

## Fiction 102

### Create a Portal for Story Immersion\*

Ruth Anne Robbins\*\*

“Stories cannot demolish frontiers, but they can punch holes in our mental walls. And through those holes, we can get a glimpse of the other, and sometimes even like what we see.”<sup>1</sup> This is how storytelling acts as a powerful form of advocacy for our clients. Stories lawyers tell on behalf of clients are nonfiction narratives designed to organize facts as cause and effect. The scheme alone helps persuade the audience, even before reaching the end, that the legal outcome must cohere to the rest of the legal story.<sup>2</sup> Legal stories are—or should be—designed to create a response in the audience, not only to engage their acceptance of the story as laid out, but perhaps to change or reinforce its current attitudes, beliefs, or behaviors.<sup>3</sup>

\* The title of this article alludes to an article published twenty years ago, Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459 (2001). Thank you to Gwen Robbins for the back half of the title.

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<sup>1</sup> From the TED talk of Dr. Elif Shafak. *The Politics of Fiction*, TED (July 2010), [https://www.ted.com/talks/elif\\_shafak\\_the\\_politics\\_of\\_fiction?language=en](https://www.ted.com/talks/elif_shafak_the_politics_of_fiction?language=en) at minute 3:56. Dr. Shafak, currently a professor of literature at Oxford, writes novels in both Turkish and English. She is a bestselling author, a women’s rights activist, and a foreign relations expert. She has delivered two TEDGlobal talks. This talk focused on nonfiction storytelling.

<sup>2</sup> J. Christopher Rideout, *Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 LEGAL COMM. & RHETORIC 67 (2013) (hereinafter Rideout, *Twice-Told Tale*); Foley & Robbins, *supra* note \*, at 472–73.

<sup>3</sup> GERALD R. MILLER, *On Being Persuaded: Some Basic Distinctions*, in THE PERSUASION HANDBOOK: DEVELOPMENTS IN THEORY AND PRACTICE 3, 6, 7 (James Price Dillard & Michael Pfau eds., 2002); Anat Gesser-Edelsburg & Arvind Singhal, *Enhancing the Persuasive Influence of Entertainment-Education Events: Rhetorical and Aesthetic Strategies for Constructing Narratives*, 27 CRITICAL ARTS: ENT. EDUC. & SOC. CHANGE 56, 60 tbl. (2013), doi:10.1080/02560046.2013.766973.

Lawyers who seek to effectively use the power of story to persuade in the spoken or written word need to understand not only the science of narrative cognition but also the linguistic mechanisms that will activate the experience of mentally sending the audience into what we call the legal *storyworld*—the jurisdiction and setting where a legal story takes place.<sup>4</sup> Storyworlds—whether real or fictionalized—have rules and social norms. Sending the audience into the storyworld matters because audience attitudes and beliefs may shift as a result of experiencing the story from inside of it, including an experience of rules and norms from characters’ perspectives.<sup>5</sup> Key to the storyteller’s successfully opening a portal and transporting the audience—the traveler—mentally into the storyworld is the use of strategic description—and particularly the description of *action* and *setting*.

The primary lessons of Applied Legal Storytelling demonstrate the concepts of character, conflict, and resolution. This article moves the legal storyteller beyond that first level to more sophisticated theories focusing on the importance of describing action and the imagery of setting precisely and strategically. The use of description is a critical tool of storytelling—in both the telling of the client’s story and in some types of legal reasoning. The success of such description, and the science behind it, apply whether the story is told verbally or embedded in written advocacy.

## 1. Introduction

To say that stories are powerful adds nothing new to what has been observed for millennia. History, sociology, anthropology: these are all disciplines that study stories. Law, as a mirror of society, is likewise comprised of nonfiction stories.<sup>6</sup> The idea of story, legal scholars remind us, speaks to us “precisely because it nourishes the kinds of human understanding not achievable through reason alone but involving intuition and feeling as well.”<sup>7</sup> Stories call to us because the characters experience emotions we can comprehend and that we, as the audience, can experience ourselves.<sup>8</sup>

4 DAVID HERMAN, *BASIC ELEMENTS OF NARRATIVE* 105 (2009), defines storyworlds as the worlds evoked by the narrative. This is not to suggest that a storyworld is necessarily a made-up place. Nonfiction stories mentally transport audience members into the storyworld of real places.

5 RICHARD C. GERRIG, *EXPERIENCING NARRATIVE WORLDS* 17 (1993).

6 Kenneth D. Chestek, *The Plot Thickens: Appellate Brief as Story*, 14 J. LEGAL WRITING 137 (2008); Linda H. Edwards, *Speaking of Stories and Law*, 13 LEGAL COMM. & RHETORIC 157 (2016).

7 Paul Gewirtz, *Aeschylus’ Law*, 101 HARV. L. REV. 1043, 1050 (1988).

8 Jeffrey Pence, *Narrative Emotion: Feeling, Form and Function*, 34 J. NARRATIVE THEORY 273–76 (2004), cited in Helena Whalen Bridge’s award-winning article, *Negative Narratives: Reconsidering Client Portrayals*, 16 LEGAL COMM. & RHETORIC 151, 170 (2019).

Stories are persuasive when they connect to the audience: that is, when the stories are well constructed, and when they present information in a way that piques interest.<sup>9</sup> Contrary to those who might worry that the act of storytelling presents a special ethical dilemma—ethical challenges beyond the rules already governing lawyers, rules that prohibit fabrication or misrepresentation—presenting facts in narrative form triggers no *specialized* or *different* obligations other than telling the facts truthfully.<sup>10</sup>

A story is not information itself, but a construct, a way of structuring information that creates context and relevance and that engages the audience. Doing so enhances memory and can bring about changes in the audience’s attitude and behavior.<sup>11</sup> A well-told story will involve the elements of character, conflict, plot, setting, theme, point of view, tone, and style. Add to those things what no story can do without: the storytelling tools of organization and description.<sup>12</sup>

Storytelling as advocacy relies on the audience’s experience of the story, which is an immersive activity—a plunge into the story’s milieu.<sup>13</sup> “Narrative reasoning” is not just telling a tale, but the tale’s organization as a cause-and-effect flow of information. In contrast, presenting facts outside of a story without the familiar structure of a plot (such as by presenting facts as a list, as a straight chronology, or as a syllogism) asks recipients to assess information through a different cognitive process.<sup>14</sup> While scientific data presents truth and facts, the audience’s response to receiving information that way does not necessarily result in the audience fully absorbing that information if the audience is biased heavily against that truth. By way of example, scientific data demonstrates, definitively, that there is zero causal connection between vaccines and autism. Yet a small but vocal portion of the population persists in ignoring the science. Much of the time the anti-vaccine information is presented as a story, one in which the vaccine is portrayed as a villain, and it is the story structure that adds to the persuasion.<sup>15</sup>

9 I will interchangeably be using the two words “audience” and “story-experiencer” throughout this article.

10 Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ALWD 63, 84 (2010).

11 KENDALL HAVEN, *STORY PROOF: THE SCIENCE BEHIND THE STARTLING POWER OF STORY* 15 (2007) (hereinafter HAVEN, *STORY PROOF*); Michael D. Slater & Donna Rouner, *Entertainment-Education and Elaboration Likelihood: Understanding the Processing of Narrative Persuasion*, 12 No. 2 COMM. THEORY 173, 176, 178 (May 2002) (including the diagram of a theoretical model for engagement and attitudinal changes that relies on the story line, the quality of the writing, and other factors).

12 *E.g.*, JAMES N. FREY, *HOW TO WRITE A DAMN GOOD NOVEL* xiii (1987) (cited in Foley & Robbins, *supra* note 9, at 466).

13 Melanie C. Green and Timothy C. Brock, *The Role of Transportation in the Persuasiveness of Public Narratives*, 79 J. PERSONALITY & SOC. PSYCHOL. 701, 702 (2000) (hereinafter Green & Brock, *Public Narratives*).

14 See *infra* section 3.1 for more detail about the differences of these two processes.

15 See, e.g., Christopher Graves, *Why Debunking Myths About Vaccines Hasn’t Convinced Dubious Parents*, HARV. BUS. REV., Feb. 20, 2015, <https://hbr.org/2015/02/why-debunking-myths-about-vaccines-hasnt-convinced-dubious-parents#>.

This technique can be used to improve health as well. Health-related studies have concluded that narrative reasoning does a better job motivating audiences towards behavioral modification than do statistics and other more data-driven, “logic-focused” approaches.<sup>16</sup> In one of these studies—examining ways to improve African American breast cancer survival rates—more African American women were persuaded of the need for regular mammography screening when they were shown videos of stories told by other African American women, as compared to being shown informational statistics without a story *showing* cause and effect.<sup>17</sup> In another study, researchers looking at information used to persuade audiences about tobacco-use cessation determined that video viewers were more influenced by narratives including a *showing* of cause and effect.<sup>18</sup>

An audience-focused approach to storytelling likewise matters in legal advocacy. In law, one empirical study has concluded that narratively written briefs persuade judges more than those written with a purely logical organization.<sup>19</sup>

This article focuses on the way that we can tell more effective legal stories by having our legal audience travel into the world of the story. The act of entering a story and experiencing it next to characters can persuade the audience enough to affect their beliefs and opinions. Social psychologists studying this process by which we enter the storyworld use the term “narrative transportation,” and, as discussed in section 3, it is considered a universal effect that can lead to persuading the traveler.<sup>20</sup> The idea of narrative transportation has become relatively recent fodder for study by narrative and cognitive psychologists, and by an emerging subset of social psychologists dealing with rhetorical persuasion.<sup>21</sup> But mainstream

<sup>16</sup> See, e.g., Leslie J. Hinyard and Matthew W. Kreuter, *Using Narrative Communication as a Tool for Health Behavior Change: A Conceptual, Theoretical, and Empirical Overview*, 34 HEALTH EDUC. & BEHAV., 2007, no. 5, at 777, 777; see also Melanie C. Green & Jenna L. Clark, *Transportation into Narrative Worlds: Implications for Entertainment Media Influences on Tobacco Use*, 108 ADDICTION 477 (2012); Amy McQueen & Matthew W. Kreuter, *Women's Cognitive and Affective Reactions to Breast Cancer Survivor Stories: a Structural Equation Analysis*, 815 PATIENT EDUC. AND COUNSELING 15 (2010); see also *infra* Section 3.1.

<sup>17</sup> McQueen & Kreuter, *supra* note 16.

<sup>18</sup> Jessica H. Williams et al., *Stories to Communicate Risks About Tobacco: Development of a Brief Scale to Measure Transportation into a Video Story—the ACCE Project*, 70 HEALTH EDUC. J. 184 (2010).

<sup>19</sup> Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story 7* J. ALWD 1 (2008).

<sup>20</sup> The study of narrative transportation is a subdiscipline of narrative psychology. The idea of narrative psychology is mainstream enough to appear in textbooks exploring the practicalities of research methods. See, e.g., MICHAEL MURRAY, *Narrative Psychology and Narrative Analysis*, in QUALITATIVE RESEARCH IN PSYCHOLOGY: EXPANDING PERSPECTIVES IN METHODOLOGY AND DESIGN 95–112 (P. M. Camic, J. E. Rhodes & L. Yardley Eds., 2003), <https://doi.org/10.1037/10595-006>.

<sup>21</sup> MELANIE C. GREEN & TIMOTHY C. BROCK, *In the Mind's Eye: Transportation-Imagery Model of Narrative Persuasion*, in NARRATIVE IMPACT: SOCIAL AND COGNITIVE FOUNDATIONS 316 (Melanie C. Green et al. eds., 2003) (hereinafter Green & Brock, *In the Mind's Eye*).

<sup>22</sup> See, e.g., Annie Neimand, *Science of Story Building: Narrative Transportation*, MEDIUM, May 10, 2018, <https://medium.com/science-of-story-building/science-of-story-building-narrative-transportation-923b2701e286>; Patrick Moreau,

interest also appears to be growing.<sup>22</sup> Media and marketing professionals also have become interested in the idea of narrative transportation and its persuasive effect as a deliberate way to increase interest in quick-narrative product advertising.<sup>23</sup>

Relatedly, an entire branch of scholars writing about Applied Legal Storytelling theory have written about the relationship between storytelling and legal persuasion.<sup>24</sup> Discussions about the science and application of narrative transportation have begun in some of the lawyering scholarship, but not yet with a full appreciation of the importance of audience response to the science<sup>25</sup> nor with a fully framed analysis of the techniques the writers should use to activate narrative transportation. Moreover, some legal scholars have begun to explore how narrative transportation may extend to transactional documents.<sup>26</sup>

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*Narrative Transportation: What It Is and Why Every Storyteller Needs to Know It*, MUSE STORYTELLING, <https://www.musestorytelling.com/blog/narrative-transportation>; Lani Peterson, *The Science Behind the Art of Storytelling*, HARV. BUS. REV., Nov. 14, 2017, <https://www.harvardbusiness.org/the-science-behind-the-art-of-storytelling/>; Leo Widrich, *The Science of Storytelling: What Listening to a Story Does to Our Brains*, BUFFER, Nov. 29, 2012, <https://buffer.com/resources/science-of-storytelling-why-telling-a-story-is-the-most-powerful-way-to-activate-our-brains/>; Annie Murphy Paul, Opinion, *Your Brain on Fiction*, N.Y. TIMES, Mar. 17, 2012, [https://www.nytimes.com/2012/03/18/opinion/sunday/the-neuroscience-of-your-brain-on-fiction.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2012/03/18/opinion/sunday/the-neuroscience-of-your-brain-on-fiction.html?pagewanted=all&_r=0).

<sup>23</sup> There are too many articles to cite comprehensively. A small cross-section includes Jennifer Escalas, *Narrative Processing: Building Consumer Connections to Brands*, 14 J. CONSUMER PSYCHOL. 168 (2004); Jennifer Edson Escalas, *Imagine Yourself in the Product*, 22 J. ADVERT. 37 (2004) (hereinafter Escalas, *Imagine Yourself*); Jae-Eun Kim et al., *Narrative-Transportation Storylines in Luxury Brand Advertising: Motivating Consumer Engagement*, 69 J. BUS. RSCH. 304 (2016); Nai-Wei Lien & Yi-Ling Chen, *Narrative Ads: The Effect of Argument Strength and Story Format*, 66 J. BUS. RSCH. 516 (2013); Inma Rodriguez-Ardura & Francisco J. Martinez-Lopez, *Another Look at "Being There" Experiences in Digital Media: Exploring Connections of Telepresence with Mental Imagery*, 30 COMPUTS. HUM. BEHAV. 508 (2014); Jeffrey J. Strange and Cynthia C. Leung, *How Anecdotal Accounts in News and in Fiction Can Influence Judgments of a Social Problem's Urgency, Causes, and Cures*, 25 J. SOC'Y FOR PERSONALITY & SOC. PSYCHOL. 436 (1999); Tom Van Laer et al., *The Extended Transportation-Imagery Model: A Meta-Analysis of the Antecedents and Consequences of Consumers' Narrative Transportation*, 40 J. CONSUMER RSCH. 797 (2014).

<sup>24</sup> J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM. & RHETORIC 247 (2015) (hereinafter Rideout, *Applied Legal Storytelling Bibliography*). That Bibliography has been updated in the same volume where this article appears. 18 LEGAL COMM. & RHETORIC 221 (2021).

<sup>25</sup> See Mary Ann Becker, *What is Your Favorite Book? Using Narrative to Teach Theme Development in Persuasive Writing*, 46 GONZAGA L. REV. 575, 589–91 (2011) (discussing narrative transportation for several paragraphs as an aspect of conveying point-of-view); see also Min Kyung Lee, *A Story of a Birth and a Funeral: A Rhetorical Analysis of Windsor and Shelby County*, 23 J.L. & POL'Y 507, 523 (2015) (providing a brief description of narrative transportation); Astrid Dirikx, *Media Use and the Process-Based Model for Police Cooperation*, 54 BRITISH J. CRIMINOLOGY 344 (2014) (summarizing the basics of narrative transportation); James S. Liebman et al., *The Evidence of Things Not Seen: Non-Matches as Evidence of Innocence*, 98 IOWA L. REV. 577, 631 n.229 (2013); Bruce Ching, *Narrative Implications of Evidentiary Rules*, 29 QUINNIPIAC L. REV. 971, 973 (2011) (quoting another author for the idea of narrative transportation as a reason for story's power in persuasion); Brian J. Foley, *Until We Fix the Labs and Fund Criminal Defendants: Fighting Bad Science With Storytelling*, 43 TULSA L. REV. 397, 399–400 (2007) (mentioning narrative transportation while discussing the types of evidence that are more likely to lead to better storytelling); Kevin Jon Heller, *The Cognitive Psychology of Circumstantial Evidence*, 105 MICH. L. REV. 241, 287–91 (2006) (spending a subsection on the topic, but ultimately dismissing narrative transportation as a storytelling tool when dealing with the relative abstraction of circumstantial evidence). One article that does spend significant time discussing the importance of narrative transportation is Susan M. Chesler & Karen S. Sneddon, *From Clause A to Clause Z: Narrative Transportation and the Transactional Reader*, 71 S.C. L. REV. 247 (2019). The authors spend significant time in the article discussing the ways that narrative transportation can evoke audience participation, problem-solving, or replotting participatory response in the readers of transactional documents.

<sup>26</sup> See *infra* section 6.

In two earlier articles, I examined the structure of legal storytelling generally and then explored the importance and technique of character-development as a central tool of Applied Legal Storytelling.<sup>27</sup> All of that represents a first-level of understanding how to build legal stories from the facts of the client’s case. This article connects to that earlier inquiry but moves readers deeper into the analysis of legal storytelling by investigating the importance of describing actions and setting in the storytelling to the outcomes of actual persuasion. To get there, I explain the way that certain types of descriptions create mechanisms for narrative transportation that lead to more effective advocacy in legal storytelling. Specifically, I discuss how some of the applied studies of narrative transportation can be used in legal storytelling in documents that involve (a) a recitation of facts in a cause-effect manner, or (b) at least a partial reliance on analogical reasoning for the advocacy.

This article thus centers on two aspects of storytelling critical to narrative transportation: action and setting. And both rely on description to get there. These two story tools have gone largely underexplored in the Applied Legal Storytelling literature. Previous works that have taken a deep-dive into the building blocks of story have centered on character-building or theme development.<sup>28</sup> While a very few Applied Legal Storytelling articles have discussed specialized aspects related to settings<sup>29</sup> and objects,<sup>30</sup> this article brings together the science and more holistic techniques. It also brings to the fore how important description is to triggering the audience’s response to the story.

## 2. A lightning-fast description of description

This entire article is premised on the idea that imagery is central to storytelling and that certain kinds of description will activate the types of storytelling mechanisms that lead to persuasion. Ergo, this section

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<sup>27</sup> Foley & Robbins, *Fiction 101*, *supra* note \*; Ruth Anne Robbins, *Harry Potter, Ruby Slippers, and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 SEATTLE U. L. REV. 767 (2006).

<sup>28</sup> *Id.*; see also Becker, *supra* note 25 (discussing narrative transportation as an aspect of point of view).

<sup>29</sup> One that has looked at setting is 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 (2013). Professor Page discusses the idea of objective correlative, which lawyers can use effectively when strategizing the use of scenic evidence. That is, a description of the setting can be used to convey emotion or truth even in the face of seemingly contradictory statements. Professor Page also suggests that details about the setting can be important in demonstrating sufficient facts to reach the requisite burden of proof.

<sup>30</sup> Two that have are James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 LEGAL WRITING, 87, 102 (2008) (discussing the “obtuse object” as cognitive dissonance aiding in memory) and Cathren Koehlert-Page, *Like a Glass Slipper on a Stepsister: How the One Ring Rules Them All*, 91 NEB. L. REV. 600 (2013) (explaining the concept of endowed objects that help weave a thematic thread in a legal story or to identify the key piece of physical evidence).

provides a quick explanation of how writers create imagery through the use of description. I have chosen to place this information up front, to plant the seeds of understanding as to how the next section's science will connect to the lawyering strategy of legal storytelling.

Less experienced legal writers are often exhorted to *show* rather than *tell*. Though the phrase might read as trite, this in fact is exceptionally good advice because it is supported by the science of narrative comprehension. A person's reaction to a story depends on their ability to so fully imagine the story that they can travel into the story itself. The art of showing the audience the place and characters of the legal storyworld—of creating a portal into the story—is the activity of description, as is evident from the very definition of a story itself: a *descriptive* telling of a character's efforts, over time, to overcome obstacles and to reach a goal.<sup>31</sup> Description creates the mental imagery for the audience that it needs for the story to cohere in their minds. Mental imagery thereby permits the transfer of content to memory.<sup>32</sup>

Four categories of things can be described narratively:

- Actions
- Settings
- Objects
- Characters.<sup>33</sup>

Showing the precise image requires writers to select details that will form the description. There are five types of details to choose from when describing actions, settings, objects, or characters.

- **The name.** A name can also include a category. For example, “national park” is a named category of settings.<sup>34</sup>
- **The function.** Objects and characters can have function. “household cleaning product” describes a function. So too does “pizza delivery person.”
- **The history or development.** Objects, settings, and actions can all have a history of development, just as characters can.
- **Sensory information.** These details call upon the senses of sight, sounds, smell, touch, and taste. The dimensions of a computer screen, how crisp the air feels, how high the person

<sup>31</sup> HAVEN, *STORY PROOF*, *supra* note 11, at 79 (emphasis supplied).

<sup>32</sup> *Id.* at 94 (internal citations omitted).

<sup>33</sup> KENDALL HAVEN, *GET IT WRITE: CREATING LIFELONG WRITERS FROM EXPOSITORY TO FICTION* 123–25 (2004). Note that more abstract concepts are missing from this list, e.g. an idea. Different narrative techniques must be employed to describe an abstract idea.

<sup>34</sup> *Id.*



jumped, or how heavily the side yard is scented with lilacs—all rely on sensory details.

- **Analogy to other objects, actions, settings, or characters.**

An analogical detail describes something through comparison to other things—sometimes explicitly and sometimes metaphorically. “It tastes like chicken” is a description that relies on analogy. So does the heading to this subsection, “a lightning-fast description of description.”

Specific details provide a description with greater emphasis and provide the audience with richer fare from which they can construct mental images. As a corollary, the more sparse the detail about actions, settings, objects, or characters, the more sparse the story experiencer’s mental images, permitting them either to conjure any image that comes to mind or to form only fuzzy pictures.<sup>35</sup> Creating images with description does not necessarily require a bulk of details, but instead relies more on specificity—choosing the right words, the precise words, the evocative words. Precision matters. Skilled writers can create memory with a mere few words—if those words are precise enough to stimulate a mental image. “He was baking cinnamon bread as he did every early Sunday morning” provides a great deal of information with a mere few words about action, setting, object, and even character. The sentence is enough to anchor us in a scene.

### 3. There is no frigate like a brief: What does a legal storyteller need to know about narrative transportation?

It was dusk and raining like hell.<sup>36</sup> But the twinkling of the holiday lights she had brought with her to cheer up the writing-retreat room cut through the gloom. She gazed down from the Airbnb apartment windows to the street below, then turned to the other professors in the room who were all bent over their laptops, “I am ready for a break and there are at least two pubs right on the block—let’s go.”

That paragraph was not designed to resonate with all audiences but was chosen to resonate with audiences who understand the act of writing and the need to sometimes hole up to hyper-focus. Assuming you, this article’s reader, are part of the target audience, what did you

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<sup>35</sup> RUTH ANNE ROBBINS, STEVE JOHANSEN & KENNETH D. CHESTEK, *YOUR CLIENT’S STORY* 166–67 (2d ed. 2019).

<sup>36</sup> I avoided “’Twas a dark and stormy night” because the use of a cliché would have interfered with the description’s function to transport the audience into the scene.



imagine as you read the above paragraph? Anything? Did you visualize a place? The time of year? The temperature outside? Did the word “pub” put you someplace different than if the words “bar” or “restaurant” had been used?<sup>37</sup> If you felt yourself to be part of the scene, you were experiencing what has been termed, “narrative transportation.” By this, narrative psychologists mean the phenomenon of imaginatively leaving the place where you are and entering the world of a story.<sup>38</sup> Audiences experience stories by traveling from their seats into the narrative world, and audience members’ attitudes can be changed by their temporary dwelling in that story world.

Most of us can relate to traveling into and inside of a story world, whether by virtue of reading, listening to, or watching stories. It is the feeling one gets when losing track of time and even one’s physical locale while watching a movie. Our language even has idioms that capture this idea. “Lost in a good book,” and “getting into,” being “swept away,” or being “drawn into” a story.<sup>39</sup> Emily Dickinson famously wrote about this in her poem, *There is No Frigate Like a Book*, from which this subsection derives its title. The poem’s first two lines say it all: “There is no Frigate like a Book/ To take us Lands away.”<sup>40</sup> This poem is used in some grade-school teaching because its theme of narrative transportation is considered an abstract concept that is nevertheless so understandable that young children can comprehend and relate to it.<sup>41</sup>

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**37** Or does the word “pub” just make you assume it’s an academic trying to pretend that Philadelphia is somewhere in Yorkshire?

**38** GERRIG, *supra* note 5, at 157.

**39** It is such a common metaphor that Jasper Fforde used that as a title in one of his books about a character who literally jumps into books to solve mysteries. JASPER FFORDE, *LOST IN A GOOD BOOK* (2004). There is also a PBS children’s series in which characters, including Little Red Riding Hood, go inside books on a giant bookshelf to help solve little-children problems. *Super Why!* (PBS Kids television series).

**40** The full poem is very short:

*There is no Frigate like a Book  
To take us Lands away  
Nor any Coursers like a Page  
Of prancing Poetry—  
This Traverse may the poorest take  
Without oppress of Toll—  
How frugal is the Chariot  
That bears the Human soul.*

Emily Dickinson, *There is No Frigate Like a Book*, a letter written around 1873 and published in *LETTERS*, Vol. 1 (1894) (capitalization in original). The letter is in the public domain. As an aside, the first to write about narrative transportation in detail, Richard Gerrig, quoted Emily Dickinson’s poem twice in his book, and perhaps for that reason the poem has become a bit of an anthem for people writing about narrative transportation. GERRIG, *supra* note 5, in the unpaginated frontispiece and at 12.

**41** Do a quick search on the web and you will find dozens of elementary school videos of children reciting or singing the poem to the tune of *Amazing Grace*. You can easily find lesson plans and conversations about lesson plans using this poem. The commercial website, Schmoop, has a page devoted to the teaching topic: <https://www.shmoop.com/there-is-no-frigate-like-a-book/>.

Thus, the idea of narrative transportation as a phenomenon is nothing new. Narrative transportation as a field of scientific study, however, is relatively young.<sup>42</sup> Professor Richard C. Gerrig, in his germinal book on the topic, borrows the verb “transported” from a passage in Paul Theroux’s novel, *My Secret History*, because he believed that the novelist had captured “one of the most prominent phenomenological aspects of the experience of narrative worlds.”<sup>43</sup> As Professor Gerrig explains, we do more than just read or hear stories—we also experience them by the flow of description. Imagining place and action of the story permits the audience to transport to and exist in that space transiently, borrowing the author’s property, “like a rented apartment.”<sup>44</sup>

### 3.1. Linking narrative transportation to persuasion is actually about *connection*

The power of narratives to affect the audience’s beliefs “has never been doubted and always been feared.”<sup>45</sup> In the gestalt, understanding and learning from story is a fundamental cognitive process.<sup>46</sup> Stories enthrall us, not for any one isolated reason, but because we are able to engage in them holistically—narrative transportation takes us there.<sup>47</sup> We connect to the story at many levels. Through these connections we are persuaded.

When we are transported into a story, some part of our own world becomes inaccessible. We must make do without some of the material comforts or norms of our physical locale.<sup>48</sup> The phenomenon operates regardless of whether we are reading real stories (as in the case of legal stories) or fiction.<sup>49</sup> When we travel through the portal into a storyworld we suspend our disbelief;<sup>50</sup> doing so jumps us over the cognitive resistance or counterargument that we normally employ with other forms of persuasion. That is, we do not question the premises but accept them. By temporarily adopting the norms of storyworld, we also open ourselves up to change.<sup>51</sup>

42 The literature doesn’t go back before the early 1990s. The scholarship begins with the publication of Richard C. Gerrig’s book in 1993, *supra* note 5.

43 GERRIG, *supra* note 5, at 2–4 (citing PAUL THEROUX, *MY SECRET HISTORY* 402 (1989)).

44 Van Laer, *supra* note 23, at 799.

45 Green & Brock, *Public Narratives*, *supra* note 13, at 701.

46 MELANIE C. GREEN AND JOHN K. DONAHUE, *Simulated Worlds: Transportation into Narratives*, in *HANDBOOK OF IMAGINATION AND MENTAL SIMULATION* ch. 16 (Keith D. Markman, William M. P. Klein & Julie A. Suhr eds, 2008) (ebook).

47 Slater & Rouner, *supra* note 11, at 176.

48 GERRIG, *supra* note 5, at 14–15.

49 Slater & Rouner, *supra* note 11, at 179.

50 SAMUEL TAYLOR COLERIDGE, *BIOGRAPHIA LITERARIA* ch. XIV (1872), <http://www.gutenberg.org/files/6081/6081-h/6081-h.htm> (“that willing suspension of disbelief for the moment, which constitutes poetic faith”).

51 GERRIG, *supra* note 5, at 16; Green & Brock, *Public Narratives*, *supra* note 13, at 701–02, 718–19.

Two of the best-known psychologists studying this area, Dr. Melanie C. Green and Dr. Timothy C. Brock, have written extensively about the persuasive assist that narrative transportation provides.<sup>52</sup> Drs. Green and Brock describe narrative transportation as a distinct mental process that melds attention, imagery, and affective responses (i.e., feelings).<sup>53</sup> They distinguish the cognition mechanisms present in narrative persuasion versus rhetorical persuasion—what they term “advocated opinions,” relying on arguments with claims and evidence.<sup>54</sup> Likewise, legal arguments by themselves are based on complex syllogisms, but the addition of narrativity adds a different dimension to the legal audience’s cognition.<sup>55</sup> Cognitively, narrative transportation moves us into a place where we process arguments distinctly and differently from the way we cognitively process arguments presented in a syllogistic manner.<sup>56</sup> That is because transporting into a storyworld “entails an experiential component as well as a melding of cognition and affect.”<sup>57</sup>

Fundamentally, the idea of narrative transportation enhances audience connection and response to story. Transportation leads to persuasion through realism, which can prompt a strong affective response. And it has the advantage of short-circuiting the audience’s negative thoughts because of the experiential aspect.<sup>58</sup> When persuading an audience through analytical processes, an audience naturally has resistance to the persuasion.<sup>59</sup> Part of logical analyses, or “cognitive elaboration,” involves the audience thinking through conclusions presented.<sup>60</sup> That type of reasoning engages the audience in methodological doubt—that is, the audience logically tests arguments against a counterweight thought of “or not.”<sup>61</sup> In contrast, persuasion via storytelling avoids the audience engaging in negative responses by lowering the audience’s resistance to the message.<sup>62</sup> This happens because we live our lives through

<sup>52</sup> See, e.g., Green & Brock, *In the Mind’s Eye*, *supra* note 21, at 320–21; Green & Brock, *Public Narratives*, *supra* note 13, at 703.

<sup>53</sup> Green & Brock, *Public Narratives*, *supra* note 13, at 701.

<sup>54</sup> Green & Brock, *In the Mind’s Eye*, *supra* note 21, at 320–21.

<sup>55</sup> Derek Kiernan-Johnson, *A Shift to Narrativity*, 9 *LEGAL COMM. & RHETORIC* 81, 93–95 (2012) (proposing the term “narrativity” as a top-level term in applied legal contexts that incorporates ideas of legal text, narrative, and performance, i.e., storytelling, and is broad enough to encompass the broader word “narrative” in lieu of the narrower root “story”).

<sup>56</sup> Green & Brock, *Public Narratives*, *supra* note 13, at 703.

<sup>57</sup> *Id.* at 718–19.

<sup>58</sup> Escalas, *Imagine Yourself*, *supra* note 23, at 38.

<sup>59</sup> ERIC S. KNOWLES & JAY A. LINN, *RESISTANCE AND PERSUASION* (2003).

<sup>60</sup> Green & Brock, *Public Narratives*, *supra* note 13, at 702.

<sup>61</sup> Peter Elbow, *The Believing Game—Methodological Believing*, 13 *J. ASSEMBLY EXPANDED PERSP. ON LEARNING* 1, 2 (2009) (using methodological doubt as a synonym for critical thinking).

<sup>62</sup> *Id.*; Slater & Rouner, *supra* note 11, at 174.

story,<sup>63</sup> so we naturally trust and respect a story as authentic, realistic, and plausible.<sup>64</sup> We, as story-experiencers, will assess the story not for accuracy but for verisimilitude, that is, the “lifelikeness” of the situations and characters.<sup>65</sup> This includes temporarily adopting the characters’ world view in the storyworld, using the norms and laws of that storyworld. What is key is the audience’s sense that they are engaging these different world views of their own free will.<sup>66</sup>

That the audience feels autonomous is very powerful in overcoming resistance to new ideas. The combination of the audience identifying with a character’s world view while also temporarily dwelling inside the storyworld reduces the audience’s impulse to question the belief-systems in the storyworld. Messages produced in the storyworld that present the audience with familiar situations or images and with familiar belief systems to that of the audience will *reinforce* the audience members’ beliefs.<sup>67</sup> Messages that similarly present the audience with familiar situations or images but that subtly expose the audience to new or oppositional messages can *overcome* or *change* the audience’s preexisting beliefs because the audience feels invited into the world where it can safely—because it will only temporarily—engage with the new ideas.<sup>68</sup>

Psychologists reason that story structure is one of cause-and-effect relationships.<sup>69</sup> When we read a story, we engage it as part of the story’s creation because our own mental images combine with the ones the author creates for us. In his foundational book on the topic, Dr. Gerrig, who first coined the term “narrative transportation,” teaches us that the metaphor of being transported serves as a schema; this is something we as legal scholars can relate and respond to. Gerrig’s schema, paraphrased, is thus

- The story-experiencer is transported by some means of transportation and as a result of certain actions.

63 HAVEN, STORY PROOF, *supra* note 11, at 24–25.

64 Gesser-Edelsburg & Singhal, *supra* note 3, at 57, 64; *see also* David Koelle et al., *Providing Decision-Support Using Insights from Narrative Science*, 3 *PROCEDIA MFG.* 3998, 3999 (2015).

65 Van Laer, *supra* note 23, at 800; Cathren Page, *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*, 78 *LA. L. REV.* 907 (2018) (discussing the idea of verisimilitude as a conduit to persuasion in Applied Legal Storytelling).

66 Gesser-Edelsburg & Singhal, *supra* note 3, at 62.

67 *Id.* at 59.

68 *Id.* at 62.

69 Fritz Heider & Marianne Simmel, *An Experimental Study of Apparent Behavior*, 57 *J. AM. PSYCHOL.* 243 (Apr. 1944) (demonstrating that humans think in cause and effect by showing test subjects a one-minute video of shapes moving around a piece of paper; the vast majority of test subjects saw a story). You can easily find that video online. *See also* Green & Brock, *In the Mind’s Eye: supra* note 21, at 316.

- The story-experiencer goes some distance from their world of origin, and that makes inaccessible some aspects of the origin world.
- Finally, the story-experiencer returns to the world of origin, changed by the journey.<sup>70</sup>

That last point demonstrates the importance of narrative transportation to the advocate. Traveling into a story can change the story-experiencer’s mindset.<sup>71</sup> Narrative transportation matters to legal persuasion because experiencing a story can change story-related attitudes as a result of becoming involved in that story.<sup>72</sup> When a story-experiencer is narratively transported, they identify with the characters the author has chosen along with those characters’ relationship to the storyworld itself and most importantly to the characters’ value systems.<sup>73</sup> It is through the act of temporarily adopting the norms of storyworld that the audience becomes more open to allowing attitudes to shift or change.<sup>74</sup>

Other narrative psychologists have tested Dr. Gerrig’s theories and their studies led them to agree that the immersion in a story—that is, the transportation into the storyworld—can have powerful emotional and persuasive consequences.<sup>75</sup> Some psychologists studying these principles have relied on stories that implicate social issues in which some public-interest lawyers might be engaged. Others conducting empirical studies have concluded that attitudes can be transformed. For example, one set of researchers concluded that audience members’ beliefs could change when they were presented with an issue-based story about high-school dropout rates. That transformation was possible regardless of whether the audience understood the story to be fiction or journalism. This is because stories don’t have to be accurate so much as they need to be plausible and coherent.<sup>76</sup> Likewise, Drs. Green and Brock found that study participants, after reading about a young girl attacked in a shopping mall by a psychiatric

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<sup>70</sup> GERRIG, *supra* note 5, at 10–11.

<sup>71</sup> *Id.* at ch. 3. Gerrig’s hypothesis has been tested and confirmed that a story can create transformation. Van Laer, *supra* note 23, at 800.

<sup>72</sup> Green & Brock, *Public Narratives*, *supra* note 13.

<sup>73</sup> Geoff F. Kaufman & Lisa K. Libby, *Changing Beliefs and Behavior Through Experience-taking*, 103 J. PERSONALITY & SOC. PSYCHOL. 1 (2012); *see also* Loris Vezzali et al., *The Greatest Magic of Harry Potter: Reducing Prejudice*, 45 J. APP. SOC. PSYCHOL. 105 (2015).

<sup>74</sup> Melanie C. Green and John K. Donahue, *Persistence of Belief Change in the Face of Deception: The Effect of Factual Stories Revealed to be False*, 14 MEDIA PSYCHOL. 312, 313 (2011) (hereinafter Green & Donahue, *Persistence of Belief Change*); Green & Brock, *Public Narratives*, *supra* note 13, at 701–02; GERRIG, *supra* note 5, at ch. 3.

<sup>75</sup> Green & Dohanue, *Persistence of Belief Change*, *supra* note 74, at 313; *see also* Slater & Rouner, *supra* note 11.

<sup>76</sup> Jeffrey J. Strange & Cynthia C. Leung, *How Anecdotal Accounts in News and in Fiction Can Influence Judgments of a Social Problem’s Urgency, Causes, and Cures*, 25 PERSONALITY & SOC. PSYCHOL. BULL. 436, 444–45 (1999). For the idea that stories need plausibility and coherence, *see* Rideout, *Twice-Told Tale*, *supra* note 2.

patient, changed their story-relevant attitudes, including their individual assessments about programs that furloughed psychiatric patients.<sup>77</sup>

A classic example can be seen in the way scores of former 1L-law students can remember the story as told by New York Court of Appeals' Chief Judge Benjamin Cardozo in the famous *Palsgraf* case.<sup>78</sup> The mere mention of that case and its facts will likely cause an American-law-trained audience to begin creating a mental image of a scene set at a railway station with people hurrying to get to a train that is about to depart.<sup>79</sup> Actually re-reading the case underscores the point. One paragraph alone has the power to narratively transport an audience to a specific place and perspective. The specificity of the setting and the action clearly present the characters and perspective that Chief Judge Cardozo chose for legal readers to see, making it easier for those legal readers to appreciate the legal conclusions Cardozo reached.<sup>80</sup>

### 3.2. Narrative transportation relies on required story conditions

Narrative transportation and its persuasive effect is far from a given. There are key conditions precedent for a narrative to create transportation that effectively persuades. Drs. Green and Brock developed five postulates about when and how narrative transportation—and subsequent persuasion—works:

1. The text must be an actual story, and one that evokes images and that can implicate a belief system.
2. The effect on the audience matters and must be taken into consideration.
3. The audience member must have some ability to be transported.
4. The story must be well crafted.
5. The medium and context of the narrative must be taken into consideration.<sup>81</sup>

77 Green & Donahue, *Persistence of Belief Change*, *supra* note 74, at 313; see also Green & Brock, *Public Narratives*, *supra* note 13.

78 *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339 (Ct. App. 1928).

79 As I boldly assume has just happened.

80 *Palsgraf*, 248 N.Y. at 340–41. Chief Judge Cardozo also demonstrated that one paragraph alone has the power to narratively transport an audience to a specific place and perspective.

81 Green & Brock, *In the Mind's Eye*, *supra* note 21, at 316. The distinction between a narrative and a list demonstrates the problem with the argument that transactional legal documents can create narrative transportation. By design, those documents rely primarily on list structures and are a series of rules setting out future behavior, rather than a tale of an unresolved conflict with a protagonist and a challenge to overcome.

From the outset, Drs. Green and Brock explain that persuasion via narrative transportation is limited to story texts that are actually stories versus lists of information or instructions.<sup>82</sup> Narrative transportation doesn't happen without a story to travel into. A story raises unresolved conflicts and depicts activities towards solving those conflicts.<sup>83</sup> Those stories must evoke images and implicate belief systems because characters in the story inevitably have belief systems. The images and the story must logically correspond for the audience to be persuaded.

The impact on the audience matters. An audience member's ability to have their belief system changed depends in part on their ability not only to be narratively transported but also to become fully absorbed into the story<sup>84</sup>—that is, to also feel what the characters are feeling. The last item on the list, medium and context, relates to the mode of communicating the story (verbal versus visual) and the historical context in which the story is told. Certain stories, as we know, do not age well. I address these issues later in the article.

## 4. The importance of imagery in narrative transportation

Mental imagery is central to the narrative transportation postulates set out by Drs. Green and Brock.<sup>85</sup> Narrative transportation happens when the audience can fully engage with the story, and doing so involves the ability to form mental images. Vivid images permit the audience to remember the events in the story just as we reconstruct images from memories of our own lives.<sup>86</sup> In a story, some imagery is more effective at persuading than other imagery. The imagery needs to include action, for reasons discussed in this section.

### 4.1. The story-experiencer participates in the storyworld because there is imagery

Story-experiencers are not merely passive recipients of a story. When we read, listen to, or watch a story, we engage it and, with the addition of mental imagery, take part in creating some of the story itself.<sup>87</sup> We are

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<sup>82</sup> *Id.* at 316.

<sup>83</sup> *Id.* at 320.

<sup>84</sup> *Id.* at 316–17, 320.

<sup>85</sup> *Id.* at 323, 327.

<sup>86</sup> Melanie C. Green & Timothy C. Brock, *Transportation into Narrative Worlds: Implications for Entertainment Influences on Tobacco Use*, 108 *ADDICTION* 477 (2013); see also HAVEN, *STORY PROOF*, *supra* note 11, at 94.



part of the story's own creation. We shadow the characters with whom we identify or whom we find interesting. That is, we are active participants even if it is not us, but the characters who engage us, with whom the story characters are interacting.

During the story experience, the author can take audience members only so far. Then it is up to the audience to fill in the mental picture of the storyworld by pulling images and scenes from their own mental filing cabinet. In that way story-experiencers actively author as well.<sup>87</sup> Actively authoring allows the audience to engage more fully and deeply. Dr. Gerrig termed audience involvement and partial creation of story as “performance” and devoted two chapters of his book to that concept.<sup>89</sup>

Experiencing story in this way is a skill that most of us innately possess and that can be further developed.<sup>90</sup> Some people will be more susceptible to narrative transportation than others, although not all causes for that are known.<sup>91</sup> Researchers have found that people who read fantasy fiction are able to develop a deeper sense of empathy than audience members who read primarily nonfiction non-narratives. The differences, they conclude, are attributable to the more active engagement of story-experiencers who must ask more of their imaginations to create the storyworld.<sup>92</sup>

Imagery is so important that it can drive the plot. In popular culture, Professor Dumbledore of the *Harry Potter* series possessed a magical stone bowl called a pensieve which illustrates how the idea of Dr. Gerrig's performance concept operates. The pensieve is a stone bowl filled with a glowing viscous liquid whose purpose is to allow someone to experience another person's memories.<sup>93</sup> When activated with the addition of a memory to the bowl—shown as a silvery thread—the pensieve pulls

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<sup>87</sup> MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE LEGAL WRITING* 38 (3d ed. 2012) (citing Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225 (1989)).

<sup>88</sup> Van Laer, *supra* note 23, at 799.

<sup>89</sup> Gerrig, *supra* note 5, at chs. 2 and 3.

<sup>90</sup> Green & Brock, *In the Mind's Eye*, *supra* note 21, at 327.

<sup>91</sup> Phillip J. Mazzocco et al., *This Story Is Not for Everyone: Transportability and Narrative Persuasion*, 1 SOC. PSYCH. & PERSONALITY SCI. 361 (2010). Dr. Melanie C. Green was a coauthor on this paper along with several others.

<sup>92</sup> Keith Oatley, *Fiction: Simulation of Social Worlds*, 20 TRENDS COGNITIVE SCI. 618 (2016); Raymond A. Mar et al., *Bookworm Versus Nerds: Exposure to Fiction Versus Non-Fiction, Divergent Associations with Social Ability, and the Simulation of Fictional Worlds*, 40 J. RSCH. PERSONALITY 694 (2006) (distinguishing fiction from nonfiction but explaining that by “nonfiction” the authors mean non-narrative nonfiction. Presumably, nonfiction narrative would share some of the same empathy development with fiction readers because the differences appear to hinge on the storyworld construction that readers must do in either case).

<sup>93</sup> J.K. Rowling's several books with these references in chronological order are HARRY POTTER AND THE GOBLET OF FIRE (2000) (Book 4), HARRY POTTER AND THE HALF-BLOOD PRINCE (2005) (Book 6), HARRY POTTER AND THE DEATHLY HALLOWS (2007) (Book 7).

Harry Potter into the bowl and he falls into the scene of the memory, leaving behind the real world of Professor Dumbledore's office. Inside the memory, we see Harry watching actions from the same angle and perspective as the memory-donor, whom we see nearby. Harry is not part of the scene but is an invisible observer. Each time he uses the pensieve, Harry walks away with fresh insights and changed attitudes. All of that occurred because he *saw* the scene.

From the pensieve, Harry witnessed key events in history—the inquisition of a war criminal and subsequent capture of another; early scenes from the childhood of the series' villain; and memories of another professor, who loved Harry's own mother and who eventually sacrificed himself for that love.<sup>94</sup> Each time, Harry came away from the pensieve *changed* from having seen those memories—being inside them affected him and re-oriented his own understandings of his world. Rowling's pensieve scenes precisely encapsulate the sensation and effect of what happens to a transported story-experiencer. Her skill in the story-telling also demonstrates the type of description that will best effectuate narrative transportation: action and setting.

#### 4.2. Imagery of actions and settings lead to more effective persuasion

Some kinds of imagery are more powerful than others. The idea of mental imagery is closely connected to that of “mental rehearsing.”<sup>95</sup> That is, our minds imitatively rehearse or simulate the actions being described.<sup>96</sup> In other words, a story-experiencer who has been narratively transported engages in a simulation of what is happening inside the story.

Neuroimaging studies show that mental simulation through imagery lights up the same areas of our brain used for the actions being described.<sup>97</sup> Even a single word representing action can cause activity in the same brain region responsible for the person engaging in that action. For example, reading about a soccer player scoring a goal activates the area of the brain associated with the actions involved with running and kicking.<sup>98</sup>

The cognitive studies have essentially been confirmed by applied studies in the field of marketing. Narrative transportation has been hailed

94 Sorry about the spoilers.

95 Green & Brock, *In the Mind's Eye*, *supra* note 21.

96 Escalas, *Imagine Yourself*, *supra* note 23, at 37–38. The phenomenon is also termed “mental simulation.”

97 Nicholas K. Speer et al., *Reading Stories Activates Neural Representations of Visual and Motor Experiences*, 20 No. 8 PSYCH. SCI. 989 (2009).

98 *Id.* at 990, 994–95.

as an effective way to approach audiences with product placement and advertising.<sup>99</sup> In one of the most-recent studies, researchers concluded that the ability of internet influencers to promote products on platforms like Instagram will be markedly improved when the influencer posts a selfie of herself using a product rather than simply showing the product in the selfie.<sup>100</sup> The confirming study was set up specifically to measure narrative transportation by virtue of the amount and level of audience interaction with the posted image.<sup>101</sup> The researchers correlated posted comments with narrative transportation. Study participants were shown different photographs and asked two sets of questions: how close was the model to fulfilling the intended action (drinking from a bottle of water or eating a piece of bread), and how likely was the test participant to post a comment? The water bottle and bread examples were chosen because they are neutral objects, i.e., non-branded, and also well-known categories of products. In each run of the study, the participants responded that they were more likely to comment on photos of models who were very close to the intended action, i.e., about to eat the bread or about to drink from the water bottle. From these results, the researchers concluded that (a) the viewers were more likely to be narratively transported when the image showed the product in action and (b) narrative transportation appeared to depend on the action of using the product.<sup>102</sup>

Thus, the audience's sense of action—of movement—creates narrative transportation. But, as a corollary, for narrative transportation to happen, the story-experiencer must have a place to be transported *to*. Even the studies concentrating primarily on the importance of action-description all presented the actions with a sense of their location. The setting was neutral in the selfie study: an indoor room.<sup>103</sup> As small an action as eating bread is, it nevertheless must occur in a physical space; there can be no narrative transportation without that sense of setting.<sup>104</sup> Actions exist in a setting. Thus, this article's readers should take away the duality of action and setting as key to making stories come alive in the minds of the story-experiencer, including those of a legal audience. In legal analysis, setting

<sup>99</sup> See, e.g., Jae-Eun Kim et al., *Narrative-Transportation Storylines in Luxury Brand Advertising: Motivating Consumer Engagement*, 69 J. BUS. RES. 304 (2016); Lien & Chen, *supra* note 23.

<sup>100</sup> Stefanie Farace et al., *Assessing the Effect of Narrative Transportation, Portrayed Action, and Photographic Style on the Likelihood to Comment on Posted Selfies*, 51 EUR. J. MKTG. 1961 (2017).

<sup>101</sup> *Id.* at 1966, 1968–99.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 1966, 1968 (images).

<sup>104</sup> Dr. Gerrig writes of a metaphorical “rented apartment” that provides the setting for narrative transportation. Van Laer, *supra* note 23, at 799.

always plays a natural part: jurisdiction matters greatly. And, additionally, the specific setting matters greatly to the specific facts.

The duality of action and setting can be shown with some very easy statements. Consider:

- Cathren was talking.

That sentence contains action but little context to create a setting. This action could be happening anywhere. There is no way for the audience to narratively transport because there is no set place for the audience to go. Now consider:

- Cathren was baking.
- Cathren was barbequing.

Each of these two simple sentences show action, and the action also creates some context. The writer has left the reader to author the setting but relies upon a shared knowledge to shape some of the setting. In the first, the reader will likely construct a setting indoors with an oven. In the second, the reader will likely construct an outdoor setting with a grill.

### **4.3. Sufficient imagery to launch narrative transportation can occur in a few words**

While, arguably, a simple statement like “Cathren was baking” might create narrative transportation, a few more details can make the imagined setting more definite. Consider:

- Cathren pulled the baking sheet out of the oven with her functioning hand.

Additional details add the vividness that translates to further audience engagement with the scene. This engagement translates into narrative transportation.

And this kind of vivid imagery can easily become part of a legal story. Suppose that Cathren is suing her neighbor for his failure to trim dead tree branches hanging over her property, claiming that the branches caused significant damage to her fence. The description might become something like this:

- Cathren remembered hearing the loud crack of the neighbor’s tree branch snapping. She had just pulled a baking sheet out of the oven with her functioning hand and the loud sound startled her so much that she temporarily lost control, tipping the sheet and spilling hot chocolate-chip cookies on to her clean kitchen floor.

The description shows us the actions of Cathren hearing, of her pulling a baking sheet out of the oven, and of her tipping that sheet so that cookies fall to the floor. The actions in that description drive forward the story.

At the same time, the setting is apparent to us. The word “kitchen” appears only at the very end of the description, but it is superfluous at that point. The audience will have already constructed and transported to a place, and that place is most likely some sort of kitchen. Which kitchen? There is no requirement other than it must be in the range of sound of the backyard, and it must contain an oven and a clean floor. The audience is free to think of a kitchen that has meaning to them—unless of course the author needs to trigger the audience to construct a specific mental image about some other key detail.

While the action and the setting are critical to the transportation, this scene also includes objects, which help construct the scene for the audience. Objects help create scenes and convey a sense of action.<sup>105</sup> These objects still permit the audience to engage in the mental creation of the scene, but with some constraints. There are cookies and they are chocolate chip. The kitchen floor is clean. The clean kitchen floor is what Professor James P. Eyster terms an obtuse object—an object that through its unexpected or precise description creates a feeling of reality and credibility.<sup>106</sup>

Finally, although not critical to the narrative transportation, there is also a flavor of character in the sentence—Cathren is physically impaired in some way. In a different scene, a description of character may actually be part of the scene-setting, details being filled by virtue of the audience’s memories and storehouse of mental images. For example,

- Our mail carrier arrives on our porch a few minutes before 11 am each day.

Notice how “mail carrier” creates the scene for us. We have a clear sense of who is arriving and why. Using a proper name would not convey the same information and would leave more of the scene open to the audience’s own interpretation. While that might be fine for many details, if the writer needs the audience to know that “Mr. Jones” is regularly on the porch every day, then “mail carrier” will do more to tap into the audience’s shared experiences. “Mr. Jones arrives on our porch a few minutes before 11 am each day” leaves open enough information that it is harder to transport into the scene.

Conveying story in a very few number of words has become something of a cottage industry thanks to the famous six-word story, “For sale, baby shoes, never worn.” The story is driven not by character but by

105 Recall that in the selfie study, the narrative transportation depended on the influencer posting a selfie of herself engaged in using the product. The action necessarily depended on the object. Farace, *supra* note 100.

106 James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 LEGAL WRITING 87, 102 (2008).

objects and (in)action that set the scene.<sup>107</sup> A Google search for the precise phrase “six-word stories” will net almost 200,000 results including a robust website devoted entirely to the topic<sup>108</sup> and guidelines for submission in a large online journal.<sup>109</sup> Relatedly, the genre “Hint Fiction” has people writing short stories, twenty-five words or fewer, which suggest a more complex series of events taking place in a larger story. Thus, Hint Fiction is characterized by a form that requires readers to notice and then fill in blanks with their own imaginations.<sup>110</sup> Multiple websites now explain the concept and even offer to write one for a fee.<sup>111</sup> To work, six-word stories and Hint Fiction require action and a sense of setting.

## 5. Applying the science in legal storytelling

Understanding the connection of description and narrative transportation opens the idea of being aware of these twin concepts in telling case facts and even in the process of legal reasoning when that reasoning is based in narrative comparisons. That is, description is key to lawyers’ identifying, selecting, and then telling facts as part of constructing legal advocacy. Lawyers engaging in persuasive storytelling are using a strategy similar to what we all do when we construct stories about ourselves. Psychologists can point to evidence suggesting that we form our individual histories by selecting and ordering personal memories to build our “coherent representation of self.”<sup>112</sup> In litigation and in policy-advocacy, the stories we tell as lawyers assist the audience to reach reasoned judgments flavored by the experience of those stories.<sup>113</sup>

<sup>107</sup> This story, apocryphally attributed to Ernest Hemingway, was not authored by him. GARSON O’TOOLE, *HEMINGWAY DIDN’T SAY THAT: THE TRUTH BEHIND FAMILIAR QUOTATIONS* 183–91 (2017).

<sup>108</sup> SIX WORD STORIES, <http://www.sixwordstories.net/> (last visited June 20, 2020).

<sup>109</sup> *Six-Word Story Guidelines*, NARRATIVE, <https://www.narrativemagazine.com/sixwords> (last visited June 20, 2020).

<sup>110</sup> Based on ROBERT SWARTWOOD, *HINT FICTION: AN ANTHOLOGY OF STORIES IN 25 WORDS OR FEWER* (2010). The author has conducted two contests. See *New Hint Fiction Contest*, ROBERT SWARTWOOD (Mar. 4, 2019), <https://www.robertswartwood.com/blog/category/new-hint-fiction-contest>. Roxanne Gay judged the second contest.

<sup>111</sup> See e.g., *How to Write Hint Fiction*, CUSTOM ESSAY MEISTER (Dec. 17, 2019), <https://www.customessaymeister.com/blog/how-to-write-hint-fiction#meaning-of-hint-fiction-what-is-hint-fiction>.

<sup>112</sup> Raymond A. Mar, *The Neuropsychology of Narrative: Story Comprehension, Story Production and their Interrelation*, 42 *NEUROPSYCHOLOGIA* 1414, 1415 (2004).

<sup>113</sup> *Id.* The cited studies looked at the impact of narrative on jurors rather than judges. The researchers found that jurors base verdicts upon the creation and coherence-testing of the multiple stories presented at trial. For a study of judges relying on story, see Kenneth D. Chestek, *Judging By the Numbers: An Empirical Study of the Power of Story*, 7 *J. ALWD* 1 (2010). Professor Chestek used two sets of briefs for each party in his fictionalized appeal. In one set of two briefs, his arguments were based strictly on a presentation of rules without cause-and-effect connective tissue. In the other set of two briefs, he used the cause-and-effect structure of narrative reasoning. The large majority of judges, career clerks, and experienced lawyers found the narrative briefs more persuasive. The only group that wavered was the newer lawyers (0–4 years’ experience), and even they were split fairly evenly.

In the legal literature and textbooks, the idea of narrative transportation in legal analysis, persuasion, and writing has started to appear and hopefully will be more fully explored in subsequent dialogue. To date, most other scholars have taken the position that the concept is important mostly for the telling of the case facts, i.e., the client's story, although some scholars have taken the position that narrative transportation is important across the whole of narrative advocacy.<sup>114</sup> One scholar suggests, though, that narrative transportation cannot occur with circumstantial evidence because that type of evidence is more abstract, making it rhetorical instead of narrative: "[A]n argument, no matter how well-crafted, simply doesn't generate such convergence."<sup>115</sup> But that one sentence generalizes a broad topic. Putting aside circumstantial evidence, some types of legal arguments can transport audience members into a story by the very nature of the arguments themselves. Analogical reasoning works by comparing facts, which automatically implicates narrative aspects.

### 5.1. Narrative transportation with the client's story

Clearly, a lawyer telling a persuasive and effective story about the client's facts depends on narrative transportation to a specified place and perspective. Much of the Applied Legal Storytelling scholarship to date that addresses the telling of a client's story relies on an assumption that narrative transportation to that place and perspective is happening—even if those scholars were not aware of the assumption.<sup>116</sup> But the science tells us more than that. It tells us that narrative transportation matters, and that action and setting matter to *it*. It also tells us that the storyteller should have a sense of the audience's relative position on an issue—the existing beliefs—and to tell the legal story keyed to the type of audience response needed—whether it is asking the audience to reinforce an existing belief system or to change currently held beliefs.

Take, for example, the much-lauded brief written by John Roberts (not yet Chief Justice Roberts) while defending the state of Alaska, which had adopted environmental emissions standards below those of the Environmental Protection Agency.<sup>117</sup> That brief is considered a testament to

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<sup>114</sup> ROBBINS, JOHANSEN & CHESTEK, *supra* note 35, at 167–69; LINDA L. BERGER & KATHRYN M. STANCHI, *LEGAL PERSUASION: A RHETORICAL APPROACH TO THE SCIENCE* 51–52 (2018) (including information about and conclusions from some of the psychological studies); SMITH, *supra* note 87, at ch. 3.

<sup>115</sup> Heller, *supra* note 25. In Professor Heller's defense, he also did not have access to all of the studies that are now available. So much of the narrative-psychology literature has been published in the past 15 years that it is unfair to hold Professor Heller to that knowledge in his 2006 law-review article.

<sup>116</sup> By "much of," I mean most of the articles that can be found in the first Applied Legal Storytelling Bibliography, Rideout, *Applied Legal Storytelling Bibliography*, *supra* note 24.

<sup>117</sup> Brief of Petitioner, Alaska Dep't of Environmental Conservation Docket 02-658 (2003).



the power of legal storytelling, in part because of this descriptive passage in the statement of facts:

For generations, Inupiat Eskimos hunting and fishing in the DeLong Mountains in Northwest Alaska had been aware of orange-and red-stained creekbeds in which fish could not survive. In the 1960s, a bush pilot and part-time prospector by the name of Bob Baker noticed striking discolorations in the hills and creekbeds of a wide valley in the western DeLongs. Unable to land his plane on the rocky tundra to investigate, Baker alerted the U.S. Geological Survey. Exploration of the area eventually led to the discovery of a wealth of zinc and lead deposits. Although Baker died before the significance of his observations became known, his faithful traveling companion—an Irish setter who often flew shotgun—was immortalized by a geologist who dubbed the creek Baker had spotted, “Red Dog” Creek.<sup>118</sup>

This description transports the audience to the cockpit of Baker’s plane, sitting next to the Irish setter, and looking down over the “orange and red-stained creekbeds.” The setting matters greatly and in fact is critical to the entire case. And the described actions put the audience into the setting, flying the plane alongside Baker. The legal reader is transported as if inside a novel. The facts, as selected and presented, reveal the conclusion the writer hopes the audience will reach: that this is a case of federal overreaching in the activities of the local community. With his statement of the facts, Roberts primes the audience for the legal theory of the case. Setting here is key to the legal theory.

Writing for narrative transportation can happen in state opinions just as easily as in briefs written to the United States Supreme Court. Return to the *Palsgraf* case as a memorable example of state law: at its core, *Palsgraf* is a state-level decision about a personal-injury claim. Just as John Roberts did in the previous example, Chief Judge Cardozo primed the legal reader for the legal theory that informed the court’s decision.

Plaintiff was standing on a platform of defendant’s railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was

118 *Id.* at 7; passage also reproduced, and the description analyzed in ROSS GUBERMAN, *POINT MADE* 59 (2d ed. 2014).

dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform, many feet away. The scales struck the plaintiff, causing injuries for which she sues.<sup>119</sup>

In one paragraph, Chief Judge Cardozo provided enough facts to narratively transport the legal reader and to point towards accepting the narrative coherence of the court's ruling in the case—that a defendant owes no duty towards an unforeseeable plaintiff.<sup>120</sup> The scene and action are described in a specific way to emphasize—and de-emphasize—certain parts of the setting and certain actions simultaneously happening. The plaintiff is given no name and no context other than being in the wrong place at the wrong time. Character does not matter in Judge Cardozo's telling. The setting matters more as do objects such as a package and a scale. The package (a focusing object) is described as wrapped—emphasizing that the dangerous nature of the contents was unknown to the guards whose actions could then be more confidently accepted in the minds of the audience as helpful rather than dismissive or improper. Our perspective inside the story is with the guards, pulling the men onto the train—we can almost imagine the train just starting to move. As part of creating that perspective, the falling scales that ultimately injured the plaintiff are described as some distance away from the emphasized action.

119 *Palsgraf*, 248 N.Y. at 340–41. I realize that in choosing to use the infamous *Palsgraf* case I have placed myself inside the controversy that surrounds Justice Cardozo's facts section in the decision. There are multiple challenges to Cardozo's decision itself, which ignore facts about Mrs. Palsgraf's status as a passenger who was owed a higher duty of care, but for the purposes of this article, the material challenge I want to highlight and respond to involves his description of the setting. He set up the scene as one of distance between the explosion and Mrs. Palsgraf, "The shock of the explosion threw down some scales at the other end of the platform, many feet away." *Id.* That description has been challenged by commentators as beyond the scope of judicial discretion in opinion-writing. RICHARD A. POSNER, *CARDOZO: A STUDY IN REPUTATION* 39 (1990); see also JOHN T. NOONAN JR., *PERSONS AND MASKS OF LAW: CARDOZO, HOLMES, JEFFERSON, AND WYTHE AS MAKERS OF THE MASK* ch. 4 (1976) (discussing, among other things, the famous Prosser lecture at the University of Michigan, *Palsgraf Revisited*). The criticism of this scene, as we all imagine it, centers on the lack of testimony about the distance. Transcript of Trial Testimony at 10–12, *Palsgraf v. Long Island Railroad, Co.*, 248 N.Y. 339 (1928), [https://www.law.berkeley.edu/files/Palsgraf\\_Record.pdf](https://www.law.berkeley.edu/files/Palsgraf_Record.pdf) (hereinafter *Palsgraf* Record). A contemporary news story about the event mentions a distance of ten feet, which may have influenced Justice Cardozo. *Bomb Blast Injures 13 in Station Crowd*, N.Y. TIMES, Aug. 25, 1924, at 1. Or, he may have simply made an inference of distance from Mrs. Palsgraf's testimony that she had enough time to call out to her daughter. *Palsgraf* Record, *supra* this note, at 11–12. While "several feet away" might be a reasonable inference, the same cannot be said for placing her "at the other end of the platform." The very liberties taken by Cardozo in his crafting of the facts demonstrates the power of description in setting the scene. His choice to create distance narratively transports readers to a particular place on a train platform and permits readers to see why the case was decided at it was. Was he unethical in doing so? There's good argument for it. And that anchors the point that setting description matters. That the *Palsgraf* decision continues to fascinate scholars underscores just how critical it is for advocates to deliberately and carefully set the scene (within the limitations of the evidence) because the place where the audience transports within the story matters enormously to how we perceive the entire story of the case.

120 *Palsgraf*, 248 N.Y. at 340–41.

If the court had ruled oppositely, that Long Island Railroad did have a duty to this plaintiff, the story would have been told differently. One professor imagined it this way, changing the emphasis to being more about character, although the setting still plays a significant role:

On a hot Sunday in August, Helen Palsgraf decided to escape her basement flat and take her two younger children, Elizabeth and Lillian, to the Rockaway Beach. A janitor and single parent with an annual income of \$416, she chose the most economical means of transportation, the Long Island Railroad, a subsidiary of the Pennsylvania Railroad. After buying the tickets, Mrs. Palsgraf led her children onto the crowded station platform, 12 to 15 feet wide.

A train stopped at the station bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, seemed unsteady as if about to fall. In his hurry, he hit a woman in the stomach. A guard on the moving car held the door open and reached forward to help him in. Another guard on the platform pushed from behind. In this act, the package was dislodged and fell upon the rails. The package was a round or oval bundle, 15 to 20 inches in diameter. In fact, it contained fireworks or some sort of explosive. When the package fell, it exploded.

The Palsgraf family stood near an ordinary penny scale of the type often found on railroad platforms. The explosion either knocked it over or the stampede of the panicked crowd caused it to fall. According to Mrs. Palsgraf: "Flying glass—a ball of fire came, and we were choked in smoke, and I says, 'Elizabeth, turn your back,' and with that the scale blew and hit me on the side." She testified: "Well, all I can remember is I had my mind on my daughter, and I could hear her holler, 'I want my mama!'—the little one (Lilian)."

Mrs. Palsgraf was hit by the scale on the arm, hip, and thigh. About one week later, she began stuttering and stammering. Dr. Graeme Hammond, a prominent neurologist, attributed her condition to traumatic hysteria. According to Dr. Hammond, "It was with difficulty that she could talk at all."<sup>121</sup>

Where the audience goes via narrative transportation is quite different in this version of the story. In this version the action and perspective focus on the plaintiff, who is now named and developed as a character. The setting also has changed as has the action. The writer deliberately places

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<sup>121</sup> Adapted from Louis J. Sirico Jr., *Cardozo's Statement of Facts in Palsgraf, Revisited*, 6 *PERSPS.* 122 (1998). Until his passing, Professor Sirico was a friend and mentor. He was the first person to interview me for a full-time academic position, and he was one of the early group of professors who encouraged me to keep writing about legal storytelling. I am delighted that this article provides an opportunity to cite something he wrote.

the audience elsewhere on the platform than where Chief Judge Cardozo placed the audience in his storytelling about the case. The writer of this version wants the audience to shadow the plaintiff and identify with her perspective of the day's events. In doing so, the description of the action shifts away from the guards helping two men onto a train, and instead becomes the action of a mother trying to keep her children safe from harm. An audience reading this version of the facts would be steered towards an outcome to the legal story that favors Ms. Palsgraf prevailing.

In a more modern context, I have seen narrative transportation memorably work in domestic-violence restraining-order cases, where the description of just a few more setting details changed the feel of the scene entirely. In one representation, a woman described an escalating child-visitation exchange with her former boyfriend. She explained that she was in her car with the child and with her father, trying to leave, but that she felt trapped because her ex-boyfriend and his family were trying to block her departure by standing around the car. Described this way, the setting frees the audience to construct a mental image of the scene that might not look intimidating enough to justify a restraining order. That scene shifts, however, when one more detail is included—a single detail can cause the “shoe to drop,” to speak. When her clinic-student lawyers asked the client how many family members this involved, she replied, “twenty.” The description now requires the audience to mentally see the scene in a much more controlled way, one that does come across as sinister and intimidating.

Similarly, in another restraining-order case, the situation centered on the plaintiff, lying ill on a couch when she was verbally accosted by her estranged husband who had entered the house, contravening the terms of their separation. The entirety of the case centered on the setting and in particular the location of that couch. The student-lawyers handling the case as part of a clinic representation had their client, the plaintiff, describe in her testimony the actions it took to reach her while she was lying immobile on the couch. Her description conveyed the sense of threat she felt. The couch was located in a family room at the back of the house, requiring someone to walk a hallway, through the kitchen, down a few steps, and across the family room. Having the client describe the setting to the hearing judge mattered in that case, because the action of a defendant traversing that far into the house was much more ominous than a scene in which a defendant could see the couch from the front door.

## **5.2. Narrative transportation in legal reasoning**

Beyond the telling of the client's story, narrative transportation plays—or should play—a role in the legal-analysis portions of persuasion

when the reasoning includes narrative. Scholars have debated whether narrative plays a role in the dialectical forms of reasoning,<sup>122</sup> but they will at least agree that narrative plays a key role in analogical reasoning.<sup>123</sup> As the Red Dog Creek story vividly demonstrates, narrative also plays a role in policy-based reasoning because that type of reasoning depends on the audience's envisioning a future world under the proposed policies.<sup>124</sup>

In analogical reasoning, lawyers compare critical facts that lead to a legal ruling that the lawyer wishes to liken to or distinguish from their client's situation. Necessarily, the process of analogy rests on a comparison of selected details and the related description. The same processes used to select and describe things in a statement of facts applies equally in a description of precedent.

As the *Palsgraf* facts demonstrate, an audience can be narratively transported in a few sentences. The illustration of a case used for analogy or distinction purposes could similarly create narrative transportation in just a few words. Case facts can be condensed to a few sentences or even a parenthetical phrase. Consider this paragraph of rule illustration in a slip-and-fall situation.

Oregon courts cast a wide net when contemplating what constitutes a pavement hazard that gives rise to a commercial landowner's duty of care for their premises. Beyond a duty to remove snow and ice, courts have deemed a number of other situations foreseeable and dangerous, giving rise to a duty of care to pedestrians walking by who tripped and fell. *Gardener v. Portland Nursery*, 321 P.3d 622 (Or. 2004) (overgrown rosebushes partially blocking the sidewalk); *MacTarnahan v. McMenamin*, 814 P.2d 802 (Or. 1982) (beer keg left on the pavement by the driveway entrance); *Blumenauer v. Wyden*, 409 P.3d 112 (Or. Ct. App. 2010) (spilled recycling can in the parking lot); *Beard v. Ringside Restaurant, Inc.*, 248 P.3d 624 (Or. App. 2002) (20-lb. bag of root vegetables placed in front of entryway as a decoration).<sup>125</sup>

122 *But see* Linda H. Edwards, *The Convergence of Analogical and Dialectic Imagination in Legal Discourse*, 20 LEGAL STUD. F. 7 (1996). In Professor Edwards's article, "analogical" refers to reasoning grounded in story and metaphor, whereas "dialectic" refers to formal logic grounded in theses and antitheses. *Id.* at 9. Professor Edwards adeptly argues that there is only imagined, not true polarization of narrative versus systematic reasoning. She demonstrates that narrative appears in the many forms of legal reasoning used by legal decisionmakers and concludes that there is room for the concept of "narrative reasoning" as part of the discourse of the dialectic.

123 Linda H. Edwards, *Speaking of Stories and Law*, 13 LEGAL COMM. & RHETORIC 157, 176–77 (rejecting in the legal context the post-Enlightenment definition of "reasoning" which included only "systematized, rationalized, formal and semi-formal thought" and which excluded narrative as part of "reasoning").

124 ROBBINS, JOHANSEN & CHESTEK, *supra* note 35, at 235.

125 This entire example is from the imagination of Steve Johansen, who was poking some light fun at the New Jersey pantheon of premises liability cases. The original version of this example can be found in *id.*, at 335.

The action described here appears before the parenthetical list—the action of a pedestrian walking and then tripping and falling. The parenthetical descriptions create the settings for the legal reader’s mental imagery. The parentheticals themselves focus on action and setting—the latter through the description of objects. No character description appears. Yet, even without it, the reader can walk into the story and beside the plaintiff who is slipping or tripping.

In legal reasoning that relies on—or that creates—legislative history, lawyers can likewise create narrative transportation by describing actions and settings related to the proposed passage of a statute or an amendment.<sup>126</sup> Part of the advocacy may involve the use of story, told either to illustrate why the legislation is needed (as in the case of lawyer acting as lobbyist or legislator) or to explain the reasons for existing legislation’s enactment (as in the case of a lawyer-as-litigator, arguing for a specific statutory interpretation). Using story as part of the policy-based advocacy helps contextualize the social–political milieu in which a piece of legislation is needed or was enacted. For example, in sponsoring what became the New Jersey Distracted Driving statute,<sup>127</sup> New Jersey Assembly members who sponsored the bill issued a news release and in it spoke of three stories of victims injured or killed by motorists texting while driving.<sup>128</sup> The stories of the accidents were focused on the setting of a car accident and the action—a driver doing something other than keeping eyes on the road.

## 6. There are always cautions

The idea of narrative transportation is not a panacea for all legal advocacy. Only certain situations will permit it—those that include a communication that is crafted as a story. Those include a descriptive telling of a character’s efforts over time to reach a goal. Not every legal-writing document is written with a cause-and-effect structure.<sup>129</sup> And in turn that means that not every legal-writing situation can provide a narrative transportation moment.

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<sup>126</sup> I am speaking of lawyers in two different situations. The first involves the lawyer working in a legislative setting, whether externally as a lobbyist or internally as a member of legislative staff (or as a legislator). The second involves the lawyer in a litigation setting who is building an argument around legislative history.

<sup>127</sup> N.J. Stat. 39:4-97.3 (2013).

<sup>128</sup> “Kulesh, Kubert & Bolis’ Law” *Cracking Down on Reckless Drivers on Cell Phones Signed into Law*, N.J. ASSEMBLY DEMOCRATS, <https://www.assemblydems.com/kulesh-kubert-bolis-law-cracking-down-on-reckless-drivers-on-cell-phones-signed-into-law/> (last visited May 25, 2021).

<sup>129</sup> See *supra* section 3.3; Green & C. Brock, *In the Mind’s Eye*, *supra* note 21.

Moreover, any communication must be strategized carefully to send the audience where the lawyer intends, while also keeping the audience engaged by having them “author” some of the details. The propensity for an audience member to be transported is also affected by the audience member’s own attributes—for example, the ability to create mental imagery. But one need not be an expert at mental imagery. Studies show that those who have even a small capability will be transported.<sup>130</sup>

Even the best-described story can fail, however, when the timing is wrong. Whether the audience is open to the story at all depends in part on the rhetorical concept of *kairos*: the opportune moment.<sup>131</sup> That is, the story must be told at a moment in time when the audience is ready to receive it. The power to persuade an audience always depends on the audience’s receptivity.<sup>132</sup> And receptivity depends on many factors, ranging from the mundane (whether the audience is alert and hydrated) to the global (societal expectations or significant recent events).

As one might expect, the quality of the writing also matters. The story must also be a *good* story, one that evokes images and emotions. The medium and context of the narrative also matter. In law as in other contexts, the communication medium matters to the way the message should be created.<sup>133</sup> Naturally, the better the story is crafted, the easier the transport (it should be a \*good\* story).<sup>134</sup>

Moreover, certain legal documents are purposefully designed to convey the outcome of a negotiated story but not be, or include, stories themselves. A legal document may even contain key aspects of setting but still not effectuate narrative transportation. A property deed focuses on place and maybe even setting. But a property deed has no action. Nor does the technical nature of the property’s description lend itself to mental imagery. Nor do transactional conveyance documents easily create narrative transportation. A negotiated contract of sale and a testator’s will are both the product of stories and the outcome of narrative reasoning and narrative decisionmaking. But the four corners of these documents are designed as a structured series of entries—numbered in many cases—

<sup>130</sup> Green & Brock, *In the Mind’s Eye*, *supra* note 21, at 327.

<sup>131</sup> CAROLYN R. MILLER, *Kairos in the Rhetoric of Science*, in *A RHETORIC OF DOING: ESSAYS ON WRITTEN DISCOURSE IN HONOR OF JAMES L. KINNEAVY* 312 (Stephen P. Witte, Neil Nakadate & Roger D. Cherry eds., 1992).

<sup>132</sup> Linda L. Berger, *Creating Kairos at the Supreme Court: Shelby County, Citizens United, Hobby Lobby, and the Judicial Construction of Right Moments*, 16 J. APP. PRAC. & PROCESS 147 (2015); Ruth Anne Robbins, *Three 3Ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 MICH. STATE U. L. REV. 1359 (2015).

<sup>133</sup> Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 Legal Comm. & Rhetoric 1 (2015).

<sup>134</sup> Green & Brock, *In the Mind’s Eye*, *supra* note 21, at 327–28. There is no empirical, just observational data for good versus bad stories. This also begs the question of what makes a story “a good story.” Humans have been chasing that idea for multiple millennia. If that were fully quantifiable, we would all be best-selling authors.



that act as an instructive checklist for parties to effectuate the outcomes dictated in the document. Although some of the items in the list may contain some narrative elements, the documents themselves cannot be a vehicle of narrative transportation because they are not designed to flow from one image or action to another in a way that would permit the readers to fall into and remain inside the story. That is not to say story is not present—it very much is in the background to the document’s creation and, of course, in any subsequent litigation that may arise.<sup>135</sup>

Description can also go too far, with overuse creating cognitive overload. We all have finite cognitive limits, even when it comes to story. There is a double-edged sword to a highly visualized description. The more the creator shows the audience visually, the less mental imagery the audience creates for themselves and presumably this means less holistic engagement.<sup>136</sup> There must be a balance. Not every part of the legal story can be described in abundant detail—that would exhaust the audience. Instead, the legal storyteller must choose where to emphasize the level and specificity of details.

Too many—and the wrong—details can also wander into the realm of distraction from the details that matter most to the legal outcomes. The legal writer who uses detail to draw readers into a scene must be careful to avoid including what amounts to irrelevant noise. In the kitchen example, the type of cookie Cathren was baking—chocolate chip—and the cleanliness of the floor might set a scene with a taste of detail. But any more than that might tip the balance. A legal advocate who includes too many facts irrelevant to the precise legal issue under review likewise risks transporting the audience to a scene that has little connection to the attitude shift the lawyer seeks.

A different kind of problem arises when a story’s reader sees its film adaptation. The reader will compare the movie to the mental imagery the reader has already “authored.” This helps explain why producers of movie adaptations of best-selling books must walk a fine line. The more elaborate the storyworld imagined by the reader, the greater the possible tension with the movie version’s narrative fidelity. Fantasy and Science Fiction are among the hardest to adapt because the audience will have engaged more deeply with the many opportunities to imagine the scenes and actions in the books.<sup>137</sup>

135 *Contra*, Chesler & Sneddon, *supra* note 25. The authors take the position that a will is a story and therefore that it can achieve narrative transportation. I appreciate the argument but fundamentally disagree with it because narrative transportation happens within the four corners of the document itself. Documents that are created in the background to support the main piece of legal writing are called “shadow documents.” ROBBINS, JOHANSEN & CHESTEK, *supra* note 35, at 141–48 (citing Interview with Victoria L. Chase).

136 *Id.*

137 Raymond A. Mar et al., *Bookworm Versus Nerds: Exposure to Fiction Versus Non-Fiction, Divergent Associations with Social Ability, and the Simulation of Fictional Worlds*, 40 J. RSCH. PERSONALITY 694 (2006). A film can rise or fall based

For persuasive legal storytelling in written format, scene-building is likewise a balancing act. The writer wants the audience to engage in some mental imagery, but also wants to provide guidance that keys to the legal story's theme and case theory. The writer must choose carefully and leave behind what will clutter a narrative, especially because we all possess a finite capacity when we process legal texts—we can do only so much with too much.<sup>138</sup> When we read narratives, we mentally rehearse their scenes. Whether this ultimately affects persuasion has something to do with the detail given to us, and, of course, how engaged we are to begin with.

Finally, as with any technique used for persuasion, a legal storyteller must be careful about professionalism and ethical obligations. Legal stories are meant to be told from a particular perspective but lawyers are prohibited from engaging in deliberate and nonconsensual deception.<sup>139</sup> Stories are sometimes termed “necessary but dangerous,” a caution based on a fear that advocates will appeal to emotion over intellect.<sup>140</sup> Advocates need to remember that legal storytelling is a way to organize and convey discovered facts. The whole genre of legal storytelling as a category of nonfiction narrative must be more grounded in truth and realism than fictional stories may dwell.

## Conclusion

It is not enough for a legal advocate to tell a story—that story must be strategic. It should create a pathway for the audience to form mental imagery of action and place. My objective here has been to open readers' minds to new avenues in Applied Legal Storytelling. I have succeeded if reading this article creates connections for lawyers and scholars in their own work. As a form of legal advocacy, legal storytelling works most effec-

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on the navigation of those tense waters. One example from media comes from Harry Potter movies. In 2001 when Warner Brothers' vision of Hogwarts was first revealed to audiences, news reports were written about people sighing with relief—Chris Columbus, the director, didn't ruin what the book readers had formulated in their minds. Kenneth Turan, *Magic by the Book*, L.A. TIMES, Nov. 16, 2001, <https://www.latimes.com/archives/la-xpm-2001-nov-16-et-turan16-story.html> (“It is the film's success in re-creating that world that points out its happiest accomplishment, the ability to remind us of what we loved about the book.”). For more about narrative fidelity in law as a substantive concept focusing on a story as ringing true with what we already know or think we know to be true, see J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING 53, 69–78 (2008).

**138** Andrew Carter, *The Reader's Limited Capacity: A Working-Memory Theory for Legal Writers*, 11 LEGAL COMM. & RHETORIC 31 (2014). For more about a reader's limited capacity in a narrative advertisement setting, see Lien & Chen, *supra* note 23, at 518 (stating that a reader has limited capacity to process information, so they will normally gravitate towards the most attractive information).

**139** That sentence was very specifically phrased because deception, also known as redirection, is not always nonconsensual in law. Melissa H. Weresh, *Wait, What? Harnessing the Power of Distraction or Redirection in Persuasion*, 15 LEGAL COMM. & RHETORIC 81, 112 (2018) (explaining that when a mediator withholds confidential information from one side in the mediation, that is a “consensual deception, agreed upon by the parties”).

**140** Brian J. Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 LEGAL WRITING 17, 45–46 (2008).

tively as persuasion when the audience is narratively transported into the story and experiences it from a specifically chosen perspective. For that to occur, legal storytellers must make careful choices about the mental imagery of action and setting. While previous advice from scholars have exhorted legal advocates to “show” rather than “tell,” what it is to do so has not been made clear. This article provides a foundation for the type of “show” that persuades.