Stranger than Fiction: How Lawyers Can Accurately and Realistically Tell a True Story by Using Fiction Writers’ Techniques that Make Fiction Seem More Realistic than Reality

Cathren Page

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Stranger than Fiction: How Lawyers Can Accurately and Realistically Tell a True Story by Using Fiction Writers’ Techniques that Make Fiction Seem More Realistic than Reality

Cathren Page*

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INTRODUCTION

How many people would believe it if someone walked up to them on the street and said, “There is a place where it rains diamonds from the sky?” It sounds like a fairy tale or the rantings of the mentally ill. According to a NASA scientist, this story actually is true.¹ Dr. Kevin Baines announced findings that it rains diamonds on Jupiter and Saturn.² Yet without this context, the notion sounds ridiculous. The average audience likely would not believe the statement on its own.

In contrast, an audience may be more eager to suspend their disbelief as they read the excerpt below from the classic children’s novel, *The Lion, the Witch, and the Wardrobe*:

“This must be a simply enormous wardrobe!” thought Lucy, going still further in and pushing the soft folds of the coats aside to make room for her. Then she noticed that there was something crunching under her feet. “I wonder is that more moth-balls?” she thought, stooping down to feel it with her hand. But instead of feeling the hard, smooth wood of the floor of the wardrobe, she felt something soft and powdery and extremely cold. “This is very queer,” she said, and went on a step or two further. Next moment she found that what was rubbing against her face and hands was no longer soft fur but something hard and rough

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2. Id.
and even prickly. “Why, it is just like branches of trees!” exclaimed Lucy. And then she saw that there was a light ahead of her; not a few inches away where the back of the wardrobe ought to have been, but a long way off. Something cold and soft was falling on her. A moment later she found that she was standing in the middle of a wood at night-time with snow under her feet and snowflakes falling through the air.3

Though the book transports the character from a wardrobe into a wintery fantasy land, so far as contemporary science indicates, that is impossible. Still, many readers suspend their disbelief as they read passages like this one. They know that the story is not real, but they set this knowledge aside and immerse themselves in a story that feels real.

Some people may be less willing to believe the story about the diamonds and more willing to suspend their disbelief temporarily when they read a fiction novel like The Lion, the Witch, and the Wardrobe. After all, “[t]ruth is stranger than fiction.”5

Telling a true story is not enough to persuade a judge or jury. The story must also seem true. It must have verisimilitude. Verisimilitude is “the appearance of being true or real even when fantastic.”6 Even with a non-fiction story, it is not enough that a story is true; it must also seem true. To foster a sense of truthfulness, lawyers can use the techniques that fiction writers employ to establish verisimilitude in stories that might otherwise seem impossible or unbelievable.

In the passage above from The Lion, the Witch, and the Wardrobe, the author achieves verisimilitude by lacing the passage with select, concrete details. These details should not be fictional. Lawyers can use real details on the record in a legal case to achieve a sense of reality; in fact, one of the ways that even fiction writers achieve a sense of reality is by using real details. Thus, legal narratives also can convey this sense of verisimilitude or truthiness when the lawyer laces concrete factual details into a

statement, brief, or memorandum or elicits these details from a witness.\textsuperscript{7} This detail-lacing approach is necessary despite the truth or integrity of a client’s claim.

This Article differs from other articles on related topics in that it focuses broadly on including specific details to establish an overall sense of reality. In contrast, in his article, \textit{This is Not the Whole Truth}, Professor Steve Johansen discusses those details that can ethically be omitted;\textsuperscript{8} this Article, however, is about which select details to include rather than to omit. Although some articles have focused on details regarding specific objects, such as an obtuse object or an endowed object,\textsuperscript{9} this Article covers a wider category of details that applies throughout the narrative as opposed to details that surface only at discrete points. With respect to that wider category, some articles discuss verisimilitude—although that is not the whole focus of those articles.\textsuperscript{10} Finally, in his upcoming article, Professor Chris Rideout of Seattle Law School will discuss the important related topic of mimesis—the process of creating verisimilitude with respect to character.\textsuperscript{11} Unlike these other articles, this Article focuses on specific techniques used to establish verisimilitude overall in fiction works and in legal narratives.

This Article illustrates how attorneys can make their true stories actually appear to be so by using some of the same techniques that fiction writers use to make fiction seem real. Part I of this Article provides a brief overview of Applied Legal Storytelling. Part II explains the concept of verisimilitude and outlines some of the traits of the concrete details chosen. Part III provides examples from fiction and from law, analyzes those examples, and makes comparisons and distinctions.

\textsuperscript{7} See \textsc{Gardner}, \textit{supra} note 4, at 22–23 (discussing how including concrete details establishes verisimilitude).

\textsuperscript{8} See Steven J. Johansen, \textit{This Is Not the Whole Truth: The Ethics of Telling Stories to Clients}, 38 \textsc{Ariz. St. L.J.} 961 (2006).


\textsuperscript{10} See, e.g., Eugene Volokh, \textit{Crime-Facilitating Speech}, 57 \textsc{Stan. L. Rev.} 1095, 1123 (2005) (mentioning that some fiction authors strive for accuracy for the sake of establishing verisimilitude); Jayne W. Baynard, \textit{Securities Fraud, Recidivism, and Deterrence}, 113 \textsc{Penn St. L. Rev.} 189, 206–07 (mentioning how “con men” must include enough detail to establish verisimilitude).

\textsuperscript{11} Chris Rideout, Professor of Law at Seattle University, Mimesis, Character, Storytelling, and the Law, Sixth Biennial Applied Legal Storytelling Conference (Summer 2017). During his presentation, Professor Rideout discussed how Mark Twain used mimesis to breathe reality into Huck Finn. Id.
I. BRIEF OVERVIEW OF APPLIED LEGAL STORYTELLING

Storytellers have been persuading audiences for millennia, and legal scholars, judges, and practitioners advocate for storytelling as a means of persuasion and understanding in legal narratives. In fact, Professor Ken Chestek conducted an experiment in which he sent a storytelling brief and a non-storytelling brief to judges for them to rate; judges found the storytelling brief more persuasive. Aside from the various articles and studies indicating that the human brain is wired for story, the idea of using story to persuade stands to reason. If fiction writers can use story to lull readers into temporarily believing something that they know is made-up, then lawyers should be able to use story to convince audiences of a story that actually is true.

This Article examines some of the concrete details that help convince readers of a legal narrative’s truth or suspend their disbelief in fiction. This


idea is rooted in precedent, but it also extends other scholars’ work further. 
Verisimilitude has been explored in fiction craft books and referred to in legal articles. Similar concepts have been analyzed in other law review articles, such as articles on metaphor or specific objects, articles on stories told to clients, and even on verisimilitude as applied to specific legal concepts. This Article, however, focuses solely on verisimilitude in persuasive writing to the court from a storytelling point of view.

II. VERISIMILITUDE EXPLAINED

It is not enough that a story is true. It must also sound true. In fact, the Author remembers once sitting in a writers’ workshop with some writers and an editor. The editor expressed that some of the events begged belief. The writer insisted, “But this part actually happened. It’s really my son.” Her truth was stranger than fiction. It was not enough that parts of her story were true. She needed to use writing techniques to make them believable.

That believability or sense of reality is known in fiction as verisimilitude. A story has verisimilitude when it seems real despite being imaginary. For example, in the opening chapter of Ursula K. Le Guin’s Left Hand of Darkness, Le Guin writes,

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15. See, e.g., ROBERT PAUL LAMB, ART MATTERS 49 (2010); GARDNER, supra note 4, at 22–23.
16. See, e.g., Volokh, supra note 10, at 1123 (mentioning that some fiction authors strive for accuracy for the sake of establishing verisimilitude); see Baynard, supra note 10, at 206–07 (mentioning how “con men” must include enough detail to establish verisimilitude).
17. Koehlert-Page, supra note 9, at 621; Berger, supra note 12, at 277 (discussing how story and metaphor have played a role in thinking, persuasion, and reasoning since Aristotle); J. Christopher Rideout, Penumbral Thinking Revisited: Metaphor in Legal Argumentation, 7 J. ASS’N LEGAL WRITING DIRS. JALWD 155 (2010); Eyster, supra note 9; Steven L. Winter, Death is the Mother of Metaphor, 105 HARV. L. REV. 745, 748 (1992) (reviewing THOMAS C. GREY, THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY 143–44, 153–54 (1991)) (explaining that the human mind is as metaphoric with respect to legal endeavors as it is with everything).
18. See Johansen, supra note 8.
20. CUDDON, supra note 6, at 755. A related philosophical concept is the idea that fake theories may resemble the truth in some ways. Karl Popper, A Note on Verisimilitude, 27 B RIT. J. FOR PHIL. OF SCI. 147 (1976). This Article focuses on the literary concept of verisimilitude while keeping in mind that lawyers must not falsify facts.
I was in a parade. I walked just behind the gossiwors and just before the king. . . . Next, a troop of jugglers with polished spheres of gold, which they hurl up high in flashing flights, and catch, and hurl again . . . . Next, forty men in yellow, playing gossiwors. The gossiwor, played only in the king’s presence, produces a preposterous disconsolate bellow.21

“Gossiwors” do not exist, but Le Guin surrounds them with concrete details in a narrative that flows to lend a sense of reality to the imaginary musical instrument. This sense of reality is verisimilitude. Verisimilitude is related to, but distinguishable from, the concept of “truthiness,” an idea coined by comedian Stephen Colbert.22 Truthiness is “truth that one feels intuitively, rather than factually, or a truth that one wishes to be true rather than knows to be true.”23 Verisimilitude is a sense of reality established by techniques that sometimes can create truthiness but that also can make real ideas seem realistic.

Recently, Kellyanne Conway, Counselor to the President, rebranded “truthiness” as “alternative facts” when she misrepresented President Trump’s inauguration crowd size.24 Conway often uses verisimilitude techniques herself to lend a sense of “truthiness” to alternative facts that she propounds to her audience, such as her recent reference to the Bowling Green Massacre,25 an event about as real as the Gossiwors in Left Hand of Darkness. Just as Left Hand of Darkness and other fictional works

employing verisimilitude have enjoyed success, Conway’s approach seems to have secured some popularity or at least forgiveness for the Trump Administration. Almost half of the country voted for President Trump, and according to one poll, his approval rating was at least 40% after Conway made her statement.

Ethical complaints aside, Le Guin and Conway both have a different audience and adhere to a different set of rules than a lawyer arguing to a judge or jury. Lawyers cannot and should not include so-called “alternative facts” or fictionalize the record. Even true facts, however, will not always seem so if the lawyer does not use the right techniques. If lawyers want their clients’ truths to sound true, then they must also employ verisimilitude. They need not tell the whole story—not every detail. But they must include certain concrete details as illustrated in the legal examples below.

III. EXAMPLES OF VERISIMILITUDE ANALYZED

In both fiction and law, storytellers can include certain concrete details and traits to increase verisimilitude. Verisimilitude performed well will

29. See MODEL RULES PROF’L CONDUCT r. 3.3, 4.1(a) (AM. BAR ASS’N 1983) (stating that a lawyer shall not make a false statement of material fact or law); Johansen, supra note 8, at 993 (explaining that the truth is the client’s individual truth within limits).
30. See Ty Alper et al., Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial, 12 CLINICAL L. REV. 1, 15 (2005) (describing how an audience pictures additional information based on several details); Michaela Roessner, Instructor, Gotham Writers’ Workshop, Online World-Building Lecture in Advanced Science Fiction Writing (Aug. 8, 2012) (on file with author) (discussing how a good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).
31. See generally GARDNER, supra note 4, at 22–23 (discussing how including concrete details establishes verisimilitude).
32. See id. (discussing how including concrete details establishes verisimilitude).
include select, tangible details that the audience recognizes from their own lives. Such a technique does not mean, however, that a story-crafter will walk into the room and catalogue everything in it. Rather, story-crafters will include those details that are organic to the scene, and they will reveal them as the scene unfolds as opposed to simply listing a description. The details will be vivid enough to conjure a picture in the audience’s mind. These details will also include natural dialogue where the characters occasionally fumble while speaking or use idiomatic expressions—just enough to feel real but not so much as to be as boring as real life—along with recognizable gestures. At times, the details even


34. See PAMUK, supra note 5, at 44–48, 89–94 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality and discussing how novels create visuals in the reader’s mind); cf. Victoria S. Salzmann, *Honey, You’re No June Cleaver: The Power of “Dropping Pop” to Persuade*, 62 ME. L. REV. 241, 252 (2010) [hereinafter Salzmann, *Honey, You’re No June Cleaver*] (explaining how more familiar details and references establish greater credibility).

35. See generally GARDNER, supra note 4, at 36–37 (telling people to describe a barn from the point of view of a man whose son has just been killed at war without mentioning the son, the war, or the death).

36. See PAMUK, supra note 5, at 44–48, 89–94 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality and discussing how novels create visuals in the readers’ minds); cf. GARDNER, supra note 4, at 22–24, 26 (mentioning how “concrete images” aid in establishing verisimilitude and stating, “Vivid detail is the lifeblood of fiction.”).


38. Cf. GARDNER, supra note 4, at 22–23 (discussing how including concrete details regarding gestures establish verisimilitude).
will include references to popular culture or documents, and these specifics also will be consistent with the unreal or “strange” facts of the story and with one another. Those details will often evoke the senses or include visuals. If unnecessary to the story and unnecessary for...

39. See Salzmann, Honey, You’re No June Cleaver, supra note 34, at 245 (explaining how popular culture references help to establish a sense of reality); see also Jennifer L. Mnookin, Theaters of Proof: Visual Evidence and the Law in Call Northside 777, 13 YALE J.L. & HUMAN. 329, 357–58 (2001) (describing how the actual lie detector administrator from real life made a cameo in the film to create a sense of reality); cf. GARDNER, supra note 4, at 22–24 (discussing how including references to actual cities and people can establish verisimilitude).

40. Cf. Cathren Koehlert-Page, Breaking Bad Facts: How Intriguing Contradictions in Fiction Can Teach Lawyers to Re-Envision Harmful Evidence, 13 LEGAL COMM. & RHETORIC: JALWD 1, 3 (2016) [hereinafter Koehlert-Page, Breaking Bad Facts] (discussing overall how seemingly harmful evidence can be consistent with an overall story); Cathren Koehlert-Page, Tell Us A Story But Don’t Make it a Good One: Embracing the Tension Regarding Emotional Stories and the Federal Rule of Evidence 403, 84 MISS. L.J. 351, 364 (2015) [hereinafter Koehlert-Page, Tell Us A Story But Don’t Make it a Good One] (discussing how details in one example fit together and create verisimilitude); Joseph Bishop, Jr., Judicial Construction of the Trading with the Enemy Act, 62 HARV. L. REV. 721, 756 (1949) (mentioning how a corroborative detail could have lent verisimilitude in a case); cf. GARDNER, supra note 4, at 22–23 (discussing how even in true stories the reader must be given details to make the story seem consistent).

disclosure, the story-crafter will omit overly jarring or strange facts. Moreover, the storyteller will employ only enough of those dialogue fumbles and realistic human gestures so that the story seems real but is not quite as long and boring as actual reality might be. Finally, on balance, the story-crafter will generally include more recognizable terms and details than unrecognizable, strange, or jarring ones. To convey these details successfully, the story-crafter must also establish compelling characters, plot, and theme. These ideas, however, are the subjects of other

42. Sometimes negative or seemingly strange information will be necessitated either by the rules of disclosure or by strategy on inclusion of seemingly harmful facts. See Model Rules of Prof’l Conduct r. 3.3, 4.1 (AM. BAR ASS’N 1983). The rules of professional responsibility require disclosure of negative facts in some instances. See Model Rules Prof’l Conduct r. 3.3, 4.1(a) (stating that a lawyer shall not make a false statement of material fact or law). In other instances, the disclosure may be necessary to the story or to persuasion. See Koehlert-Page, Breaking Bad Facts, supra note 40; Robbins et al., supra note 12, at 171–83 (discussing managing adverse materials); Quentin Brogdon, Inoculating Against Bad Facts: Brilliant Trial Strategy or Misguided Dogma?, 63 Tex. B.J. 443, 444 (2000) (discussing how disclosing harmful evidence enhances credibility); Daniel G. Linz & Steven Penrod, Increasing Attorney Persuasiveness in the Courtroom, 8 Law & Psychol. Rev. 1, 17–25 (1984); William J. McGuire & Demetrios Papageorgis, The Relative Efficacy of Various Types of Prior Belief—Defense in Producing Immunity Against Persuasion, 62 J. Abnormal & Soc. Psychol. 327, 327 (1961); L. Timothy Perrin, Pricking Boils, Preserving Error: On the Horns of a Dilemma After Ohler v. United States, 34 U.C. Davis L. Rev. 615, 619–26 (2001) (contending that revealing weaknesses enhances credibility, stating that the conventional wisdom supports disclosure of weaknesses, and providing data refuting arguments that attorneys should not disclose harmful evidence). In one study, the researchers presented two mock juries with two different sets of opening statements. The mock jury was more persuaded by the plaintiff’s attorney’s opening statement that disclosed harmful evidence than the one that failed to disclose harmful evidence later revealed by the defendant’s attorney. Douglas S. Rice & Ellen L. Leggett, Empirical Study Results Contradict Sponsorship Theory, 7 Inside Litig. 20, 21 (1993).

43. Cf. Salzmann, Honey, You’re No June Cleaver, supra note 34, at 245 (explaining how more familiar details and references establish greater credibility); Pamuk, supra note 5, at 44–48 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality). But cf. Koehlert-Page, Breaking Bad Facts, supra note 40 (discussing when seemingly harmful or strange facts may actually be an integral part of the story).

44. Cf. Prose, supra note 37, at 143–44, 153–54 (indicating that a writer would not want to duplicate the exact way that people speak and also pointing out that a character’s repetition of an ignored point is closer to real life); Gardner, supra note 4, at 22–23 (discussing how including concrete details regarding gestures establishes verisimilitude).
articles beyond the scope of this one and are separate topics from verisimilitude.

A. Verisimilitude in Fiction

Even a true story must sound true. Likewise, historical and contemporary fiction must have enough concrete facts to give the story an air of “truthiness.” Every historical or contemporary detail need not be reported—just enough that the story seems real. These details must be organic to the plot and the characters in some way, part of an overall objective correlative, which is a means of revealing the internal state of mind through the external world. And what if a story is based on fantasy, magic, or the impossible? Those same concrete details aid readers in suspending their disbelief.

The examples below all involve either historical or contemporary fiction blended with fantasy/science fiction. The historical or contemporary realistic elements make these stories seem as though they might actually be true. Yet other parts of these stories involve magic or science fiction; readers either temporarily suspend their disbelief or wonder if somehow the magical or fictional story elements could be possible and are just beyond current human understanding. If writers can convince readers of a story that is fiction—and quite likely impossible—then lawyers can use some of the same techniques to convince an audience of a true story.


46. See Alper et al., supra note 30, at 15 (describing how an audience pictures additional information based on several details); Roessner, supra note 30 (discussing how good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).

47. See Cathren Koehlert-Page, A Look Inside the Butler’s Cupboard: How the External World Reveals Internal State of Mind in Legal Narratives, 69 N.Y.U. ANN. SURV. AM. L. 441 (2014) (explaining how lawyers can use an objective correlative in a legal narrative); see also GARDNER, supra note 4, at 36–37 (telling people to describe a barn from the point of view of a man whose son has just been killed at war without mentioning the son, the war, or the death).

48. See Wedgwood, supra note 33, at 269 (describing the “kind of detail that cannot be filled in by the imagination and so lends verisimilitude”); see also GARDNER, supra note 4, at 22–23 (mentioning the suspension of disbelief that accompanies verisimilitude and discussing how even regular fiction, as opposed to realistic fiction, must have some verisimilitude).

49. See GARDNER, supra note 4, at 22 (mentioning the suspension of disbelief that accompanies verisimilitude).
1. How Novelist Jo Walton Used Popular References and Concrete Details to Establish a Sense of Reality in the Contemporary Realistic Fiction/Fantasy Blend Novel, Among Others

Novelist Jo Walton establishes verisimilitude in her book, Among Others, by weaving in popular culture references,50 revealing concrete details51 as the story logically unfolds, and including more ordinary, real-life details than extraordinary details.52

Among Others blends contemporary realistic fiction with a fairy story to create a sense of reality. At times, the Welsh tween protagonist and first person narrator, Mori, endures the ordinary angst of a tween53 sent to boarding school.54 To cope with her angst and other challenges, Mori casts spells.55 The spells’ mere methodology seems rather pedestrian. For instance, Mori and her sister, Mor, cast a spell to eliminate the local Phurnacite factory.56 The spell seems quite mundane. Mori pulls a crushed flower out of her pocket and writes, “Never had what we were doing seemed more childish and stupid than standing in the centre of that desolation by that dead pool holding a pair of crushed pimpernels the fairies had told us would kill the factory.”57 Then she and her sister toss the flowers into the pool, and nothing else seems to happen at the

50. For a discussion of this technique, see Salzmann, Honey, You’re No June Cleaver, supra note 34, at 245 (explaining how popular culture references help to establish a sense of reality); see also Mnookin, supra note 39 (describing how the actual lie detector administrator from real life made a cameo in the film to create a sense of reality). Cf. GARDNER, supra note 4, at 22–24 (discussing how including references to actual cities and people can establish verisimilitude).

51. See Wedgwood, supra note 33, at 270 (describing the “kind of detail that cannot be filled in by the imagination and so lends verisimilitude”); cf. GARDNER, supra note 4, at 22–23 (discussing how including concrete details establishes verisimilitude).

52. See Salzmann, Honey, You’re No June Cleaver, supra note 34, at 245 (explaining more familiar details and references establish greater credibility); PAMUK, supra note 5, at 44–48 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality). For the novel itself, see generally JO WALTON, AMONG OTHERS (Tor Books 2011).


54. WALTON, supra note 52.

55. Id.

56. Id.

57. Id. at 15.
moment.\textsuperscript{58} The magical results also seem just ordinary enough to be deniable, yet just coincidental enough to seem plausible. Although nothing immediately happens when Mori and her sister toss the petals in the pool, the next day the local paper includes an article announcing the factory closing.\textsuperscript{59}

Some readers may have experienced similar coincidences in their own lives; they have said a prayer, made a wish, or crossed their fingers and received just what they wanted. The difference between Mori and readers is that Mori’s wish is granted each of the few times that she enacts a spell.\textsuperscript{60} She also chafes against casting selfish spells, uses magic sparingly, and avoids asking for anything too big.\textsuperscript{61} The biggest result of one of her spells is that she winds up in a book club.\textsuperscript{62} Readers are left feeling that the granted wishes are no mere coincidence and that the spells succeed because Mori used her power appropriately and fairly. The end result leaves readers wondering whether the energy that people release into the world is what they receive back in small ways, a sort of magical version of \emph{The Secret}.\textsuperscript{63}

Not only do the spells seem both ordinary and somewhat logical but the fairies themselves blend into the environment so well as to make readers question whether they might have encountered fairies without noticing them. For example, after spotting a fairy up in a tree branch, Mori states that “much more fairies are like plants than anything else.”\textsuperscript{64} Thus, already, readers think how fairies might blend into the background. She reinforces that thought when she explains, “This was one of that kind. It was long and spindly, its skin like rough bark. If you didn’t see its eyes, which are kind of underneath, you’d take it for some kind of creeper draped with spider’s web.”\textsuperscript{65} And so the fairy seems not so unusual at all but more like something readers might see on any hike through the trees.

Walton reinforces this sense of reality by balancing concrete details with tiny touches of the extraordinary. So just before Mori spots the fairy

\begin{itemize}
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id.
\item \textsuperscript{61} Id.
\item \textsuperscript{62} Id.
\item \textsuperscript{63} This “pop” self-help book roughly advises people that believing in a goal and putting positive thoughts out into the world is how people achieve their goals and bring positive developments into their lives. \textit{See Rhonda Byrne, The Secret} (Beyond Words Pub. 2006).
\item \textsuperscript{64} \textit{Walton, supra} note 52, at 38.
\item \textsuperscript{65} Id.
\end{itemize}
above, she is looking for fairies. Walton writes, “There was a bush and a little stunted mountain ash and a hazel tree on the school side of the ditch. I put my left hand on the smooth bark of the hazel, not really hoping for anything now.” Then she spots the fairy described above. Except for the word “fairy,” all the other words in this passage describe things that belong in readers’ regular lives, such as “tree branch,” “bush,” “school,” “bark,” and, finally, what could be more ordinary and visual than a “ditch.” The only thing unusual about the fairy’s appearance is that the fairy had an eye underneath its body. Otherwise, it seemed that she was describing some creeping vine or epiphyte of some sort.

These realistic visual details lull readers into envisioning a scene that they have likely seen many times. Engaged with these details, when some small fantasy detail is slipped in, readers are more willing to suspend disbelief temporarily and even wonder, if just for a moment, “Could it be so?” Had Walton included too many unusual details, readers might feel jarred, have more opportunities to question what they read, and have less ability to picture the scene.

Throughout the book, Mori reinforces this sense of reality not merely by including popular culture references to science fiction and fantasy books but by actually comparing and contrasting those books to her experience. Mori frequently references Tolkien and speculates as to whether he actually knew about fairies. She explains how “real” fairies are different from fictional fairies in the following passage:

I’d like to report our conversation as if it were like talking to Tolkien’s elves. “Long we have missed you and awaited your coming, Mori . . . .” But it wasn’t like that. Sometimes Mor and I would play over a conversation with the fairies with me saying what they should have said in language like that.

Likewise, Mori speculates that Shakespeare must have known about fairies and admires the language he uses to translate his stories. She discusses Arthur C. Clarke and Robert Heinlein and wonders whether there are fairies in space.

66. Id.
67. Id.
68. Id.
69. Id.
70. Id.
71. Id. at 83–84.
72. Id.
73. Id. Sir Arthur C. Clarke is an award winning science fiction novelist and an Academy Award nominated screenwriter. He has won the Hugo and the Heinlein
These references accomplish two tasks. First, by mentioning popular culture references, Mori makes herself appear to be just some person in the real world whom readers do not know personally; she makes her world seem more like the real world with all of its details. Second, by contrasting the portrayals of fairies, magic, fantasy, and science fiction in fiction to her own experience, she makes it appear as though fairies and magic are real but have just been over-embellished by fantasy writers.

All of these details alone do not carry the story, however; rather, readers engage with the plot and the character. When both the plot and the character engage the reader, the reader wants the story to be true or seem real even for a little while. In Among Others, readers already are involved in Mori’s dilemma as she faces rejection from her peers, grief over the loss of her sister, pain over her disability, and adjustment to a new environment.\(^7^4\) She goes looking for fairies and fails at first but slowly gets a few clues regarding the fairies’ hiding place.\(^7^5\) Readers want her to find the fairy in the tree and for her dilemma to be resolved. The verisimilitude techniques simply push them over the edge into suspending their disbelief.\(^7^6\)

Lawyers can use similar techniques to make true facts actually seem true in legal narratives. In so doing, however, they must take care to be accurate rather than using the techniques to spread falsehood in law or even in shaping public opinion. Currently, on the national stage, audiences on a wide scale seem to believe “alternative facts” otherwise proven wrong simply because they want to do so.\(^7^7\) This Article admonishes against using


\(^7^4\) WALTON, supra note 52, at 83–84.

\(^7^5\) Id.

\(^7^6\) GARDNER, supra note 4, at 22 (mentioning the suspension of disbelief that accompanies verisimilitude).

\(^7^7\) Motivated Reasoning: A Philosopher on Confirmation Bias, All Things Considered, NPR (Jan. 28, 2017), https://www.npr.org/2017/01/28/512199352
these techniques to spread falsehood in this manner. Instead, lawyers should lace in the same kinds of true, concrete details to make true, yet novel, ideas seem real without including the fantasy or fairy elements seen in Among Others.

2. How the Novel Doomsday Book Blends Concrete Details from Historical Fiction with Science Fiction/Fantasy to Create a Sense of Reality

Likewise, the fantasy elements in Connie Willis’s Hugo and Nebula Award-winning Doomsday Book seem more real due to Willis’s use of similar techniques. Willis blends historical fiction with science fiction/fantasy and weaves a convincing tale; the story seems like it could have happened. Like Jo Walton, Willis tells a logically coherent story that has concrete details weaved in throughout. In some sense, Willis’s job is easier than Walton’s because, typically, all of the details that Willis uses are things that actually did exist; it is just that in reality the protagonist could not have actually traveled back in time to witness the details. Willis merely creates vivid imagery that plants pictures in readers’ minds to establish this sense of reality—she is nonetheless a master storyteller.

In the book, historian Kivrin lives in a world in which time travel is possible. She receives special permission, however, to travel back to a dangerous period, the Middle Ages. An error occurs, and she arrives during the bubonic plague. She becomes feverish and sick on her arrival.


79. Id. at 3–5.
80. Id.
81. Id. at 563, 405–07.
82. Id. at 62, 102, 107–08, 129.
The passage below shows how Willis uses details to convince readers of both the historical time period and the fantasy aspect of the story:

The cold woke her again, and she had the feeling that she had only slept a few moments, though there was a little light in the room now. It came from the narrow window recessed in the stone wall. The window’s shutters had not been opened, and that was where the cold was coming from, too.
A woman was standing on tiptoe on the stone seat under the window, fastening a cloth over the opening. She was wearing a black robe with a white wimple and coif, and for a moment Kivrin thought, I’m in a nunnery, and then remembered that in the 1300s women covered their hair when they were married. Only unmarried girls wore their hair loose and uncovered.83

Little touches of detail set the story in the 1300s—“stone wall,” “stone seat,” “fastening a cloth over the [window] opening,” “black robe with a white wimple and coif.” Even a reader who received a C in history class will know that this setting is not the world of today. These images create a sense of a medieval European setting. All of the things Willis describes are real things that did exist. The details cue readers to picture a medieval scene and prime them to buy into the story’s reality.

Then there is small detail that reminds readers that Kivrin has traveled back in time to arrive in the medieval period. Initially Kivrin thinks she is in a nunnery and then remembers that married women wore their hair covered in the 1300s—something that would give her no pause were she actually from the 1300s. This detail is organic to the scene; it flows as a natural consequence of Kivrin’s thoughts and fits in so seamlessly as to give readers little pause. Readers who are caught up in Kivrin’s tale will want to believe it. Again, just as in Among Others, in Doomsday Book, this detail takes up less space on the page than all of the details regarding things that are actually real and that have actually existed in the world.

3. How Novelist M.T. Anderson Uses Not Just Historical Details but “False Documents” to Establish a Feeling of Reality in The Astonishing Life of Octavian Nothing

Likewise, in the somewhat fantastical, historical young adult novel, The Astonishing Life of Octavian Nothing, Traitor to the Nation, Volume
One: The Pox Party, the author includes vivid details, balances language peculiar to the novel’s time period with language that readers can comprehend, and uses a technique known as a “false document” to create a sense of verisimilitude. Thus, M.T. Anderson lends this occasionally bizarre tale a sense of reality and historical accuracy.

In this National Book Award-winning novel, protagonist Octavian is a young man being kept as a slave by a group of colonial, pre-revolutionary American scholars who are studying him to determine whether black people are the same species as white people.

In an unusual turn, the author extensively uses “false documents” to make the novel seem as though it is an actual historical account. Near the end of the novel, the protagonist-narrator scratches out the story, and the author tells the story through letters and documents. At this juncture in the story, Octavian’s enslaved mother, Cassiopeia, has just died after an experiment known as a “Pox Party,” which inoculates people from smallpox. Throughout the story, Octavian has lauded his mother’s grace and beauty. Upon her death, his last words about her are that “[t]here was no kindness, no gentleness to this departure; nothing human, but rather a degeneration into some demonic substratum of the body that had waited to lay waste to all the lineaments of grace.” The remaining words are blotted out on the page.

It is after that inkblot that the author then launches into using the letters and documents to tell the story for nearly 100 pages. One of the first of these is the case study regarding the “observations upon the progression of the smallpox in Homo Afri,” rather than being a mother, a nurturer, a lady of skill and grace, Cassiopeia is reduced to a lab subject, described in the report as a “corpse.” The language is cold and clinical. For instance,

86. For a brief description of “false documents,” see supra note 85.
87. Anderson, supra note 84, at 221–56.
88. Id. at 186, 225–32.
89. Id. at 21–22, 30–35, 200.
90. Id. at 222.
91. Id.
92. Id. at 222–306.
93. Id. at 225.
94. Id. at 227.
the case study states, “Of particular interest in our investigation was the disruption of the skin and its humoral balance by the sores.” This language is distancing; instead, the scholars could have written, “Infected sores covered her skin.” But Cassiopeia is not a “her” to them, and the scholars use passive voice to further distance themselves and readers from her as a person.

Not surprisingly, one of the next documents in the tale is the runaway notice regarding Octavian; the formatting and style of this notice establish a sense of verisimilitude as much as the wording and substance do. This runaway notice is depicted below in photograph of the hardcover version of the novel:

![Image of a runaway notice](image_url)

The archaic font, the border, and the antiquated lapses into all caps or italics all lend a sense of reality and history to this document. The phrases

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95. Id.
96. Id. at 237.
97. Cf. Jewel, supra note 41, at 240–41 (demonstrating that people in today’s society often have been conditioned to more readily understand visual information as opposed to written information).
98. ANDERSON, supra note 84, at 237.
also seem appropriate to the times: “is of a handsome countenance”; “being of a silent and melancholy disposition”; and “yield him up”—none of these phrases are in the plain English used today. Today’s writers might eliminate many of the prepositions and say, “he is handsome yet quiet and depressed.” The word choices, such as “disposition,” “masters of vessels,” and “negro,” also are archaic. Finally, the details included create a sense of reality regarding the historical period: “frock-coats,” “breeches,” and “waistcoats,” are clothes from a different era. They trigger visuals for the reader that make the past seem real.99

Despite the document design, the archaic wording and phrasing, and the visual details from the past, the author creates a sense of reality that is more vivid and real than the actual reality might be. The author samples each of these things rather than recreating them. For instance, in a real document, the parchment might be falling apart or some of the English words might be unrecognizable to contemporary readers. There may even be typos. As for the phrasing, anyone who has ever read old case law knows that the writing often is much harder to follow—the sentences are longer, more embellished, and more tortured with prepositional phrases and clauses. Even regarding the substance itself, Anderson did not include every detail of Octavian’s dress and appearance. Rather, he sampled a few key details—enough for readers to fill in the blanks100 and receive a full picture of the grieving Octavian in his breeches. Readers also get a sense of the notice’s authors. Based on their language choices and their ownership of a slave in silks, the authors come across as educated and wealthy men from colonial times.

The word choices, the document, and the imagery all lend a sense of reality to this fictional tale. Even after reading, readers might think, “Well, maybe Octavian himself was not a real person, but it all could have happened.”

B. Verisimilitude in Law

Despite the recent popularity of “alternative facts,” legal storytellers cannot invent untrue facts as the writers above have done. Even true facts, however, must seem so to be believed. If anything, the recent willingness

100. See generally Alper et al., supra note 30, at 15 (discussing a process called “coding” in which a storyteller provides a little information from which the audience fills in the rest); Roessner, supra note 30 (discussing how a good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).
to buy into “fake news” or “alternative facts”\textsuperscript{101} illustrates that advocates of the truth face a challenge in winning the belief of their audiences.

Without fictionalizing, lawyers can borrow some of the fiction-writing techniques above to make a true story seem more real. These techniques do not require fictionalizing. In fact, including real places, objects, and people is one way that fiction writers establish verisimilitude. Using similar techniques, lawyers can weave concrete details seamlessly into a cohesive narrative\textsuperscript{102} that logically unfolds. They can sample dialogue,\textsuperscript{103} documents, and other sensory details.\textsuperscript{104} They can surround the more odd-seeming—yet true—facts with the more readily believable facts, taking care to include just enough detail to create a sense of reality,\textsuperscript{105} but not so much as to overwhelm or confuse the audience. These details should unfold in a compelling story that the audience wants to believe because they are engaged with both the protagonist and the plot.

\textsuperscript{101} Presidential Approval Ratings—Donald Trump, supra note 27 (demonstrating President Trump’s approval ratings, which may indicate that millions of people still support him despite the so-called “alternative facts” discussed in Bradner, supra note 24 and Schmidt & Bever, supra note 25).

\textsuperscript{102} See Koehlert-Page, Tell Us A Story But Don’t Make It a Good One, supra note 40, at 364 (discussing how details in one example fit together and create verisimilitude).

\textsuperscript{103} See Salzmann, Here’s Hulu, supra note 37, at 318 (discussing how well-known linguistic uses create verisimilitude); Sherwin, supra note 37, at 899 (discussing how well-known linguistic uses create verisimilitude); cf. Bilder, supra note 37, at 356 (discussing how some writers use quotes to establish verisimilitude).

\textsuperscript{104} PAMUK, supra note 5, at 44–48, 89–94 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality and discussing how novels create visuals in the readers’ minds); GARDNER, supra note 4, at 22–25 (mentioning sensory details such as “concrete images” and “city’s sounds and smells” in discussing how to establish verisimilitude).

\textsuperscript{105} See Salzmann, Honey, You’re No June Cleaver, supra note 34, at 245–46 (explaining more familiar details and references establish greater credibility); PAMUK, supra note 5, at 44–48 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality); see also Alper et al., supra note 30, at 15 (describing how an audience pictures additional information based on several details); Roessner, supra note 30 (discussing how a good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).
1. How the Attorneys for Hameed Darweesh Folded Concrete Details into their Petition in Darweesh v. Trump to Breathe Reality into the Life Risks Mr. Darweesh Took to Help the United States

To many of the nearly 63 million Americans who voted for Donald Trump, it might sound strange to say that America could be made more dangerous by an order that is purported to prevent potential terrorists, coming from a country that has warred with the United States, from entering the country. Using many of the same techniques advanced in the fiction examples above, the attorneys for Hameed Darweesh and Haidar Alshawi breathed reality into ideas like these that may initially sound strange to some to convince the district court to issue an injunction and a restraining order.

Hameed Darweesh is a 53-year-old Iraqi citizen who contracted to perform various tasks for the U.S. Army, such as interpreting and working as a project engineer. This contract placed him “in substantial risk of being targeted, attacked, and killed by anti-American militias and insurgents.” He obtained a Special Immigrant Visa as a result of his service to the United States. Then President Donald Trump issued an executive order suspending the immigrant and non-immigrant entry of persons traveling from a list of countries, including Iraq. Mr. Darweesh was detained pursuant to this order. In response, Mr. Darweesh’s

106. For the numbers of voters, see Krieg, supra note 26.
109. Id.
110. Id.
111. Id.
112. Id.
attorneys filed a petition for a writ of habeas corpus. In the quoted portion of the petition below, his attorneys used concrete details to create verisimilitude:

Mr. Darweesh's services included: working as an interpreter for the U.S. Army 101st Airborne in Baghdad and Mosul from April 1, 2003 to January 15, 2004; working as an interpreter for the 91st Engineering Unit at the Baghdad Airport from January 20, 2004 to August 4, 2004; working as a Project Engineer for the U.S. Government Projects Contracting Office Oil sector of North Iraq from December 5, 2005 to December 1, 2006; and, working for Vessar contractors of the U.S. government from 2006 to 2011.

Mr. Darweesh was directly targeted twice for his association with the U.S. Armed Forces. While working at the Baghdad Airport between 2004 and 2005, the Baghdad Police entered his house, claiming they were searching for a terrorist. The Baghdad Police are widely known to be closely affiliated with anti-American militias. Shortly after this incident, two of Mr. Darweesh's colleagues were killed as soon as they arrived at work. As a result of these attacks, Mr. Darweesh feared for his safety and decided to leave Baghdad for Kirkuk.

In the second instance, in July 2009, Mr. Darweesh was stopped at a market in Kirkuk where he was informed by a local shopkeeper that men were driving around in a BMW asking for him by name and the location of his house. These men returned a second time the following week, and Mr. Darweesh had strong reasons to suspect that the men searching for him were terrorists. As a result, Mr. Darweesh and his family were forced to flee to a different area of Iraq, Erbil.

First, the attorneys injected a sense of reality into their petition by listing specific dates, jobs, and cities. With these bits of information, some readers already may fill in the blanks with scenes they have viewed on the news or in movies. They may picture Mr. Darweesh in his surroundings and thus have a greater sense of reality.

113. Id.
114. Id.
115. See Alper et al., supra note 30, at 15 (describing how an audience pictures additional information based on several details); Roessner, supra note 30 (discussing how a good science fiction novel provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).
Then for the first incident the attorneys provided readers with a closer view. Readers go from the city to inside Mr. Darweesh's home. For a moment, readers catch a glimpse of real time as the police enter Mr. Darweesh's residence. Again, the attorneys repeat specific locations.

Of the three, the last paragraph ultimately creates the greatest sense of verisimilitude. Little details like “shopkeeper,” “the market,” and “BMW” help readers get a visual image of the scene. For a moment, readers are again in real time, following Mr. Darweesh as he is stopped at the market and as he receives information from the shopkeeper.

Rather than just referring to a vague and general threat, the attorneys provide at least two specific instances in which Mr. Darweesh feared for his life, one of which later resulted in two of his colleagues' deaths. Mr. Darweesh was so afraid that he fled to Kirkuk, then to Erbil, and, finally, to the United States. As readers picture Mr. Darweesh moving about his day, he becomes a real person and not some bomb-wielding stereotype from television. There is a sense of reality. In fact, readers predisposed to view Iraq as a dangerous region might view the threats as even more vivid and real.

Thus, the attorneys met two key elements of their request for an injunction. First, they showed that there was an “imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nations subject to the January 27, 2017 Executive Order.” Second, by creating a believable picture of Mr. Darweesh’s service to the United States and how it put him at risk, the attorneys established that “[t]he issuance of the stay of removal will not injure the other parties interested in the proceeding.”

116. See Petition for Writ of Habeas Corpus, supra note 108.
117. See, e.g., Laila Al-Arian, TV’s Most Islamophobic Show, SALON (Dec. 15, 2012), http://www.salon.com/2012/12/15/tvs_most_islamophobic_show/ [https://perma.cc/L2NG-9DA5].
118. These are the standards that the court found that the petitioners had demonstrated in making its ruling. Darweesh v. Trump, 2017 WL 393446 (E.D.N.Y. Jan. 28, 2017); see also Petition for Writ of Habeas Corpus, supra note 108.
2. How the Attorneys in Foster v. Chatman Used Not Just Concrete Details but Also Real Documents, Much Like the “False Documents” in Octavian Nothing, to Create a Sense of Reality in Their Statement of the Case to the Supreme Court of the United States

Using similar techniques, the attorneys in Foster v. Chatman created a believable picture of seemingly unbelievable racism by including key details and several real documents that created the same sense of verisimilitude as the false documents in Octavian Nothing. In this case, Foster petitioned the United States Supreme Court for review of the lower court’s denial of his petition for a writ of habeas corpus in his death penalty case. Previously, the trial court had overruled Timothy Tyrone Foster’s Batson challenge, and the Georgia Supreme Court upheld this ruling, finding that the trial court did not err in finding sufficiently race-neutral and legitimate explanations for the peremptory strikes filed by the prosecution. The United States Supreme Court reversed. The verisimilitude in the petition enhanced this success.

The petition weaves a believable scene of racial discrimination from the beginning. The statement of the case in the petition to the Court begins, “Petitioner Timothy Tyrone Foster was a poor, black, intellectually compromised eighteen-year-old when he was charged in 1986 with murdering Queen White, an elderly white woman who worked as a school teacher before her retirement.”

With a few select descriptive terms, the petition creates visuals for the readers and establishes a sense of reality around the theme itself: racial divide. First, the defendant was poor, black, intellectually compromised, and only 18, whereas the victim was a white school teacher who had disproportionately more power than Foster and might be viewed as a greater authority figure or vessel for empathy by a white community.

120. See Petition for Writ of Certiorari, Foster v. Chatman, 136 S. Ct. 1737 (2016); see also Wedgwood, supra note 33, at 269 (describing the “kind of detail that cannot be filled in by the imagination and so lends itself to verisimilitude”).
121. For a brief description of “false documents,” see Hinken, supra note 85; see also Narratology, supra note 85; cf. Jewel, supra note 41, at 240–41 (explaining that our society has conditioned people to comprehend visual information better than written information); see also the discussion of false documents in OCTAVIAN NOTHING, supra Part III.A.3.
122. See Petition for Writ of Certiorari, supra note 120, at i.
123. Id.
125. Petition for Writ of Certiorari, supra note 120, at 2.
Moreover, by using the full names of the parties, the petitioners also breathed a sense of unique reality into the characters and highlighted the racial and potential socioeconomic disparity between the two. Within race, statistically a higher percentage of black people are named “Tyrone.” By ironic coincidence, Foster’s elderly white victim is named “Queen White.” Some readers might further view her as a community ruler of sorts in a small community that might defer to her or view her as their representative to the world. But beyond these thematic ideas, the uniqueness of the names lends Southern flavor to the petition and makes the story seem more genuine.

The attorneys also created an aura of reality around the core of their complaint: the Batson challenge. Four of the 42 prospective jurors at Foster’s trial were black and the prosecution struck them all by peremptory strike. Defense counsel made a Batson objection, under Batson, counsel cannot make peremptory strikes on the basis of race. The court overruled the objection and the prosecutor subsequently provided reasons for the strikes to “perfect the record.”

The petition plants the inference that the prosecution played on the racial dynamics it created with the strikes. At the penalty phase, the prosecutor argued that the jury should impose a death sentence to “deter other people out there in the projects.” At the time, black families occupied 32 of the 34 units in the local housing projects. The jury sentenced Foster to death. The petitioner’s inclusion of the small detail of the prosecutor’s actual quote further lends a sense of reality to Foster’s story. It is not simply that the prosecutor seemed to be asking a white jury to deter the black families in the projects. It is also that the prosecutor’s idiomatic manner of speaking feels real. “[O]ther people out there” is not just an

126. Although a higher percentage of white people are named “Tyrone” overall, the chart reveals that this is because white people represent a higher percentage of the population as a whole. Within race, a higher proportion of black men are named “Tyrone.” See Statistics for the First Name Tyrone, MY NAME STATS, http://www.mynamesstats.com/First-Names/T/TY/TYRONE/index.html (last visited Jan. 21, 2018) [https://perma.cc/3QMS-6C5N].

127. Petition for Writ of Certiorari, supra note 120, at 2.

128. Id. at 2–3.


130. Petition for Writ of Certiorari, supra note 120, at 3.

131. Id.

132. Id.

133. Id.

134. Id.
informal phrase, it is also a distancing one. "Other people out there"\textsuperscript{135} seems to refer to people who are further away, to strangers, "others," like those others who were so strange and alien to Mori in Among Others.\textsuperscript{136} Most readers are unlikely to consciously make this calculation upon reading this phrase, but they likely will get a subconscious sense that, in a folksy sort of way, the prosecutor is setting up an “us versus them” scenario with the jury. He and the jurors are “us,” and Foster and the poor black people in the projects are “them.”

The petitioner drove this point home by including accurate, real documents that play the same role as the “false documents” in Octavian Nothing. Before the list below, the petitioner’s attorney explained that the prosecution highlighted each of the black prospective jurors’ names in green on the jury list.\textsuperscript{137}

\begin{verbatim}
135. Id.
136. See supra Part III.A.1. (discussing Mori and the strange fairies and mentioning Mori’s difficulty with her peers).
137. Petition for Writ of Certiorari, supra note 120, at 5.
\end{verbatim}
What is more telling is that the prosecution circled the word “black” next to each prospective juror in the following jury questionnaire.\textsuperscript{138}

Finally, the petition explained that in his notes, the prosecutor identified three black prospective jurors as “B#1,” “B#2,” and “B#3.”\textsuperscript{139}

Including these documents within the statement of the case not only proved that the prosecutor struck the jurors based on race but also established a feeling of reality. Seeing the handwritten scrawl and the sloppy highlighting, some readers may feel as though they are sitting at

\textsuperscript{138} Id. at 6.  
\textsuperscript{139} Id.
the prosecutor’s desk as he made race-based decisions that he later developed neutral-seeming pretexts to defend.

These documents, combined with the few select details mentioned previously, all create an atmosphere of reality. For those living in less discriminatory environments, it might seem almost unbelievable that a prosecutor would strike based on race or would make such obvious notes. Seeing the notes for themselves along with a glimpse of the community, the race dynamics, and his folksy language, readers see a more vivid racially discriminatory environment.

In this instance, the documents were accurate and consisted of the best evidence of not merely a relevant issue, but a key issue in the case. Nonetheless, attorneys should select visual evidence with caution. Rhetoric scholar Professor Michael Murray illustrates that visual legal rhetoric is susceptible to ethical problems. The fast emotional calculations people make upon viewing an image give that image great power. Visual images do have an “author” who has chosen what to include and exclude in an image and has chosen an angle, lighting, focus, and zoom; thus, an image still can have a bias. Moreover, people bring their own biases to images; not everyone sees the same thing. Therefore, care should be taken that an attorney follows the rules of evidence and ethics regarding omissions, accuracy, and relevance.

3. How Prosecutors Weaved Concrete Facts into the Opening Statement in the Trial of Doctor Conrad Murray for the Death of Michael Jackson to Create a Feeling of Verisimilitude

Although Foster may seem shocking, the phrase “You can’t make this stuff up” seems to apply to the trial of Doctor Conrad Murray. It is quite strange that a medical doctor, someone who could potentially be wealthy

140. See Murray, supra note 41.
142. Murray, supra note 41, at 111.
143. Id. at 144; see also Jewel, supra note 41, at 247–48 (discussing the ways in which images can create a subconscious bias).
all on his own, would lie, violate his oath, and risk a pop star’s life all for money. It seems equally strange that one of the most world-renowned pop stars would choose to spend his evenings during a tour not doing ordinary popular drugs but actually becoming anesthetized as though going into surgery. The prosecution imbued these bizarre ideas with an air of reality in the trial of Murray for the death of Michael Jackson.

Murray was tried for involuntary manslaughter of Jackson. The prosecution had to prove beyond a reasonable doubt that Murray had either “committed a lawful act with criminal negligence” or “failed to perform a legal duty due to criminal negligence.” To meet this burden, the prosecution had to breathe a sense of reality into the bizarre overall conditions of Jackson’s treatment and reveal the criminal aura in Murray’s actions.

The prosecution surmounted the initial hurdle regarding Murray’s motivation for such neglect by weaving in details of how Murray became involved with Jackson. Murray had previously treated Jackson for minor illnesses. Then in March 2009, Jackson requested that the doctor accompany him on tour and paid him $150,000 a month along with London airfare. This little detail about London paints a picture not just of inordinate wealth but also of a glamorous life.

Having breathed reality into Murray’s motivation to neglect Jackson, the prosecution then used concrete details to illustrate how his behavior rose to a criminal level of negligence. A key facet of this proof was the fact that Murray was administering anesthesia to Jackson at home so that he could sleep. The prosecution had to demonstrate that administering anesthesia at home was unheard of, so they included details to paint this picture. To obtain the drugs, Murray lied to a supplier and claimed that he had a clinic. The package warning itself said that the drug was supposed

145. Kim, supra note 144, at 522.
to be administered only in a hospital and that facilities for monitoring the patient airway must be available.\textsuperscript{150} The insert warned that a medical professional must continuously monitor the patient for hypotension, apnea, airway obstruction, and oxygen desaturation.\textsuperscript{151}

The package insert serves as another of verisimilitude’s “false documents” like the prosecutor’s notes in \textit{Foster} and the ads and letters in \textit{Octavian Nothing}.\textsuperscript{152} It creates a sense of reality around these warnings and around Murray’s level of awareness. The audience can picture the insert and visualize Murray viewing and ignoring the warning that even they understood.

Another particular concrete visual detail, however, likely drove home the outlandishness of the home anesthesia—Jackson was wearing a condom catheter when the EMT’s arrived.\textsuperscript{153} Patients wear condom catheters during surgery to collect urine.\textsuperscript{154} This little detail paints a realistic picture for jurors. Jackson was not popping some Ambien to get a night’s rest. He was not even sitting propped in bed taking Vicodin after a car accident. He was prepped as though for surgery.

This visual of a non-responsive Jackson wearing a condom catheter is bizarre and disconcerting. It is not something that most people expect to ever see—let alone see outside of a hospital. It drives home the wrongness of home anesthesia. The prosecution painted a realistic picture of not only the wrongness of the anesthesia but also of the many times Murray could have saved Jackson’s life and failed. Jackson had chills, trembled, and rambled at rehearsal a few days before death.\textsuperscript{155} He did not rehearse.\textsuperscript{156} The next day, his director, Kenny Ortega, called a meeting at Jackson’s house, and Murray scolded Ortega.\textsuperscript{157} He said to Ortega, “I am the doctor, not you. You direct the show and leave Michael’s health up to me.”\textsuperscript{158}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{150} \textit{Id.}
\item \textsuperscript{151} \textit{Id.}
\item \textsuperscript{152} See supra Part III.A.3.; Part III.B.2.
\item \textsuperscript{153} MJLoverAngie, \textit{Conrad Murray Trial..Opening Statements..(Part 7)}, \textsc{YouTube} (Sept. 27, 2011), \url{https://www.youtube.com/watch?v=b1Wui7Moi4k [https://perma.cc/5QWS-NEH7]}
\item \textsuperscript{154} MJLoverAngie, \textit{Conrad Murray Trial..Opening Statements..(Part 8)}, \textsc{YouTube} (Sept. 27, 2011), \url{https://www.youtube.com/watch?v=lhXsUugBBAU [https://perma.cc/Y83D-6LYR]}
\item \textsuperscript{155} MJLoverAngie, \textit{Conrad Murray Trial..Opening Statements.. (Part 6)}, \textsc{YouTube} (Sept. 27, 2011), \url{https://www.youtube.com/watch?v=qEsJg_SjLbg [https://perma.cc/9QR7-GF5W]}
\item \textsuperscript{156} \textit{Id.}
\item \textsuperscript{157} \textit{Id.}
\item \textsuperscript{158} \textit{Id.}
\end{enumerate}
\end{footnotesize}
The prosecution also detailed the flurry of phone calls that Murray made the night of Jackson’s death. He even gave Jackson CPR, but for 30 minutes after realizing that Jackson was in trouble, he did not call 911. Murray also told paramedics that he gave Jackson Lorazepam but never mentioned the anesthetic, propofol, which investigators found on the floor. By weaving in dialogue, sensory details, the real “false document,” a concrete bizarre detail, and other little details regarding motivation, the prosecution made the legal narrative about Murray’s bizarre and criminal negligence seem real.

4. How the Prosecution in California v. Manson Used Not Just Concrete Details but Also Popular Culture References Like Those in Among Others to Breathe Reality into the Summation of an Otherwise Strange Case

California v. Manson is a similarly strange case, and the prosecutor’s closing narrative is similarly realistic. A group of middle class young women in their early 20s, including a mother, was gathered one day and


161. MJLoverAngie, Conrad Murray Trial..Opening Statements.. (Part 12), YouTube (Sept. 27, 2011), https://www.youtube.com/watch?v=ZydusBHvLc8 [https://perma.cc/6CA4-SUMH].


163. See Salzmann, Here’s Hulu, supra note 37, at 318 (discussing how well-known linguistic uses create verisimilitude); Sherwin, supra note 37, at 892 (discussing how well-known linguistic uses create verisimilitude); cf. Bilder, supra note 37, at 356 (discussing how some writers use quotes to establish verisimilitude).

164. See PAMUK, supra note 5, at 44–48 (discussing the familiarity bred by sensory details and eventually leading up to the idea that a story can be mistaken for reality); GARDNER, supra note 4, at 22–25 (mentioning sensory details such as “concrete images” and “city’s sounds and smells” in discussing how to establish verisimilitude).
decided to visit movie star Sharon Tate’s house.\textsuperscript{165} At the direction of Charles Manson, they arrived and killed her and her guests.\textsuperscript{166}

\textit{California v. Manson}\textsuperscript{167} sounds at least a little unbelievable at first and definitely bizarre. Yet prosecutor Vincent Bugliosi breathed reality into the trial narrative. Bugliosi’s closing statement captured his overall narrative at trial in a shorter story that itself creates verisimilitude.

First, Bugliosi illustrated how the young women became capable of murder. Bugliosi provided a cohesive, logical narrative to show that the women who did the killing were followers who were desperate for love.\textsuperscript{168} He recapped the testimony of Linda Kasabian who said that her husband had rejected her.\textsuperscript{169} She met a woman named Gypsy who told her “that there was a beautiful man that they had all been waiting for.”\textsuperscript{170} She told the rejected Kasabian that the group lived like a family and would accept her.\textsuperscript{171}

Bugliosi repeated the word “family” throughout his closing statement\textsuperscript{172} and included concrete facts that reinforced the reality of this notion. As in a more historically traditional family, the women cooked, cleaned, and did chores.\textsuperscript{173} The men took care of the trucks and did mechanical work.\textsuperscript{174}

With these details, Bugliosi breathed life into the notion that the family was a group of followers desperate for belonging. By including Gypsy’s chosen name and her exact quote, Bugliosi painted a realistic picture of a “hippie” with a cult-like fascination for Charles Manson, the leader of the

\begin{itemize}
  \item \textsuperscript{165} See People v. Manson, 1971 WL 223596 (Cal. App. Dep’t Super. Ct. Apr. 19, 1971). A transcript of the trial is available online. Transcript of Closing Argument, People v. Manson, 1971 WL 223596 (Cal. Super. 1971). UMKC Professor Douglas Linder has posted a transcript of the summation on his website. \textit{Closing Argument : The State of California v. Charles Manson et al.}, http://law2.umkc.edu/faculty /PROJECTS/FTRIALS/manson/mansonsummation.html (last visited Jan. 21, 2018) [hereinafter Transcript of Closing Argument] [https://perma.cc/8DRW-PNCF]. Professor Douglas O. Linder compiles and maintains the “Famous Trials” website at University of Kansas Missouri City School of Law, which contains both actual trial transcripts, Professor Linder’s analysis, and other essays and documents. A graduate of Stanford University School of Law, Professor Linder has received the Daniel L. Brenner Faculty Publishing Award, among other awards.
  \item \textsuperscript{166} See Transcript of Closing Argument, \textit{supra} note 165.
  \item \textsuperscript{167} \textit{Manson}, 1971 WL 223596.
  \item \textsuperscript{168} See Transcript of Closing Argument, \textit{supra} note 165.
  \item \textsuperscript{169} \textit{Id.}
  \item \textsuperscript{170} \textit{Id.}
  \item \textsuperscript{171} \textit{Id.}
  \item \textsuperscript{172} \textit{Id.}
  \item \textsuperscript{173} \textit{Id.}
  \item \textsuperscript{174} \textit{Id.}
\end{itemize}
“Manson family cult.” The small detail about Kasabian—that her husband had rejected her—made it more plausible that she and others like her would want to join this strange “family” in which they would be accepted. The name “Gypsy” itself has nomadic connotations, so the audience forms a picture of hippies drifting in together, seeking acceptance and some semblance of the family they might have never had.

To solidify the cohesiveness of this narrative further, Bugliosi painted a picture of an unstable group without boundaries. Kasabian left her husband, went to Manson’s ranch, and had sex with Manson family member Charles “Tex” Watson on her first night there. She then joined other family members and stole $5,000.

Bugliosi animated this promiscuous environment with sensory details and psychologically significant interchanges. Bugliosi stated that when Kasabian met Manson,

Manson then felt Linda’s legs, and she testified that she got the impression he thought they were okay. The next day Manson made love to Linda in a cove in back of the ranch, and he told her she had a father hang-up. Linda was impressed by this because no one ever told her this before, and she said she did have a hang-up. She disliked her stepfather very much.

Notice how Bugliosi samples little facts to paint a realistic picture of an environment with no boundaries. Kasabian had sex the first night there. The group stole $5,000. Manson felt Linda’s legs. When the two made love, it was “in a cove in the back of the ranch.” Bugliosi does not have to describe all the sex at the ranch to give the audience a sense that this atmosphere was promiscuous. Rather, it is enough that Kasabian had sex the first night there with a stranger and then had sex again with Manson. Bugliosi does not need to describe the entire act but instead samples one graphic moment regarding Manson touching her legs. Then the term “cove at the back of the ranch” is just enough for readers to picture sneaking away to some rundown and perhaps unclean environment.

Moreover, just as author Jo Walton created a sense of contemporary reality by referencing popular culture in Among Others, Bugliosi referenced popular culture in his closing statement. He mentioned how the Beatles

175.  Id.
176.  Id.
177.  Id.
178.  For a discussion of this technique, see Salzmann, Honey, You’re No June Cleaver, supra note 34, at 245 (explaining how popular culture references help to establish a sense of reality); see also Mnookin, supra note 39, at 357–58 (describing
influenced Manson, who viewed the band’s song “Helter Skelter” as an anthem for a race revolt.\textsuperscript{179} The term “Helter Skelter” appears in Bugliosi’s closing statement 41 times.\textsuperscript{180} In combination with hippie nicknames like “Gypsy” and “Squeaky,” the song name gives the narrative sense of being rooted in the contemporary times in which the trial took place. It also fit in well with the “free love” commune type portrayal of “the family.”

Thus, Bugliosi weaves in visuals, dialogue, popular culture references, and relationships all to create verisimilitude. Together, these things create a sense of no boundaries and of a need for acceptance by “the family.” Ultimately, that lack of boundaries makes the overall idea that this group of young women could act on Manson’s orders to kill all the more believable and realistic.

In addition to establishing the group’s predisposition itself, Bugliosi revealed how the group ultimately came to the house where they found movie star Sharon Tate and the other victims. Bugliosi provided concrete details regarding a witness, Shahrokh Hatami, a photographer and a close friend of Tate’s.\textsuperscript{181} Months before the murders, Tate was leaving for Rome, and Hatami visited the Cielo Drive house and took some film of her.\textsuperscript{182} Hatami was in the living room.\textsuperscript{183} From there, he looked out the window and saw a lone man walking toward the house.\textsuperscript{184} The man was Manson.\textsuperscript{185} He was looking for Terry Melcher because he wanted Melcher to produce some music.\textsuperscript{186} Hatami, however, had never heard of Melcher.\textsuperscript{187} The two exchanged angry words, and Hatami told Manson to take the back alley.\textsuperscript{188} Before Manson left, Tate came outside and asked, “Who is it, Hatami?”\textsuperscript{189}

Bugliosi stated, “A very beautiful honey blonde, Sharon Tate, looked into the eyes of the man who the evidence shows just four and a half months later would order her tragic and violent death.”\textsuperscript{190}

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how the actual lie detector administrator from real life made a cameo in the film to create a sense of reality).
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\textsuperscript{180} Id.
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\textsuperscript{181} Id.
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\textsuperscript{182} Id.
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\textsuperscript{183} Id.
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\textsuperscript{184} Id.
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\textsuperscript{185} Id.
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\textsuperscript{186} Id.
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\textsuperscript{187} Id.
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\textsuperscript{190} Id.
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Bugliosi weaved in concrete details in the section above to create a sense of reality around ex-convict Manson’s visit to a movie star’s home. First, Bugliosi provided some specifics about the visit between Hatami and Tate—that Hatami was a photographer and Tate was leaving for Rome. He provided the specific address. Second, Bugliosi provides just enough detail to make Manson’s visit seem half-chance and half-planned. It is not surprising that when seeking a music producer, Manson might accidentally visit the home of another wealthy and famous person. Third, some of the details help the audience to picture the visit unfolding: “living room;” “looked out of the window;” and “a man[,] which the audience likely hears as ‘a stranger,’]walking toward the residence.” Details strung together in this fashion help the audience to picture the scene. Having now pictured the scene in their heads, the audience likely feels as though it is real.

A final detail mentioned above pushes the encounter over the edge: “A very beautiful honey blonde, Sharon Tate, looked into the eyes of [Charles Manson].” Notice, Bugliosi does not describe everything about Tate, just enough that the audiences gets a visual of their own idea of a “beautiful honey blonde.” For some reason, it seems as though Bugliosi said, “doe-eyed,” and yet the words are not there. Audiences often fill in the blanks in this way. Once they do so, this detail not only makes Tate seem real, but when she looks into Manson’s eyes, it also makes Manson’s choice of prey seem real.

Primed with this sense of reality, the audience believes the final trip to Cielo Drive for the murders actually happened. Months later, when Manson first asked Kasabian to go, he told her to bring a change of clothes, a knife, and a driver’s license. Bugliosi walked the jury through preparation for the trip, sampling details like these as well as Manson’s dialogue about doing something “witchy.”

Bugliosi also sampled just enough details from the murder itself without providing the whole gory picture. He did need to reproduce reality and would risk scaring the audience away with every bloody detail. He just needed to include enough to breathe life into the violence. So he mentioned

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191. *Id.*
192. *Id.*
193. *Id.*
194. See *id.* (containing no mention of the term “doe-eyed”).
195. See Alper et al., *supra* note 30, at 15 (describing how the audience can fill in the blanks based on a piece of information); see also Roessner, *supra* note 30 (discussing how a good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).
197. *Id.*
Kasabian’s testimony about the screaming that “seemed like forever, infinite.”\textsuperscript{198} When Kasabian ran to the house, a man came out with blood all over his face.\textsuperscript{199} Kasabian said, “‘Oh God, I am so sorry. Please make it stop.’”\textsuperscript{200} The man fell to the ground.\textsuperscript{201} Kasabian went on to describe more chasing and stabbing.\textsuperscript{202}

The visuals of the blood and the falling man, the sound of the screaming, and the dialogue are all sufficient to make the scene seem vivid and real.\textsuperscript{203} Having experienced these sensory details in their heads, an audience is more likely to believe them, however strange the initial summary of the story may seem.

Bugliosi won the trial and the defendants were convicted. Though the tale he told was true, he still needed to create a sense that this bizarre event was real. He effectively weaved sensory details, dialogue, and popular culture references into a plot with a logical progression and cohesive relationships to breathe life into the legal story.

\textbf{CONCLUSION}

Why does truth sometimes seem stranger than fiction? Perhaps, it is because fiction writers often shy away from telling a story that readers cannot believe. Then again, it may often be because truth-tellers fail to use the same successful techniques fiction writers use to make stories believable. Rather than reproducing everything in the room, the storyteller must sample real bits of detail, enough for an audience to form an image. That image must then be woven into a seamless and coherent narrative\textsuperscript{204} that flows logically. The truthful storyteller can sample dialogue, images, sensory details, other concrete specifics, artifacts used as exhibits, psychological relationships, and popular or historical culture to create a realistic image, realistic relationships, a realistic belief in time and place, and an overall realistic story. In the end, perhaps the audience may believe strange truths over seemingly realistic fictions.

\begin{footnotes}
\footnotetext[198]{Id.}
\footnotetext[199]{Id.}
\footnotetext[200]{Id.}
\footnotetext[201]{Id.}
\footnotetext[202]{Id.}
\footnotetext[203]{See Alper et al., supra note 30, at 15 (describing how an audience pictures additional information based on several details); see also Roessner, supra note 30 (discussing how a good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude).}
\footnotetext[204]{Cf. Bishop, Jr., supra note 40, at 756 (mentioning how a corroborative detail could have lent verisimilitude in a case).}
\end{footnotes}