesting making adverse material consistent with your client’s story).
37 See NEUMANN, supra n.14 at 231; BEAZLEY, supra n.14 at 146-150; OATES, supra n.17 at 108-16.
38 See Koehlert-Page, supra n.23; ROBBINS, supra n.12 at 66-67, 187, 189 (discussing stepping into the point of view of clients and witnesses); BEAZLEY, supra n.14 at 146-150 (advising attorneys to use point of view); OATES, supra n.17 at 13 (discussing looking at the case through the client’s eyes); Ian Gallacher, Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance, 8 LEGAL COMM. & RHETORIC: J. ALWD 109, at 123-24 (explaining that a lawyer must empathize with witnesses and clients to properly represent them). Cf. JOHN GARDNER, THE ART OF FICTION 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).
39 See ROBBINS, supra n.12 at 179-80, 189 (discussing seeing the flaws from the client’s point of view); BEAZLEY, supra n.14 at 146-150 (advising attorneys to use point of view); OATES, supra n.17 at 3, 13.
40 Cf. id. (providing an example in a side-bar of a seemingly harmful fact that is actually a part of a client’s story).
can find that consistency, the attorney can establish a more believable and ethical narrative. In so doing, the attorney must burrow into the details that make the contradiction consistent and make the opponent’s evidence a part of the client’s story.

A. The Importance of Exploring the Contradiction for Consistency

Where people conflict with one another, there is often contradiction. Thus, this seemingly harmful evidence will likely exist in many cases, and turning away from the client without exploring those contradictions can have drastic consequences. For instance, in at least 325 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. Perhaps because the stakes are lower and civil evidence might be less conclusive, there seems to be less data regarding the number of other types of judgments that could have been incorrect based on evidence not introduced at trial. However, if so many murder convictions are flat out wrong despite the high stakes and Constitutional concerns, then it stands to reason that it is likely that other criminal and even civil judgments could also be incorrect or at least unfair. These incorrect judgments should not ever happen, but, unfortunately, poor representation often plays a role in their occurrence. Lawyers owe their clients more than that.

Not only do some clients receive incorrect judgments, but many needy clients never have a case brought on their behalf at all due to failure to explore consistency. For

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41 See ROBBINS, supra n.12 at 171-80 (discussing managing adverse materials); Perrin, supra n.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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz & Penrod, supra n.12 at 17-25 (1984); McGuire, supra n.12.

42 Cf. Rule 1.1 Competence, Ann. Mod. Rules Prof. Cond. s. 1.1 (providing that lawyers shall provide competent representation to their clients and prepare 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); but see Freedman, supra n.15 at 837-38 (1982); Silverman, supra n.15 at 951, 959; Klonoff, supra n.15.

43 Cf. ROBBINS, supra n.12 at 178 (suggesting making adverse material consistent with your client’s story).

44 Brogdon, supra n.12 (stating that every case has bad facts); see also ROBBINS, supra n.12 at 96-97 (discussing the conflict in legal stories).

45 See id.

46 DNA Exonerations Nationwide, Innocence Project

47 Bad Lawyering, Innocence Project,

48 See note 42 supra.
example, many cases of elder abuse are not pursued due to the seeming contradictions in their stories.\footnote{See Bonnie Brandl, M.S.W. & Tess Meuer, J.D., Domestic Abuse in Later Life, 8 ELDER L.J. 297, 299 (2000)(providing the client’s reluctance to share, a type of seeming inconsistency as one reason that lawyers do not pursue elder abuse cases); 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).} Lawyers may hesitate to bring elder abuse cases because the clients may have physical, mental, or psychological challenges that might seem inconsistent with their stories.\footnote{See Madow, supra n. 49 at 620 (discussing how these challenges can impact the clients’ credibility).}

Lawyers owe it to these clients and others to fully explore their stories and to search for consistency within their contradictions.\footnote{Cf. Rule 1.1 Competence, Ann. Mod. Rules Prof. Cond. s. 1.1 (providing that lawyers shall provide competent representation to their clients and prepare 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).}

When the first harmful evidence comes to light, a lawyer’s instinct may be to disbelieve the client’s ultimate assertion. However, upon closer inspection, in many instances, these contradictions can be reconciled.

The conviction and later exoneration of Eddie Joe Lloyd illustrates how a lawyer’s refusal to fully explore the contradiction can lead to the worst miscarriages of justice.\footnote{Eddie Joe Lloyd, Innocence Project, http://www.innocenceproject.org/Content/Eddie_Joe_Lloyd.php (last accessed February 15, 2015).} Lloyd’s assertion of innocence seemed contradicted foremost by his own confession to the rape and murder of sixteen year old Michelle Jackson.\footnote{Id.; Naseem Stecker, From the Courtroom to the Newsroom, 83 MICH. B.J. 36 (March 2004).} His mental illness and interest in discussing the crime seemed more consistent with his guilt than with his innocence.\footnote{Cf. Stecker, supra n.53 (discussing how police “rail-roaded” “this mentally ill man.”).} Compounding his confession and his illness was Lloyd’s discussion of certain details regarding the crime.\footnote{Brandon L. Garrett, False Confessions, 37 LITIG. 54, 55 (Summer 2011).} For this reason, Lloyd’s own lawyer said that Lloyd was guilty and should die.\footnote{Innocence Project, supra n. 52.} Lloyd was convicted and served seventeen years.\footnote{Id.} However, later DNA evidence established that Lloyd could not have been the perpetrator.\footnote{See Garrett, supra n.55.} Lloyd was exonerated.\footnote{Scott Ehlers, State Legislative Affairs Update, Champion 56 (June 2006)(mentioning Lloyd’s exoneration and death); 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. SOCIETY 1, 15 (2010)(discussing the reprimand of the attorney).} Sadly, Lloyd died two
years after his exoneration. Although one of Lloyd’s attorneys, Bob Slamenka, was reprimanded by the Supreme Court of Michigan, in 2010, Slamenka was still appointed to represent people in Michigan death penalty cases.

If Lloyd’s first three attorneys had stepped into Lloyd’s shoes to see the case from his point of view and had explored the case more, they might have found the consistencies within the contradictions. As it turns out, Lloyd was diagnosed as paranoid schizophrenic and had delusions that he had special crime-solving powers. Those delusions were part of his mental illness. Lloyd had contacted the police regarding several unsolved crimes offering to help in solving them; one of those crimes was the rape and murder of Michelle Jackson. The police then fed Lloyd information about the crimes and provided him with details. For instance, Lloyd recounts 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.”

From there, the detective walked him through a sketch of the garage, and other details. He emphasized to Lloyd, “You want to help us, right?” Lloyd did say that

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60 Ehlers, supra n. 59. (mentioning Lloyd’s exoneration and death); Bright, supra n.59 at 15 (2010)(discussing the reprimand of the attorney).
61 Ehlers, supra n. 59 (mentioning Lloyd’s exoneration and death); Bright, supra n.59 at 15 (discussing the reprimand of the attorney).
62 See Bright, supra n.59 (discussing the fact that Slamenka was still appointed to represent people).
63 Cf. Koehlert-Page, supra n.23 (advising attorneys to explore point of view); ROBBINS, supra n.12 at 66-67, 189 (advising attorneys to step into all witnesses’ point of view to determine whether the story makes sense); BEAZLEY, supra n.14 at 146-150 (advising attorneys to use point of view); OATES, supra n.17 at 3, 13 (advising attorneys to explore point of view); Gallacher, supra n.38 , at 123-24 (explaining that a lawyer must empathize with witnesses and clients to properly represent them).
64 Garret, supra n.55; Innocence Project, supra n. 52.; see also Jodi Wilgoren, Confession Had His Signature; DNA Did Not, The New York Times http://www.nytimes.com/2002/08/26/us/confession-had-his-signature-dna-did-not.html (last accessed)(mentioning that Lloyd was in a mental hospital when he contacted the police and at the time of his arrest).
65 Id.
66 Id.
67 Id.
69 Id.; Wilgoren, supra n.64 (discussing how the interviewing detective provided Lloyd with information about the case).
there was a green bottle left at the crime scene, but later Lloyd said he had "overheard someone at a party store mention a bottle,’ a detail that had not been released to the public but may have been known to those in the search party.”71

The police told Lloyd that they could smoke out the real killer if he confessed,72 Lloyd agreed and made a confession where he included details provided by the police.73

From there, Lloyd had a series of lawyers who failed to explore for consistency within his contradictions.74 Lloyd’s original attorney received a hundred and fifty dollars for investigation and preparation.75 He gave fifty dollars of this money to a convicted felon who conducted no investigation into Lloyd’s mental status or his confession, and then the attorney withdrew eight days before trial.76 The court appointed Lloyd another attorney who did not meet with the previous attorney.77 The new attorney did not question the investigation details nor did he cross-examine the police officer primarily involved in the confession.78 He called no witnesses, and his closing argument was only five minutes long.79 Then Lloyd was appointed another attorney for appeal.80 He did not visit Lloyd in prison or raise a claim of ineffective assistance of counsel.81

In response to Lloyd’s letter complaining of the lack of assistance, Lloyd’s attorney wrote Lloyd should not be taken seriously because he was “guilty and should die.”82

After sentencing, Lloyd said,

Eddie Lloyd was focused on as a suspect while he was a mental patient and somewhere along the line was 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.83

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70 Id.; Wilgoren, supra n.64 (mentioning how the detective repeatedly emphasized Lloyd’s desire to help in order to get his confession).
71 See id. at 1085 (discussing the bottle); Wilgoren, supra n.64.
72 Innocence Project, supra n. 52.
73 Id.
74 See id.
75 Id.
76 Id.
77 Id.
78 Id.
79 Id.; Garrett, supra n.55 at 55 (Lloyd’s attorney admitted to the jury that the “so-called confession” left him “bewildered”, but still only provided a tepid defense).
80 Innocence Project, supra n. 52.
81 Id.
82 Id.
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 super-hero in this picture. In fact, his own statement at sentencing regarding the crime indicates that his intentions were to stop criminals, quite the opposite of harming others. Thus, the mental illness is part of an unexpected combination. 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. Ultimately, DNA evidence established that Lloyd was not the killer. The more speculative among us may even wonder whether the circles in which Lloyd traveled caused him to cross paths with the real killer and mix everything up in his ill brain. In addition, even Lloyd’s confession was consistent with his delusions and desire to catch the real killer.

B. Revealing the Warts

While the attorney should not turn away from the client’s story upon finding inconsistencies, in a meritorious case, the attorney should also actually reveal those inconsistencies. A story is actually more believable rather than less when the storyteller shows the warts. In real life, things are rarely if ever one thing or another. So the audience can begin to doubt when they hear that a person is all bad, that a voyage was without complication, or that company never made a mistake. By revealing the inconsistency or harmful evidence and weaving it into

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84 Garret, supra n.68 at 1085.

85 Id.

86 See ROBBINS, supra n.12 at 171-80 (discussing managing adverse materials); Perrin, supra n.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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz & Penrod, supra n.12 at 17-25 (1984); McGuire, supra n.12; Stanchi, supra n.16 at 395.


88 See NANCY KRESS, CHARACTERS, EMOTION, AND VIEWPOINT 51 (Writer’s Digest Books 2005)(stating that readers tend to distrust one-dimensional characters); CHRISTOPHER VOGLER, THE WRITER’S JOURNEY, 2d ed., 36-37, 74-75 (Michael Wiese Productions 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 22-23(Henry Holt and Company 1990)(discussing the inconsistencies one finds in people and characters); see also ORHAN PAMUK, THE NAÏVE AND SENTIMENTAL NOVELIST (Vintage Books 2010) 62-63(discussing how Shakespeare helped fictional characters to evolve into multi-dimensional beings).

89 Cf. id.
the larger narrative, both the fiction storyteller and the attorney can establish greater credibility.90

1. Fiction

It’s the seeming inconsistency that breathes life into the Breaking Bad anti-hero, 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 conservative dresser who pays little attention to fashion.91 His overall appearance is a bit nerdy, and he gets pushed around by even high school students.92 Throughout the series, he emphasizes the importance of family.93 This nerdy high-school chemistry teacher and family man hardly seems like the type of person one would expect to become a methamphetamine manufacturer, a murderer, and a drug lord.94

These contradictions arouse viewers’ curiosity and make them want to examine White more closely.95 They are intriguing.96 They are an unexpected combination.97

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 has the know how to manufacture methamphetamine.98 Because he is pushed around by others, he feels small and wants to feel big for a change.99 He wants his own power.100 Because he seems to put his family over others, he initially justifies his activities as a means of making money to leave to his

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90 Cf Perrin, supra n.12 at 619-25 (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); Brogdon, supra n.12 at 444-7 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12 at 20; Linz & Penrod, supra n.12 at 17-25; McGuire, supra n.12 at 327; BEAZLEY, supra n.14 at 145-6.
91 See generally Breaking Bad: Pilot (AMC).
92 See id.
93 See Breaking Bad: Ozymandias (AMC) (showing White’s love for his family still exists despite his obvious villainy at this point).
94 See A.O. Scott, Bad in the Bones, How Walter White Found his Inner Sociopath, NEW YORK TIMES (July 24, 2013) 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).
95 See The Unlikely Ingredients In One of Television's Best Shows, University Wire (Sept. 18, 2013)(discussing some of the shows contrasts and mentioning that the show arouses curiosity).
96 See id.
97 See id.
98 See Breaking Bad: Pilot (AMC).
100 See id.
family after his terminal cancer. 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. Yet, despite the immorality of his actions and the psychological consequences of them, in the end, he manages to leave a nest egg for his immediate family, to free them from danger, and even to free his partner, Jesse from danger. Like a real human being, White does not fit a stereotype, and, yet, like a real human-being, White’s behaviors are driven by real motives that ultimately make his story consistent.

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. The villain has no redeeming qualities whatsoever. The extremes are part of the fun laughability of it, and perhaps audiences enjoy setting aside reality to join in the certainty of absolutes. But most people are less likely to mistake this story for something real. In contrast, the other fiction examples in this article fall within the contemporary realistic fiction genre.

The 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 1950’s. 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. Viewers know that the world of Pleasantville is not real and could not be real; that is part of the humor. However, when trying to convey a sense of reality, storytellers will need to include contrasts and dimension as opposed to one-note stereotypes.

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101 See Breaking Bad: Ozymandias (AMC) (showing White’s love for his family still exists despite his obvious villainy at this point).

102 Id.

103 Breaking Bad: Felina (AMC).

104 Barney Oldfield’s Race for a Life (Keystone Film Company 1913).

105 Id.

106 See id.


108 Id.

109 Id.
2. Law

To convey this sense of reality in law, lawyers can also include contrasts—seeming inconsistencies and seemingly harmful evidence. In contrast, trying to prevent a picture of a flawless client can backfire.

*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. In their brief to the Supreme Court of Florida in the self-defense case of abused spouse, Kathy Weiand, Weiand’s attorneys included Weiand’s flaws along with the flaws in the case. For instance, they revealed a lack of absolutes. They mentioned that Weiand was the same size as her deceased husband, Todd, but also explained that she was not as strong as him and that she had just had a caesarean section. Further, they mentioned that her husband Todd had a prosthetic leg, but they also showed his strength. They detailed all of Todd’s violence towards Kathy that day and throughout their courtship and marriage and discussed the weapons he used against her. They acknowledged that Kathy drank that night and that she drank a lot to cope with her situation.

Most importantly, they provided details relevant to their dual theme—Kathy was too scared to leave and too scared to stay. They mentioned that Weiand 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.

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110 See ROBBINS, supra n.12 at 171-80 (discussing managing adverse materials); Perrin, supra n.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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz & Penrod, supra n.12 at 17-25; McGuire, supra n.12. Cf. F. Barron Grier III, *Effective Representation at Mediation*, 21 S.C. Law. 14, 17 (November 2009)(discussing how it can be harmful to hide inconsistencies in the mediation process); NEUMANN, supra n.14 at 231; BEAZLEY, supra n.14 at 146-150.

111 See Patten, supra n.87; see also Jackson v. Lo Greco, 181 So. 561 (La. App. 1938)(involving a woman who lost at trial and on appeal after exaggerated her injuries).

112 See Br. of Pet., *Weiand v. State*, 732 So. 2d 1044 (Fla. 1999)(available at 1998 WL 34087061) (including all the harmful evidence alongside the evidence which makes it consistent with the overall theory of the case).

113 Id.

114 Id.

115 Id.

116 Id.

117 Id.

118 Id.

119 Id.
These contradictions are ultimately consistent and believable. 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 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.120 This approach was successful, and the Supreme Court of Florida overruled its previous holding requiring that co-occupants must retreat.121

In contrast, hiding the flaws can beg believability.122 For 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.123 However, the father testified that R.D.G. could out run him in his walker; he could run from one end of the trailer house to the other before he could catch him.124 In failing to acknowledge the flaws and presenting such a fantastical picture, the father destroyed believability. It begs reason that an infant could outrun an adult in a walker; 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 may have seemed more credible.

V. Weaving Intriguing Contradictions Throughout the Story

If the seeming contradictions are part of an organic whole, then, rather than being shoved to the side, they can be weaved throughout the story. They can be planted in the beginning, infused in symbolic objects or images, and revealed in the characters, clients, and witnesses. Thus, they can drive the plot and even the theme of the story and can enhance credibility throughout the story.

A. Beginnings

Often the first line of a movie or novel hooks the reader with a contradiction that promises to later establish consistency. Heuristics expert Daniel Kahneman and legal writing professor, Steve Johansen, both explain that these beginnings are

120 Id.
121 Id.
122 See Patten, supra n.87; see also Jackson v. Lo Greco, 181 So. 561 (La. App. 1938)(involving a woman who lost at trial and on appeal after exaggerated her injuries).
123 Br. of Appellant, In the Interest of R.D.G., Jr., NO. 06-00-00030-CV (Tex. 6th Dist. Year), See also In the Interest of R.D.G., 98-0739 (71st Dist. Court—Harrison County) 3rr 112, lines 4-6, 14-16.
124 Id.
important because studies indicate that a person’s later impression is typically filtered through conclusions a person makes based on first impressions.125

1. Fiction

For instance, the initial image in the first episode of Breaking Bad draws the viewer in by showing a contrast.126 The viewer sees an empty desert full of nothing but cactus, dirt, and plateaus.127 The viewer hears nothing but the wind.128 Then out of nowhere a pair of belted khaki pants falls from the sky.129 The pants seem out of place in this no-man’s land.130 Not only are the pants a manmade object appearing in the wilderness, but they hardly seem to be the gear of the kind of rough and tumble outdoorsman one might expect to appear in this setting.131

Thus, viewers are drawn in by the contrast and also primed for the larger contradiction of the series.132 Just as the pants seem out of place, stiff Walter White seems out of place in the rugged setting and in the world of drug lords.133 However, just as there is an explanation for the appearance of the pants in the desert, there is an explanation for White’s entry into the world of methamphetamine manufacturing.134 White used his chemistry background to help his former student to produce methamphetamine after White was diagnosed with cancer at a time when he could not fully support his family and newly pregnant wife.135 He went to the desert so that he could covertly make the drugs.136 He removed his pants because he did not want to smell like the lab.137 Later, when he was fleeing the scene, the pants flew off of the RV.138

126 A couple of other interesting examples include the first lines of J.D. SALINGER, THE CATCHER IN THE RYE (Little, Brown and Company 1951)(“If you really want to hear about it, the first thing you probably want to know is where I was born, and what my lousy childhood was like, and how my parents were occupied and all of that David Copperfield kind of crap, but I don’t feel like going into it, if you want to know the truth.”); MELVIN BURGESS, SMACK (Avon Books 1996)(“A boy and a girl were spending the night together in the back seat of a Volvo estate car.”); RAY BRADBURY, FARENHEIT 451 (Ballantine Books 1953)(“It was a pleasure to burn.”)
127 Id.
128 Id.
129 Id.
130 Id.
131 Id.
132 Id.
133 Id.
134 Id.
135 Id.
136 Id.
137 Id.
138 Id.
Not only is there a logic that explains White and the pants, but, in some ways, it seems too strange to be invented. White is not conveniently stereotyped. All of the warty details about him and his story make his story believable from the beginning in the way that a one-dimensional character or story would not be. People do not conform wholly to stereotypes in the real world. They are complex, and their complexities are revealed in contradiction.

When those contradictions are set up in the beginning, we are intrigued and also primed to believe.

2. Law

Similarly, the opening statement of a trial, the beginning of an oral argument, or the preliminary statement of an appeal can contain a contradiction that draws the reader in, creates believability, and primes the reader to accept the rest of the story.

For example, the preliminary statement in the brief for the case of Turner v. Rogers, a child support incarceration case, contains such an intriguing contradiction:

Petitioner Michael Turner was incarcerated for twelve months after a South Carolina family court held him in civil contempt of a court order to pay child support for respondent Rebecca Price's (now Rogers') minor child. The contempt order provided that Turner could purge his contempt and gain release from jail if he paid his arrearage in full (nearly $6,000), but Turner, who is indigent, was unable to pay, and he served the full sentence.

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139 See KRESS, supra n.88 at 51 (stating that readers tend to distrust one-dimensional characters); VOGLER, supra n. at 36-37, 74-5 (discussing how heroes are more realistic if they are not stereotyped and how antagonists are better if they are humanized); Cf. LAMOTT, supra n.88 at 45 (discussing how no one is perfect); SEGER, supra n.88 at 22-23 (discussing the inconsistencies one finds in people and characters); see also PAMUK, supra n.88 at 62-63 (discussing how Shakespeare helped fictional characters to evolve into multi-dimensional beings).
140 See id.
141 See id.
142 See id.
143 Cf. Johansen, supra n.125 at 44 (discussing how beginnings prime the audience); 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) (discussing how foreshadowing earlier in the story can help the reader to believe events that happen later in the story).
144 Cf. ROBBINS, supra n.12 at 171-80 (discussing managing adverse materials); Perrin, supra n.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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz & Penrod, supra n.12 at 17-25; McGuire, supra n.12.
145 Brief for Petr., Turner v. Rogers, 2011 WL 49898, at 2-3; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
Here, there is both harmful evidence against Turner and an intriguing contradiction regarding his legal situation. The evidence against Turner shows a lack of absolutes—he did not pay, but he was also in a difficult situation. Moreover, the court’s order had unexpected consequences—it further prevented him from paying. These facts prime the reader for what is later to come. Turner was what is sometimes called a “dead-beat dad.”

His counsel reveals in the beginning that Turner has not paid his court ordered child support. For many, a failure to pay child support strikes at the foundation of our psychological survival needs; that a parent could refuse to provide for us, thus neglecting our health care needs, food, and shelter needs is a frightening thought that invokes abandonment wounds. And yet, Turner is indigent. He could not pay. He could not get out of jail unless he paid. Since he was indigent and in jail, he would not be able to pay. Thus, the court’s order is based on a contradictory and circular foundation. As a reader, I will admit that I am not happy with Turner for failing to pay his child support; however, given the attorney’s framing, I also do not see how the court has crafted a solution to the problem.

Just as the opening image in Breaking Bad primes the reader for the full story and sets up the larger contradictions, so in Turner, the preliminary statement primes the reader for the rest of the story. Turner, who was indigent, was also denied counsel for his incarceration trial. The state welfare agency had been providing for the child and was seeking compensation from Turner, so his child was not financially neglected. As it turns out, Turner had been repeatedly incarcerated for failure to pay child support. Thus, it appears that Turner was caught in a loop of incarceration that made it harder for him to pay his child support.

Having been primed by the contradictions in the beginning, the reader sees Turner warts and all. His situation is believable, and his attorney is credible—more so than

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147 See generally SUE JOHNSON, PHD, LOVE SENSE (Little Brown and Company 2013)(discussing the various problematic and lifelong attachment and abandonment issues created by parents who are distant or fail to provide).
148 Brief for Petr., Turner v. Rogers, 2011 WL 49898, at 2-3; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
149 Brief for Petr., Turner v. Rogers, 2011 WL 49898, at 2-3; see also Johansen, supra n.125 (discussing how the preliminary statement shows that the system criminalized poverty).
150 Brief for Petr., Turner v. Rogers, 2011 WL 49898, at 2-3; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
151 Brief for Petr., 4; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
152 Brief for Petr., 2-4; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
153 Brief for Petr., 2-4; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
154 Brief for Petr., 2-4; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
if the reader had not heard about the child support issue until much later. His neglect of support fits his whole story. While asking the reader to empathize with him might seem contradictory, despite his failure to pay, his story is ultimately more consistent with the relief he requests rather than less. Jailing him does not make him able to pay or solve the problem; rather, it criminalizes his poverty. Thus, the beginning of the story prepares readers to accept unflattering information about Turner that reveals a larger consistency with his theory of the case.

B. In Characters

While the beginning primes the audience, 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.

1. Fiction

One such intriguingly contradictory character is Ma in the novel Room by Emma Donoghue. The traits that allowed Ma to protect her son are also the traits that later lead others to declare her an unfit mother, which in some ways she is. Her traits have unexpected consequences. When the novel begins, it has already been years since Old Nick kidnapped, imprisoned, and impregnated Ma. Ma and her son with Old Nick, Jack, are living in captivity. Ma protects Jack from Old Nick by inventing a fiction that the room in which they are imprisoned is the whole world. She has improper food and has to feed Jack breast milk until a late age, and she and Jack are more intimately bonded than the average parent and child.

However, when Ma and Jack escape from Room, the world perceives their bond as unnatural. Both also have trouble adjusting to the world outside of Room after

155 Brief for Petr., 2-4; see also Johansen, supra n.125 (discussing this statement and explaining how movie trailer techniques can be applied to opening statements).
156 Another example of an intriguingly contradictory character is the murder-solving, Mrs. 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 Mrs. Marple, and she solves mysteries. See AGATHA CHRISTIE, MURDER AT THE VICARAGE (Collins Crime Club 1930); Kathy Mezei, Spinsters, Surveillance, and Speech: The Case of Miss Marple, Miss Mole, and Miss Jekyll, 30 J. Mod. Lit. 2, 103-120 (2007).
157 EMMA DONOGHUE, ROOM (Little, Brown and Company 2010).
158 Id. at 93 (Ma explains she was kidnapped when she was nineteen, but at the start of the novel admits to Jack that she was approaching her twenty-seventh birthday).
159 Id. at 35 & 85 (showing how Old Nick keeps Ma and Jack locked in the room via a coded security door).
160 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).
161 Id. at 215.
162 Id. at 236-38.
having to learn to survive within it.\textsuperscript{163} Family members, the press, and even authorities criticize Ma for her parenting practices.\textsuperscript{164}

Yet, it is because Ma was so intimately connected to Jack, because she lied to him inside Room, that she was able to keep him safe and ultimately escape.\textsuperscript{165} 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 from it.\textsuperscript{166} There is consistency within the contradiction.\textsuperscript{167} 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.\textsuperscript{168} For instance, the previously mentioned paranoid schizophrenic, Eddie Joe Lloyd was obsessed with discussing the details of the murder.\textsuperscript{169} He even confessed.\textsuperscript{170} He might seem an unlikely crime-solver and a more likely criminal.\textsuperscript{171} 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.\textsuperscript{172} All of 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.

C. In Symbolic Objects and Images

Not only should writers explore the contradictions within characters and clients like Lloyd to find and reveal both contradiction and consistency, but writers should also

\begin{footnotesize}
\textsuperscript{163} Id. at 301-07.
\textsuperscript{164} Id. at 249 (her experiences combined 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).
\textsuperscript{165} Id. at 85.
\textsuperscript{166} Id. at 118-125.
\textsuperscript{167} Id.
\textsuperscript{168} See generally ROBBINS, supra n.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).
\textsuperscript{169} Innocence Project, supra n 52; Garrett, supra n. 68; Garrett, supra n. 55; see generally Wilgoren, supra n.64.
\textsuperscript{170} Id.
\textsuperscript{171} Id.(Lloyd was actually involuntarily committed to the mental hospital for evaluation after being in a violent dispute).
\textsuperscript{172} Id.
\end{footnotesize}
harness the power of symbolic objects and images. An image, a single item, or endowed object, may also hold within it a contradiction. These intriguingly contradictory symbols can further reinforce believability.

1. In Fiction

For example, in the movie, Life is Beautiful, Guido’s son, Joshua’s toy tank is an endowed object that is intriguingly contradictory. An endowed object is a single item that has symbolic resonance throughout a work of fiction, 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. The tank from Life is Beautiful is such an object, and it has dual symbolism.

Early in the movie, little Joshua plays with his toy tank and refuses to take a shower. Later, Guido, Joshua, and Dora, Guido’s wife and Joshua’s mother, are taken to a concentration camp. To save his son’s life, Guido tells him that they are playing a game, and his uncle chimes in to tell Joshua that the prize is a tank. Joshua protests that he already has a tank. “This one is a real tank,” says Guido. The hope of winning this prize motivates Joshua to follow the rules of the game invented by Guido, and these rules keep Joshua hidden and safe inside the camp. The rules also shield Joshua from some of the horror of the camp, like the mass

173 The image of Jesus on the cross is a believable intriguing contradiction. Studies show that when we are upright with our arms spread wide we are viewed as being in a power pose. See Amy Cuddy, Your Body Language Shapes Who You Are, TedGlobal 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 yourself 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 (King James), Luke 23:26-43 (King James), Mark 16 (King James), Mathew 28 (Good News).

174 See EYSTER, supra n.21. 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 (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, Motion Picture (New Line 2010).

175 See ROBBINS, supra n.12 at 171-80 (discussing managing adverse materials); Perrin, supra n.12 at 619-25 (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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz, supra n.12 at 17-25; McGuire, supra n.12.

176 Id.

177 Life Is Beautiful (Cecchi Gori Group 1997).

178 Id.

179 Id.

180 Id.

181 Id.

182 Id.
grave that Guido stumbles upon. In the end, just after Guido is shot by the Nazis, Joshua is rescued by an American driving a tank. 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 does not want to take a shower. However, the item itself is contradictory because it represents a war machine. A tank is used for killing. But a tank also seems unstoppable in a sense. With its heavily armored shell, it protects those inside, and it has all-terrain capabilities. The tank itself seems quite a contrast to small, innocent Joshua who is not only a child but a half Jewish child in a country that is being taken over by the Nazis. However, just as the heavily armored shell protects the soft skinned bags of water 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, viewers are intrigued by this humorously contradictory idea of a symbol of destruction as a child’s prize. Yet, there is consistency within the contradiction. Joshua does have a toy tank, a common kind of toy during that era. It is a time of war, and many camps were actually liberated by tanks at the end of the war. It makes sense, and the contrasts make the story more fully fleshed and believable.

Thus, the tank is tied to the plot and moves the story forward, but it is also part of a bittersweet ending that drives home the dual theme. Laughter is tied to love. Yet, also, because we love we feel horror and sorrow. And, yet, we still love. The depth of our feelings tied to love make life beautiful. The tank, which begins almost 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 of 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.

2. Law

Likewise, these seemingly contradictory images or objects appear in legal stories as well. For example, in the Eddie Joe Lloyd case, police found a green bottle at the murder scene of Michelle Jackson was one such contradictory object with hidden
There were semen stains on the bottle and on a shirt. After the police found the bottle, the schizophrenic Lloyd called the police offering to act as a crime solver. Although Lloyd described the scene, most of the details he provided were wrong. However, he mentioned that there was a green bottle found out at the scene. Lloyd’s interest in the murder and a couple of the details he provided were used to convict Lloyd; his lawyers neglected to investigate his case.

However, the bottle itself contained contradictions. Surely, Lloyd’s knowledge of the bottle was incriminating given that this information had not been released to the public. But later Lloyd said he had “overheard someone at a party store mention a bottle.” Lloyd’s contradictory statement might seem self-serving. However, after Lloyd had served seventeen years, tests established that the DNA on the bottle was not Lloyd’s. Thus, the bottle had hidden properties. Lloyd was exonerated and died two years later.

The bottle is an intriguing contradiction that draws the audience into the store, establishes credibility, and ultimately proves Lloyd’s case. Initially, Lloyd’s knowledge of the bottle is suspect. However, his statement regarding learning about the bottle contradicts his knowledge. When his statement is viewed in conjunction with his schizophrenia, his offers to help solve the crime, and his inability to accurately provide other details, questions arise. Did Lloyd actually see or overhear something about the crime that got twisted in his confused mind and led him to believe that he was a crime-solver? At the point these questions arise, it is time to inspect the bottle more closely. On closer inspection, the same object that was used to convict Lloyd holds the keys to his salvation, the DNA evidence that cleared him of the crime.

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189 Innocence Project, supra n.52; see also Garrett, supra n.55; Garrett, supra n.68; Wilgoren, supra n.64.
190 Id.
191 Id.
192 Id.
193 Id.
194 Id.
195 Id.
196 Id. See also Garrett, supra n.68 (discussing the bottle).
197 Id.
198 Id.
199 Jeremy W. Newton, False Confession: Considerations for Modern Interrogation Techniques at Home and War, 9 J. L. & SOC. CHALLENGES 63, 64 (2008).
200 Innocence Project, supra n.52.
201 See Garrett, supra n.68 at 1085 (discussing how police fed him details); see also Wilgoren, supra n. 64.
202 See id; see also Innocence Project, supra n.52.
D. Settings

Objects like the bottle may sometimes be a part of a larger setting, and even the setting itself may contain a contradiction. Just as exploring other contradictions leads to greater genuineness and believability, exploring the contradictions within the setting does as well.

1. Fiction

For instance, the initial setting for the previously mentioned book, Room, is an intriguing contradiction that creates a more fully fleshed and believable story. Room is a single room in which Jack and his mother are held captive. 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. Thus, Room is small, yet it also fosters great intimacy between mother and child; it has both unexpected consequences and dual symbolism.

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 or another. The reality of the setting helps breathe reality into the characters; real people live in real places.

2. Law

Just as the setting in Room, contains an intriguing contradiction that makes the story more believable, the setting in the previously mentioned case Weiand v. State is an intriguing contradiction that ultimately supports Weiand's self-defense claim. Todd Weiand beat Kathy Weiand repeatedly during their marriage, and their marital home was the frequent scene of the beatings as well as the scene of Todd’s death. At an initial glance, the scene seems incriminating. The officers found the couple’s child sleeping in the living room, which may seem to suggest less than a long scuffle. Kathy emerged with blood on her face and hands. Paramedics found Todd laying in the doorway of a bedroom with a towel on his head. The door to

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203 See also Philipp Meyer, The Son 110-111, (HarperLuxe 2013)(each of the harsh Texas landscapes described in these pages also has something pretty, soft, or sweet like wildflowers, bunnies, or berries, all of which belong in this wild country fueled by water and son).

204 Donoghue, supra n.157 at 16.

205 See, e.g., id. at 5-14

206 See generally id.

207 Br. of Pet., Weiand, supra n.112.

208 See generally id.

209 Id.

210 Id.

211 Id.
the bathroom was ajar and had a large hole in it, which had been created when Kathy hacked it with a knife to scare Todd.\textsuperscript{212} Wood chips and pieces of knives lay on the floor.\textsuperscript{213} A knife bearing a drop of blood lay on a dresser in the larger bedroom.\textsuperscript{214} Bullet holes punctured a hall closet wall and the door to the small bedroom, and a large amount of blood stained the day bed and the small bedroom floor.\textsuperscript{215}

However, the scene also contained contradictions that supported Kathy’s self-defense argument. Kathy had been attempting to leave Todd when he first attacked her and choked her.\textsuperscript{216} She then came to, took a kitchen knife, and chased him into the bathroom, which is when she hacked the holes in the door.\textsuperscript{217} Todd then beat Kathy with a torn-off towel rack and backed her into their bedroom with it.\textsuperscript{218} However, police initially failed to collect the torn-off towel rack; later, after the scene had been cleaned by management, only a portion of it was found.\textsuperscript{219} Also consistent with Kathy’s assertion that Todd beat her with the towel rack was the blood on the bathroom door; it could have been Kathy’s but not Todd’s.\textsuperscript{220}

Additionally, the scene supported the contradictory idea that Kathy shot Todd on accident—in self-defense. After Todd backed Kathy into the bedroom, she grabbed a gun, and Todd ran into the baby’s room and closed the door.\textsuperscript{221} Intending to scare Todd, Kathy fired two shots.\textsuperscript{222} She said that she did not intend to shoot Todd.\textsuperscript{223} Those shots passed through the hall closet wall and the door to the small bedroom.\textsuperscript{224} Thus, the bullet holes actually corroborate Kathy’s statement that she could not see Todd when she shot him. Further, based on the trajectory, Todd had to have been sitting down rather than standing and would not have been hit had he been standing.\textsuperscript{225} That further supports the idea that Kathy did not intend to kill him. Therefore, while the scene proved that Kathy killed Todd, it also corroborated her self-defense argument and her assertion that she did not intend to kill Todd.

Here, the warts would have been impossible to hide and downplaying or glossing over them would have diminished Kathy’s story. Shining a brighter light on all of the competing evidence in the scene reveals that Kathy acted in self-defense and did

\begin{itemize}
  \item \textsuperscript{212} \textit{Id.}
  \item \textsuperscript{213} \textit{Id.}
  \item \textsuperscript{214} \textit{Id.}
  \item \textsuperscript{215} \textit{Id.}
  \item \textsuperscript{216} \textit{Id.}
  \item \textsuperscript{217} \textit{Id.}
  \item \textsuperscript{218} \textit{Id.}
  \item \textsuperscript{219} \textit{Id.}
  \item \textsuperscript{220} \textit{Id.}
  \item \textsuperscript{221} \textit{Id.}
  \item \textsuperscript{222} \textit{Id.}
  \item \textsuperscript{223} \textit{Id.}
  \item \textsuperscript{224} \textit{Id.}
  \item \textsuperscript{225} \textit{Id.}
\end{itemize}
not intend to kill Todd. Given the chaos of the scene and the chaos that occurred between the two, this desperate and unfocused attempt at self-defense seems more plausible rather than less.

E. Plot

These characters, objects, and settings are a part of the plot, and, thus, the plot may contain a contradiction. In fact, a plot without complications is likely to have little forward motion at all. Without forward motion, there is no cohesion and no believability.

1. Fiction

The contradictions in a fiction plot can propel the story forward and make it more believable. For example, the movie *Life is Beautiful* begins as a romantic comedy, but the characters end up in a concentration camp half-way through. Yet, it is Guido’s comedic tendencies that preserve his son’s life while they are imprisoned in the camp. The comedy and horror dovetail with another and move the story to its culmination. Ultimately, the tender comedy makes the ending all the more poignant.

2. Law

A legal narrative will also have a plot, and that plot will be more believable rather than less if it contains intriguing contradictions. For example, in the above mentioned case of *Turner v. Rogers*, Turner’s brief begins with a flash-forward; Turner has been incarcerated for inability to pay child support and has not been provided with an attorney. Already, Turner is a criminal defendant, a prisoner, and a “dead-beat dad,” but already he is also in an impossible situation. He has to

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226 See ROBBINS, supra n.12 at 45, 96-98; LINDA SEGER, MAKING A GOOD SCRIPT GREAT, 2D ED, 165-66 (discussing how conflict is key to drama).
228 See id.
229 See id.
230 Cf. ROBBINS, supra n.12 at 103-113, 171-80 (discussing plots in legal narratives and conflicts in plots and discussing managing adverse materials); Perrin, supra n.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); Brogdon, supra n.12 (discussing how disclosing harmful evidence enhances credibility); Rice & Leggett, supra n.12; Linz, supra n.12 at 17-25; McGuire, supra n.12; Stanchi, supra n.16 at 395.
pay money that he does not have to extricate himself from jail, or argue his way out of his situation on his own without counsel.

From there, Turner’s character dovetails with his hopeless situation as the plot of the legal narrative progresses. The state first had to prove Turner’s paternity—so some readers may already view him as dodging his parental obligations wholly from the start. Moreover, the first time Turner was released from jail, he testified, “I got back on dope. I done meth, smoked pot and everything else, and I paid a little bit here and there.” Turner seems like quite a warty protagonist indeed. He fits no absolute picture of innocence.

Yet, these facts are part of larger and more empathetic story. Turner goes on to testify, “And, when I finally did get to working, I broke my back, back in September. I filed for disability and SSI. And, I didn’t get straightened out off the dope until I broke my back and laid up for two months. And, now I’m off the dope and everything. I just hope that you give me a chance.” In his own ineffective manner, Turner was trying to work, and he did have genuine set-backs. After being released from a later incarceration, Turner detailed many of the steps that he took trying to find a job. The brief cycles on with multiple instances of Turner being incarcerated and released and then, failing to find a sufficient job, being incarcerated again. Thus, each instance of release, failure, and incarceration drives the story forward, and, each instance, also shows how the orders had unexpected consequences.

The contrast between Turner’s empathetic hopelessness and his questionable character makes the story and the theory of the case more believable rather than less. Rather than trying to paint Turner as a prince, the attorney revealed that Turner was stuck in situation without hope of release regardless of the shortcomings that may have led him there in the first place. He was being incarcerated for his poverty and being denied assistance of counsel. That he was in this situation because he was a poorly spoken (and likely poorly educated) recovering drug addict seemed more believable rather than less. He is not the most empathetic figure to those of us who have been children wanting a more involved parent or to those of us current and future parents wanting a reliable co-parent. Nonetheless, the illogic of imprisoning Turner is stark; rather than remedying the situation, it makes the situations worse. Moreover, for some, the hopelessness of his situation arouses enough empathy to overcome Turner’s drug history and his failure to care for his child.

Thus, while Turner’s plot contains contradictions, his desire to pay in combination with his relapses, even his relapses and failure seem all the more plausible given

233 Id.
234 Id.
235 Id.
that he was impoverished and repeatedly jailed. These things seemed to perpetuate his situation.

F. Theme

The plot drives the theme, which also may initially seem to be contradictory. The theme may contain a seeming contradiction. In fact, sometimes attorneys may try to categorize a case under one legal theory or another and, thus, view the contradiction as harmful. However, often the theory of the case and the theme can accommodate a contradiction that aids the client.

1. Fiction

The theme of Life is Beautiful is that life is not joyous but beautiful. All of the horror, grief suffering, evil, and disgustingness of our existence is a part of our existence. That we endure and still find love, hope, and laughter is all the more beautiful because of the horror not in spite of it. The theme itself makes the contradiction consistent.

2. Law

Likewise, the theme in Weiand v. State melds seemingly contradictory ideas. For example, in Weiand v. State, Kathy Weiand shot her husband accidentally while defending her life after a long history of spousal abuse. Even the idea that Weiand shot her husband both “accidentally” and “in self-defense” may seem contradictory. However, examination of Weiand’s story reveals that was defending herself by trying to scare her husband away. When he at one point agreed to a truce, he later came after her again. Thus, his retreat likely seemed unconvincing to Weiand, and she was attempting to prevent him from pursuing again by scaring rather than killing her husband. Given his long pattern of aggression, the seemingly contradictory theme makes sense.

F. Conclusion Regarding Weaving Contradiction Into the Story

Ultimately, in well-drawn stories, the opening, all of the scenes, the characters, the objects and symbols, the plot, and theme are all aligned. And often each of these items contain the contradiction. For example, the contradiction regarding Walter White is apparent in the opening scene, in single images, in his character, and in the

Cf. ROBBINS, supra n.12 at 103-113 (discussing plots in legal narratives and conflicts in plots).

Cf. BEAZLEY, supra n.14 at 38 (discussing how two competing policies can coexist).

Cf. BEAZLEY, supra n.14 at 38 (discussing how two competing policies can coexist).
series as a whole.\textsuperscript{239} Likewise, the contradictions in \textit{Weiand, Turner,} and \textit{Lloyd} are apparent in multiple aspects of their stories. By shining a light on these inconsistencies and exploring them more deeply, attorneys can often build a more genuine and believable case.

VI. 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 give them a step-by-step guide to legal writing, 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 opening scene and then appears next at . . . You bury it in a dependent clause in the middle of the paragraph and later contrast to 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\textsuperscript{240} and recursive nature of writing and storytelling.\textsuperscript{241}

The process itself is more amorphous and will vary from writer to writer and from story to story. It involves repeatedly examining the client’s story until the writer can see it in all its details through the client’s eyes and match it to a legal theory.\textsuperscript{242} From there, some of the tools in the storyteller’s toolkit will likely be helpful, but those are subjects of other articles. Nonetheless, three common writing skills will aid the writer in conveying a believable and ultimately consistent intriguing contradiction. Those skills include using structure to reveal contrasts, burrowing into significant details, and showing rather than telling.

\textsuperscript{239}See generally, \textit{Breaking Bad,} supra n.; \textit{Acuna,} supra n.10; \textit{Kain,} supra n.10.
\textsuperscript{240}See, e.g., \textit{Robert Olen Butler, From Where You Dream} 13 (Grove Press 2005) (“Art comes from your subconscious. It comes from the white hot center of you.”); \textit{see also Janet Burroway, Introduction To Robert Olen Butler, From Where You Dream} 2 (Grove Press 2005) (“And it is in the realm of unconscious rather than that of technique or intellect that the writer seeks fictional truth.”)
\textsuperscript{242}See Koehlert-Page, supra n.23 (discussing point of view); \textit{Robbins,} supra n.12 at 46, 66-67, 73-86, 189 (discussing see through the client’s point of view and discussing choosing a legal theory); \textit{Beazley,} supra n.14 at 146-150 (advising attorneys to use point of view); \textit{Oates,} supra n.17 at 3, 13 (advising attorneys to explore point of view).
A. Notes About Technique

While readers should explore the many great articles on technique in telling a client's story, 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.

Nonetheless, I also encourage advocates to explore the wealth of materials that discuss technique. These articles cover such issues as establishing point of view, placing contrasting information alongside helpful information to create contrast, using structure of documents, sections, and paragraphs to create emphasis or de-emphasis, using sentence structure and word choice for emphasis, and so on. This background can be helpful as the writer critiques his or her own work; they can help to identify writing flaws.

Nevertheless, these techniques are tools rather than end goals. Ultimately, the writer 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 are "bad from the head writing" as opposed to "from the heart writing." Focusing solely on technique can result in a contrived story.

See generally 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 (2014); Robbins, supra n.12; Koehlerl-Page, Like a Glass Slipper, supra n.174; Koehlerl-Page, Come A Little Closer, supra n.23; Robbins, Harry Potter, supra n.21; Bruce Ching, Argument, Analogy, and Audience: Using Persuasive Comparisons While Avoiding Unintended Effects, 7 J. Ass'n Legal Writing Directors 311 (2010); Berger, supra n.21; Rideout, supra n.21; Johansen, supra n.125; Rita Williams-Garcia, Professor, Vermont College of Fine Arts, Lecture: Objects, Artifacts, and Stuff (Winter 2011) (this lecture discusses endowed objects); Kimberly Winters, The Things Stories Carry: How a Rope, a Loop of Red Thread, a Song of Fine
technique should inform the writing, but it should not replace the vivid dream
described by Butler. 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, 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. However, the idea behind an intriguing contradiction is not to
universally de-emphasize it, but to re-envision it—to determine how it is an integral
part of the larger whole.

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; it’s place is described below.

Still, rather than de-emphasizing Eddie Joe Lloyd’s schizophrenia, an attorney would
actually 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 call this disclosure inoculation or “stealing thunder.” While these
studies do indicate that this preemptive disclosure can create believability, it

253 See BUTLER, supra n.240 at 13, 114-16; see also BURROWAY, supra n.240 at 2.
254 See NEUMANN, supra n.14 at 231; Beazley, supra n.14 at 146-150, 183-4; OATES, supra n.17 at 14-9,
108-16.
255 See ROBBINS, supra n.12 at 184-6 (advising to put the weakest link in the middle); OATES & ENQUIST,
THE LEGAL WRITING HANDBOOK, supra n.17 at 633-5; see NEUMANN, supra n. 14 at 231; BEAZLEY, supra
n.14 at 146-150, 183-93; OATES, supra n.17 at 14-9, 108-16; EDWARDS, supra n.17 at 209-11
(deemphasizing bad facts in brief writing); see also Stanchi, supra n.16 at 390 (mentioning that some
advocates encourage placing harmful information in the middle).
256 Cf. ROBBINS, supra n.12 at 174-7, 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 n.16 at 397 (presenting studies that show that refuting a two-
sided message is effective).
257 See Stanchi, supra n.16 at 415; Williams, supra n.18 at 601; Brogdon, supra n.12 at 446.
typically only establishes greater believability if it is refuted. If not, it weakens the case. In some instances, the disclosure and refutation resulted in only a marginal increase in credibility. Re-envisioning the evidence can go beyond mere refutation.

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. The attorney could argue that majority of schizophrenics have not actually killed someone. However, re-envisioning the evidence means showing that Lloyd’s schizophrenia is what 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 they could smoke out the real killer if he confessed.

Similarly, Kathy Weiand’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 take care regarding how they present this information so that the audience sees this new vision. The sections below on burrowing into the details, using contrasts, and showing rather than telling illustrate how to handle this information. Moreover, there still may be times where some aspect of the contradiction might be emphasized over some other aspect. For instance, in Breaking Bad, the number scenes of Walter making drugs, plotting, hiding, engaging in violence outweigh the number of domestic scenes where he is taking care of his family.

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 Weiand’s physical characteristics would be an example of this kind of lack of absolutes. She was not entirely frail in comparison to her husband, which makes

258 See Stanchi, supra n.16 at 415-26; ROBBINS, supra n.12 at 173-6.
259 See Stanchi, supra n.16 at 415-26; ROBBINS, supra n.12 at 173-6.
260 Stanchi, supra n.16 at 415-26; ROBBINS, supra n.12 at 173-6.
261 Cf. Perrin, supra n.12 at 627-8 (advising that weaknesses should be woven into the story).
263 Innocence Project, supra n.52; Wilgoren, supra n.64.
264 See Breaking Bad, TV Series, Seasons 1-7.
265 See Br. of Pet., Weiand, supra n. 112.
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 large size can be de-emphasized in contrast to her weaknesses.

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.266 Novelist Anne Lamott advises, “Any plot you impose on your characters will be onomatopoetic…don’t worry about plot. Worry about characters. Let what they say or do reveal who they are and be involved in their lives.”267 Breaking Bad creator Vince Gilligan seems to have followed this advice; he explains that he followed the natural consequences of Walter White’s actions.268 As a result, sometimes the story led to places that he had not intended.269 In fact, the character of Jesse Pinkman, who many see as the heart of the show, was initially intended to appear in only one episode.270 However, he was working, and they kept him. 271

Another consequences of White’s foray into the drug world is that he kills a man, the drug dealing “Krazy 8.”272 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.273 The other alliances and choices Walter makes to deal with Tuco’s family sets of a chain reaction that is believable but that also fuels the entire series.274

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 where I had planned to take the story.

266 See id.
267 LAMOTT, supra n.88 at 54.
268 See Chris Harvey, No bad deed goes unpunished, Daily Telegraph (Sept. 28, 2013); The Guide: BAD MEANING GOOD: Mad Men, The Wire and … Breaking Bad? This superior meth-dealing psychodrama may currently be off the box but it's a must-see on DVD. Paul MacInnes speaks to its creator Vince Gilligan, The Guardian (U.K) (May 19, 2012).
269 Cf. id.
271 See id.
272 Breaking Bad, TV Series, “And the Bag’s in the River” (Feb. 10, 2008).
273 Breaking Bad, TV Series, “And the Bag’s in the River” (Feb. 10, 2008)(death of Krazy 8); Breaking Bad, TV Series, “Grilled” (Feb. 10, 2008)(death of Tuco); Breaking Bad, TV Series, “Caballo Sin Nombre” (cartel cousins assigned to kill Water White); Breaking Bad, TV Series, Seasons 1-3 (chain of consequences).
274 See Breaking Bad, TV Series, Seasons 1-7.
At those points, 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 writing. When I do so, I am engaging in the “bad from the head writing.” Such writing is not genuine and falls flat.

Instead, exploring the results of actions or the consequences of character traits leads to a more believable story. Thus, Butler instructs writers to dive back into the dream. 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.

Similarly, lawyers should explore details and not shy away from the warts or problems in the client’s story. They should red flag and then explore seeming inconsistencies and explore them. 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 has a grasp of a genuine story from the client’s point of view.

All of the details regarding the inconsistency itself must be explored, but the attorney must also step into the client’s point of view. 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, battered spouses, abused or neglected children or elders, or even clients with more garden-variet psychological challenges should take time to familiarize themselves with some of the special dynamics that can cloud their client’s account. Moreover, witnesses can help fill in the missing details. For instance, in the Eddie 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 do not understand the terms a person is using.

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275 See BUTLER, supra n.240, at 13, 114-16; see also BURROWAY, supra n.240, at 2.
276 See BUTLER, supra n.240, at 13, 114-16; see also BURROWAY, supra n.240, at 2.
277 See LAMOTT, supra n.88 at 45. “As soon as you start protecting your characters from their less than lofty behavior, your story will start to feel flat and pointless. . . .”
278 See BUTLER, supra n.240 at 13, 114-16; see also BURROWAY, supra n.240 at 2.
279 See BUTLER, supra n.240 at 13, 114-16; see also BURROWAY, supra n.240 at 2.
280 Cf. ROBBINS, supra n.12 at 174-7 (discussing directly managing adverse material as opposed to ignoring it or indirectly managing it).
281 Cf. ROBBINS, supra n.12 at 59-72 (discussing investigating the case and asking questions).
282 See ROBBINS, supra n.12 at 59-72 (discussing investigating the case and asking questions); BEAZLEY, supra n.14 at 146-150 (advising attorneys to use point of view).
283 See ROBBINS, supra n.12 at 189 (advising attorneys to explore the client’s point of view); BEAZLEY, supra n.14 at 146-150 (advising attorneys to use point of view); OATES, supra n.17 at 3, 13 (advising attorneys to explore point of view).
284 See, e.g., Brandl, supra n.49 (explaining the dynamics of elder abuse).
Additionally, we may fail to miss causes for a person’s behavior or for other events in the case.\textsuperscript{286}

Each time the story falls short, it is time for the attorney to dive back in and further explore the details. In so doing, attorneys must imagine themselves in the client’s shoes.

After the client’s point of view and the details are explored, the attorney must then determine whether these reveal a consistency within the narrative as a whole and whether the narrative fits a helpful legal theory.\textsuperscript{287} From there, it is the attorney’s duty to develop a narrative that reveals that consistency for the opposing party, the judge, or the jury.

**D. Three Important Traits of Effective Narratives with Intriguing Contradictions**

Although this article is not about prescribing techniques, three writing skills are particularly crucial to effective narratives with intriguing contradictions, using structure to reveal contrasts, burrowing into the significant details, and showing rather than telling. With respect to using structure to reveal contrasts, the writer can plant suggestions for the reader by placing contrasting facts side-by-side. The other two concepts are related because burrowing into the details is one way that the writer can show rather than telling. A wart can just be a blemish on the case if all of its contradiction and consistency is not fully explored. Rather than downplaying it, the writer should dive into the contradiction, flesh it out, and find showing ways to reveal both contradiction and consistency. Finally, the writer can place certain contradictory facts side-by-side to lead the reader to conclusions.

1. **Using Structure to Reveal Contrasts**

By placing contrasting information side-by-side in the right order,\textsuperscript{288} storytellers can plant suggestions for the audience. Audiences have a tendency to subconsciously connect two pieces of information that are adjacent to one another\textsuperscript{289} and can sometimes see one of those pieces of information as being the cause and the other as being the effect.

\textsuperscript{286} Cf. id. (discussing sources of inconsistency).

\textsuperscript{287} See Koehler-Patel, supra n.23 (discussing point of view); ROBBINS, supra n.12 at 46, 66-67, 73-86, 189 (discussing see through the client’s point of view and discussing choosing a legal theory); OATES, supra n.17 at 3, 13 (advising attorneys to explore point of view); cf. BEAZLEY, supra n.14 at 182-183 (discussing pursuing only the stronger legal theories on appeal).

\textsuperscript{288} BEAZLEY, supra n.14 at 148-9 (dubbing these contrasts “pointillism”).

\textsuperscript{289} Id.
a. Fiction

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

b. Law

Just as the audience likely connects, readers are likely to make similar connections after reading this passage from the brief for Kathy Weiand,

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.  

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. First, he suggested that they not move him. The implication is that moving him would destroy evidence. Then they moved him repeatedly. This contrast ultimately has the effect of taking the sting out of physical evidence that could implicate Kathy—readers might wonder how much they can rely on the physical evidence if the officials on the scene did not take care.

2. Burrowing into the Details

These kinds of contrasts often include details. For the audience to believe the consistency regarding the contradiction, they must see or hear details regarding both the warts and the consistency. Thus, the storyteller must delve into detail regarding these topics. Just a couple of details that weave the contradiction together can establish greater credibility.

290 Br. of Petr., Weiand, supra n. 112.
291 See also Gerald Reading Powell, Opening Statements: The Art of Storytelling, 31 STETSON L. REV. 89, 96 (2001) (discussing how a good story is rich in detail); cf. ROBBINS, supra n.12 at 171-80 (discussing managing the adverse facts).
a. Fiction

The audience is more likely to trust the consistency within the contradiction if the writer provides a few vivid details. In the opening scene of *Breaking Bad*, Vince Gilligan establishes this trust by providing such details that help us to accept his unexpected combination of traits. After viewers see Walter’s gas mask and semi-nudity, they see that, “Behind them, the interior is a wreck. Beakers and buckets and flasks -- some kind of ad-hoc CHEMICAL LAB -- spill their noxious contents with every bump we hit. Yellow-brown liquid washes up and down the floor. It foams in a scum around.” The chemicals seem to explain the gas mask so that viewers buy it. The state of undress is still a mystery, but, between the chemicals, the chaos of the spilling chemicals, and the bodies on the floor, viewers might begin speculating at some explanation. The nerdy description of Walter in the opening as forty-year-old, pasty man with a receding hairline seems to fit in with the chemical lab. While the bodies and the high speed seem to conflict with his nerdiness, the lab does not. Then Gilligan gives his viewers a few more details to complete the picture—“a blizzard of MONEY. A Von’s bag lies leaking twenties. Fifteen, twenty grand in cash wafts around in the air or floats in the nasty brown soup.” Viewers begin to suspect that a nerdy chemist might have been using his skills for something illegal; thus, the picture comes together.

b. Law

Likewise, in law, it is not enough to merely mention the warts and the consistencies; instead, the attorney must shine a light on them and burrow into the details. These vivid details create verisimilitude and establish credibility. Thus, Professors Anne Enquist, Laurel Currie Oates, and Connie Krontz discuss the concept of “air time,” which means devoting more space on the page or time in the speech to certain helpful details. However, with an intriguing contradiction, also delving into even those details that might initially seem harmful can be a means of discovering the consistency within them.

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292 See OATES, supra n.17 at 15 (discussing how details create a more vivid picture).
293 GILLIGAN, supra n. 2.
294 See id.
295 Id.
296 Cf. Cathren Koehlert-Page, *A Look Inside the Butler’s Cupboard: Objective Correlatives in Appellate Briefs*, 69 N.Y.U. Annual Survey of American Law 441 (2014); Koehlert-Page, *Come a Little Closer*, supra n.23 at 419 (discussing including detailed play-by-plays); ROBBINS, supra n.12 at 59-64, 171-80 (explaining that investigation of details is necessary to determine relevant facts and discussing managing adverse facts); Eyster, supra n.21 at 94, 100, 105 (2008)(encouraging attorneys to seek out physical details); OATES, supra n.17 at 15 (discussing how details make a story more vivid).
297 See ROBBINS, supra n.12 at 47 (discussing how writers can create vivid images by selecting the right details); OATES, supra n. 17 at 15 (discussing how details make a story more vivid).
298 OATES, supra n.17 at 14-5 (discussing how details make a story more vivid and explaining the concept of air time); see also Stanchi, supra n.16 at 390 (also mentioning that some advocates encourage giving less air time to negative facts).
For instance, in the Weiand brief discussed above, the attorneys detailed unflattering evidence regarding Kathy Weiand, and, in so doing, they created a more vivid and realistic picture of a person who had suffered long-term spousal abuse. They discussed the history of spousal abuse in great detail. They also explored the specifics of the night of the killing. This detailing included ample particulars regarding the exculpatory evidence, but they also delved into a few key details regarding the inconsistencies.

For instance, the attorneys did not portray Kathy as an absolute angel. In one of the many past incidents that the attorneys detailed while still including negative information reads as follows,

Later in April, an incident occurred which resulted in the police being called to their home. Todd and Kathy had shot darts, played pool, and drank beer all afternoon... On the way home they argued about Todd’s reckless driving, then Kathy kicked at his seat, the shifter, and probably at Todd. Todd slowed, then stepped on the gas as she was getting out of the car, her clothing hooked on the door; she came loose and tumbled on the pavement. She walked home, believing the incident was over.

When she arrived home, she wanted to use the phone or get her car keys, but Todd hid them. Todd choked her, pulled her hair, and slammed her against a wall. She pushed and punched him to defend herself. When she attempted to leave, Todd threw the contents of her purse around, shoved her in the bedroom, and ordered her to stay.

Notice that Kathy’s drinking and kicking are included and the context regarding these incidents are detailed. So rather than simply saying that Kathy kicked at Todd, the writers start with the couple’s argument itself, which is over Todd’s reckless driving. Then they mention that Kathy first kicked at inanimate objects and then at Todd. The result is to breathe these facts to life. And while they do not seem pretty or angelic, they seem understandable. Readers can feel her frustration and powerlessness as a passenger.

From there, the details of Todd’s reaction are disproportionate to Kathy’s misbehavior, and the brief includes a key detail—Todd punished her for trying to leave.

299 See Br. of Pet., Weiand, supra n.112.
300 See Br. of Pet., Weiand, supra n.112 at 15-9.
301 See Br. of Pet., Weiand, supra n.112 at 15-9.
302 Id. at 17-18 (record citations omitted).
303 See generally ROBBINS, supra n.12 at 61-62 (explaining that facts require context to be understood).
3. **Showing Rather than Telling**

Notice the details in both narratives above are done in a showing way rather than a telling way. Instead, we see a few significant details that lead us to conclusions. This showing rather than telling is important in intriguing contradictions because otherwise the audience is being asked to swallow two ideas that are contradictory. Instead, we have to trust audiences to be open-minded enough and smart enough to reach these conclusions on their own once we really show them the story.

**a. Fiction**

An audience is more likely to believe an experience that they feel themselves as opposed to believing conclusions made for them. Thus, a commonly repeated piece of writing advice is “Show. Don’t Tell.” Vince Gilligan does so in the opening scene from *Breaking Bad* detailed above. If Gilligan had instead begun with Walter’s wife Skylar saying, “My husband is a nerdy guy who committed a lot of crimes and made some money and enemies, but his circumstances pushed him into it,” he would not have established the same air of authenticity that he does with showing all of the details. The speeding Winnebago, the gas mask, the spilling chemicals—all of these images drive home a sense of reality.

**b. Law**

Similarly showing details work in legal narratives as well. When a writer or speaker provides his or her conclusion, then the audience believes that the conclusion is the conclusion of the person making the statement rather than adopting it. If instead the audience is shown, then they form the conclusion for themselves. So, for example, in the excerpt above from the Wieand case, the brief does not state outright, “Todd punished Kathy when she tried to leave.” Instead, the brief puts readers in the moment and shows them what happened with the words, “When she attempted to leave, Todd threw the contents of her purse around, shoved her in the bedroom, and ordered her to stay.” By shining a light on the details and letting the reader reach conclusions, the storytelling makes the audience feel as though they reconciled the contradictions as opposed to feeling that they are being told to buy a story that just does not add up.

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304 Cf. ROBBINS, supra n.12, at 241 (urging writers to show rather than telling).
305 Cf. id.
306 See, e.g., id.
307 Cf. id.
308 Cf. id.
V. Conclusion

Thus, while it may seem that Kathy Wieand “broke bad” when she shot her husband, these seemingly inconsistent and harmful facts are often a natural part of a story.\textsuperscript{309} Likewise, Turner and Lloyd might at a glance seem like “bad” characters, but their weaknesses were a part of the larger story. These seemingly negative facts can ultimately make the story more genuine rather than less. In using these intriguing contradictions to establish an engaging and trustworthy narrative, lawyers can study the intriguing contradictions in fiction narratives. In so doing, they can establish more truthful and realistic narrative while creating greater logical cohesion and underscoring their theory of the case.

\textsuperscript{309} Cf. ROBBINS, supra n.12 at 187 (suggesting making adverse material consistent with your client’s story).