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### Like a Glass Slipper on a Stepsister: How the One Ring Rules Them All at Trial

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# Like a Glass Slipper on a Stepsister: How the One Ring Rules Them All at Trial

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## I. INTRODUCTION

It's dark out. The clock ticks. Time is running out. Sneaking in seemed like a good idea. But the sneak was not supposed to be there. There's no more time. *Hurry! Leave Now!* The sneak runs. A single clothing accessory slips loose. In the aftermath, searchers arrive on the scene. All of them ask the same question. Who was that person? Where has this mysterious person gone? They comb the scene. They find the accessory. Perhaps it will lead to their missing person. So they ask questions. They develop a list of people to whom it might

belong. One of them tries it on. But it doesn't fit. Then the moment arrives. The sneak slips the accessory on. It fits. They have found their missing person, or perhaps not.

The story above could be Cinderella.<sup>1</sup> Then again, it has elements of the trial of Lincoln assassination conspirator, Dr. Samuel Mudd.<sup>2</sup> It has a few elements of the murder trial for O.J. Simpson, whom the defense cast as Cinderella's stepsister.<sup>3</sup> These are just a couple of examples from more famous trials involving a piece of evidence that served as an "endowed object" in the trial narrative.

Material items appear in both our literature and our cases.<sup>4</sup> If attorneys sift through the physical evidence, they can often find the One Ring, the glass slipper, or the holy grail. In literature, these items are known as endowed objects.<sup>5</sup> These objects appear throughout celebrated fiction works such as *The Lord of the Rings*, *The Wizard of Oz*,

1. See WANDA GAG, *TALES FROM GRIMM* (Coward, McCann & Geoghegan, 1981); HENRY W. HEWET, *CINDERELLA* (D. Appleton & Company 1855).
2. Robert Aitken & Marilyn Aitken, *The Long, Strange Case of Dr. Samuel Mudd: The Assassination of Abraham Lincoln*, 31 *LITIG.*, no. 3, Spring 2005, at 51, 53-55; Chief Judge Frank J. Williams, *Third George S. Prugh Lecture in Military Legal History: Abraham Lincoln in Law and Lore: The Lincoln Conspirators' Trial by Military Commission*, 202 *MIL. L. REV.* 258, 263 (2009); *Biography and Images of Dr. Samuel Mudd, Assassination Conspirator*, UNIV. OF MO.-KANSAS CITY SCH. OF LAW, <http://law2.umkc.edu/faculty/projects/ftrials/lincolnconspiracy/mudd.html>, (last visited July 3, 2012).
3. See Robert W. Peterson, *The Bard and the Bench: An Opinion and Brief Writer's Guide to Shakespeare*, 39 *SANTA CLARA L. REV.* 789, 790 (1999) (comparing the glove to the handkerchief and Simpson to Othello); Susan Sage Heinzelman, *Amateurs and Professionals, Lawyers and Critics: An Essay on Kornstein's Shakespeare*, 21 *LAW & SOC. INQUIRY* 185, 202 (1996) (reviewing DANIEL J. KORNSTEIN, *KILL ALL THE LAWYERS? SHAKESPEARE'S LEGAL APPEAL* (1994)) (comparing the glove to the handkerchief and Simpson to Othello); Kenneth Noble, *June 11-17: An Ill Fitting Strategy*, *NEW YORK TIMES* (June 18, 1995) (discussing how the gloves invoked the analogy of the step-sisters).
4. See, e.g., WILLIAM SHAKESPEARE, *OTHELLO* (A handkerchief was key to the plot in this play); RITA WILLIAMS-GARCIA, *LIKE SISTERS ON THE HOMEFRONT* (Lodestar Books 1995) (A cowrie shell featured prominently in this novel); Transcript of Opening Statements by Mr. Hartzler & Mr. Jones, *U.S. v. McVeigh*, No. 96-CR-68 (D. Colo. Apr. 24, 1997), 1997 WL 198070 (In the trial of convicted Oklahoma bomber Timothy McVeigh, a t-shirt figured prominently in the prosecution's case.); Transcript of Closing Arguments by Mr. Scheck and Mr. Cochran, *People v. Simpson*, No. BA097211 (Cal. Super. Ct. Sept. 28, 1995), 1995 WL 697930 (In the trial of acquitted murderer, Orenthal James Simpson, an ill-fitting leather glove helped to undo the prosecution's case and resulted in the famous saying, "If it doesn't fit, you must acquit.").
5. Rita Williams-Garcia, Professor, Vermont College of Fine Arts, Lecture: Objects, Artifacts, and Stuff (Winter 2011) (this lecture discusses endowed objects); Kimberly Winters, *The Things Stories Carry: How a Rope, a Loop of Red Thread, a Song-less Canary, and Other Collected Objects can Reveal the Heart of a Story* (Fall 2004) (unpublished critical thesis, Vermont College/Union Institute & University) (on file with author) (the concept of an endowed object is central to this thesis).

and *Cinderella*. In *The Lord of the Rings*, one single magic ring rises up above all the other magic rings to “rule them all.” The ring rules not just the other rings but all of the characters, the story itself, and the readers.

Trial attorneys can learn techniques that fiction writers have been using successfully for centuries and endow a single object to “rule them all.” In fact, there is a growing field of legal scholarship, known as Applied Legal Storytelling, which involves applying storytelling concepts to legal concepts, and some evidence suggests that juries are responsive to narrative framework.<sup>6</sup> Thus trial attorneys can use the literary concept of endowed objects to identify a key piece of physical evidence that weaves a thread of narrative continuity through the case and resonates in the mind of the judge or juror.

An endowed object is a material object that reverberates with symbolic significance throughout the story.<sup>7</sup> It creates narrative cohesion, and, at trial, it can work well as a transition or a reminder of previous testimony.<sup>8</sup> These symbols speak to the subconscious mind and evoke an emotional response.<sup>9</sup> They develop a character.<sup>10</sup> An endowed object assumes an importance larger than itself through the characters who interact with it;<sup>11</sup> indeed in ancient times, objects themselves could be accused of crimes.<sup>12</sup> Some critics say that the object should be something that people can hold in their hands and that the object should be touched or invoked three times to be endowed.<sup>13</sup> Finally,

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6. Valerie P. Hans and Krista Sweigart, *Jurors views of Civil Lawyers: Implications for Courtroom Communications*, 68 IND. L.J. 1297, 1303 (1993).

7. See Williams-Garcia, *supra* note 5; Winters *supra* note 5.

8. See *infra* Part VII (discussing endowed objects and story structure).

9. See Carl Jung, *Instinct and the Unconscious* (1919), in THE PORTABLE JUNG 47, 55–58, (Joseph Campbell ed., R.F.C. Hull trans., the Viking Press, Inc. 1971) (discussing how certain archetypal images speak to the unconscious mind and are somewhat universal); see also JOSEPH CAMPBELL, THE HERO WITH A THOUSAND FACES 18 n.18 (Princeton University Press 1972) (discussing how Jung’s archetype has been a common theory discussed by multiple social and psychological commentators); cf. JOHN GARDNER, THE ART OF FICTION 30–31 (Alfred A. Knopf, Inc. 1984) (discussing how narrative invokes a dream for the reader); Linda Berger, *The Lady, or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L.J. 275, 277 (Winter 2011) (discussing how story and metaphor have played a role in thinking, persuasion, and reasoning since Aristotle); Steven L. Winter, *Death is the Mother of Metaphor*, 105 HARV. L. REV. 745, 748 (January 1992) (reviewing THOMAS C. GREY, THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY (1991)) (explaining that our mind is metaphoric with respect to legal endeavors as it is with everything).

10. See *infra* Parts V–VII.

11. See Williams-Garcia, *supra* note 5; Winters *supra* note 5.

12. Paul Schiff Berman, *An Anthropological Approach to Modern Forfeiture Law: The Symbolic Function of Legal Actions Against Objects*, 11 YALE J.L. & HUMAN. 1, 20–23 (Winter 1999).

13. See Liza Ketchum, Professor Vermont College of Fine Arts, Summer Residency, An Object Lesson (July 2001) (stating that the object should be touched three

although endowed objects are always symbolic,<sup>14</sup> in fiction they can be ordinary objects without any magical powers, like a baseball bat.<sup>15</sup> Trial attorneys who learn to recognize endowed objects and their traits can invoke their power at trial.

Endowed objects have been persuasive symbols in famous trials as well although the attorneys trying the case may not have realized they were creating endowed objects.<sup>16</sup> In well-known trial narratives, endowed objects include the blue dress in the Bill Clinton impeachment hearings, the Lindbergh ladder, and the glove in the O.J. Simpson murder trial.<sup>17</sup>

These endowed objects will naturally weave their way into a trial narrative.<sup>18</sup> By developing awareness of them, lawyers can “edit” their trial narrative to invoke the persuasive power of these objects.<sup>19</sup> In so doing, lawyers must link the evidence to the theory of the case and ensure that the object is relevant.<sup>20</sup> Further, attorneys must also consider how the same evidence can be turned against them. For ex-

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times and can be held in a person’s hand); CAROL BLY, *THE PASSIONATE, ACCURATE STORY* 159–62 (Milkweed Editions 1990) (discussing the use of “small props” three times in a story); *cf.* Winters, *supra* note 5, at 23–24 (contemplating objects that need not be held in one’s hands); GARDNER, *supra* note 9, at 182–83 (explaining that repeated images accrue greater psychological and symbolic impact).

14. James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 *LEGAL WRITING: THE JOURNAL OF THE LEGAL WRITING INSTITUTE* 87 (2008); Williams-Garcia, *supra* note 5; Winters *supra* note 5.
15. *See generally* Williams-Garcia, *supra* note 5 (describing endowed objects and mentioning several non-magical objects such as a jar full of sand).
16. *See, e.g.*, Transcript of Opening Statements by Mr. Hartzler & Mr. Jones, *supra* note 4 (the t-shirt in this trial is discussed in detail *infra* Part VII on endowed objects and story structure); Transcript of Closing Arguments by Mr. Scheck & Mr. Cochran, *supra* note 4 (the leather glove in this trial is discussed in detail in Subsection IX(B) *infra* on endowed objects turned against the proponent at trial). In discussing the role that a single item can play at trial, Professor Mitch Frank, the director of Barry University School of Law’s National Award Winning Trial-Team uses the term “exhibit only.” The endowed object concept overlaps with this concept and can be applied to it.
17. *See* Douglas O. Linder, *The Stained Blue Dress that Almost Lost a Presidency*, UNIV. OF MO.-KANSAS CITY SCH. OF LAW (2005), <http://law2.umkc.edu/faculty/projects/ftrials/clinton/lewinskydress.html> (Monica Lewinsky’s blue dress in the President Clinton investigation); Transcript of Closing Arguments by Mr. Scheck & Mr. Cochran, *supra* note 4 (Orenthal Simpson’s glove).
18. *See* Eyster, *supra* note 14, at 107–08 (discussing examples of subconscious use of obtuse objects); Williams-Garcia, *supra* note 5.
19. *See infra* Part IV on process; *cf.* Eyster, *supra* note 14, at 95, 121–22 (discussing how to expose verbal images and advising lawyers to take care when using these images).
20. *See* Eyster, *supra* note 14, at 121–22 (encouraging lawyers to take care with objects); MICHAEL R. SMITH, *ADVANCED LEGAL WRITING* 240–42 (Aspen Publishers 2d. ed. 2008) (explaining that metaphor should be consistent with the legal theme); *infra* Part IV on Process.

ample, if the prosecution in the O.J. Simpson case had taken notes from *Othello*, they might have seen how the handkerchief was turned against its proponent, Iago.<sup>21</sup> Instead, the leather glove in the O.J. Simpson case was similarly turned against the prosecution.<sup>22</sup>

This article will present the literary concept of endowed objects, provide examples of endowed objects in literature, provide examples of endowed objects in trials, and then discuss how attorneys can identify and use evidence to create an endowed object. Part II of this article explains why endowed objects are useful at trial. Part III defines endowed objects, explains the similarities and differences between endowed objects and other symbols, and illustrates the use of both in fiction and at trial. Part IV describes the process of endowing an object in both fiction narratives and legal narratives. Part V discusses how endowed objects can develop a theme in fiction and theory of the case at trial. Part VI discusses how endowed objects can create a structural through-line in story structure in fiction and litigation. Part VII discusses how endowed objects can develop character in both fiction and litigation. Part VIII gives examples of endowed objects turned against their proponent in fiction and at trial. And finally, Part IX discusses the ethical issues surrounding endowed objects in litigation.

## II. REASONS FOR USING ENDOWED OBJECTS

A single item can help to build a story's structure, theme, character, and emotion.<sup>23</sup> In fact, since a trial is a story that is told witness by witness rather than chronologically, trial attorneys have an even greater need of some means to tie each of those non-chronological mini-stories.<sup>24</sup> Professor Stefan Krieger and Clinic Fellow Reza Rezvani discussed this non-chronological format at the Applied Legal Storytelling conference in Denver at Sturm College when presenting

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21. In conversation, Professor Fred Jonassen noted that had the glove fit it would have had its intended effect and worked against Simpson. The prosecution could not assure that the glove would not backfire because they could not control Simpson's hand. Similarly, in *Othello*, Iago could not control his wife Emilia's tongue when she revealed that he had used the handkerchief to plot against Othello.

22. See Peterson, *supra* note 3 (comparing the glove to the handkerchief and Simpson to Othello); Heinzelman, *supra* note 3 (comparing the glove to the handkerchief and Simpson to Othello).

23. See Williams-Garcia, *supra* note 5; Winters, *supra* note 5.

24. See generally *Applied Legal Storytelling Conference: July 8-10, 2011*, UNIV. OF DENVER STURM COLL. OF LAW, <http://www.law.du.edu/index.php/storytelling-conference> (last visited Aug. 7, 2012) (narrative structure at trial was discussed during this conference).

their project involving the use of movie storyboarding techniques to plan a trial and create a good trial narrative.<sup>25</sup>

During their presentation, Professor Hugo De Rijke from the University of Plymouth, England, asked, “Given that trial proceeds witness by witness, how do you divide the story into acts?”<sup>26</sup> Professor Krieger explained that each witness will have his or her own acts one through three and that those will fit into the larger whole.<sup>27</sup> Given that format, it is helpful to have a symbolic mechanism of jogging the judge or jury’s memory of the previous Act One when a new witness returns to Act One again. An endowed object can trigger the memory of a previous portion of the story in a deep and emotive way.<sup>28</sup> Moreover, the object often works overtime to provide readers with a host of information.

### A. In Fiction

National Book Award nominee and Coretta Scott King Award winning author, Rita Williams-Garcia explains that an object can reveal character and evoke a multitude of senses in a way that a string of words cannot.<sup>29</sup> For instance, she notes that readers instantly get a different sense of a character’s stepfather depending on whether he arrives in a hybrid van or a Corvette.<sup>30</sup> If the stepfather then hands the protagonist a chocolate shake that she proceeds to drink, readers sense “cold,” “chocolate smell,” “chocolate taste,” and “creaminess.”<sup>31</sup> But these objects evoke more than just the senses; they evoke emotions.<sup>32</sup> In fact, the objects may communicate the emotions better than most characters, who are not self-aware enough to identify and verbalize their own emotional state.<sup>33</sup> Despite this lack of awareness, readers require some sense of a character’s emotions, or they will get

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25. Stefan Krieger, Hofstra Univ. Sch. of Law & Reza Rezvani, Dir., Ctr. for Applied Legal Reasoning, Hofstra Univ. Sch. of Law, ONE 8' x 4' FOAM BOARD, 2000 INDEX CARDS, AND TOTAL IMMERSION: STORYBOARDING AS AN APPROACH TO LEGAL STORYMAKING (JULY 8, 2011), *available at* <http://www.law.du.edu/index.php/story-telling-conference/program> (last visited Jan. 24, 2012).

26. *Id.*

27. *Id.*

28. Williams-Garcia, *supra* note 5.

29. *Id.*

30. *See id.*

31. *Id.*

32. *Id.*

33. Winters, *supra* note 5, at 11; *see also* T.S. ELIOT, *Hamlet and His Problems*, in *THE SACRED WOOD, ESSAYS ON POETRY AND CRITICISM* 95, 100–03 (Methuen & Co. Ltd. 1950) (discussing how Shakespeare used “objective correlatives” to evoke emotions which the characters themselves could not).



frustrated and turn away from the story.<sup>34</sup> Novelist Kim Winters writes, “Clues are needed to entice and hook a reader—concrete clues that hint at the story’s heart.”<sup>35</sup> A concrete item in the character’s objective world can correlate to his or her subjective state.<sup>36</sup> The reader need not be aware of the symbolic meaning for these concrete items to resonate.<sup>37</sup> Nonetheless, these objects are essential to hooking and holding readers.

This idea of an object as an emotionally resonant symbol has roots in other disciplines as well. Some believe that these objects connect to the dream brains and remain fairly universal.<sup>38</sup> Psychologists have a similar, yet more expansive, concept referred to as a totem.<sup>39</sup> Moreover, psychoanalysts Carl Jung and Sigmund Freud believed that some images serve as symbols.<sup>40</sup> Interestingly, the history of Jung’s study makes an ouroboros<sup>41</sup> of the study of symbols in life and literature. First there was life, then there was story—Greek story, tribal story, modern story. Then Jung studied life, and in so doing, he studied these stories.<sup>42</sup> Jung thought that the symbolic images in myth derive from “the collective unconscious.”<sup>43</sup> After Jung, Joseph Campbell studied Jung and myth.<sup>44</sup> And then movie consultant and author of the popular book, *The Writer’s Journey*, Chris Vogler, studied Camp-

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34. See Winters, *supra* note 5, at 11; ELIOT, *supra* note 33, at 98–103 (attributing the artistic failure of *Hamlet* to Shakespeare’s inability to convey the main character’s emotions).

35. See Winters *supra* note 5, at 11.

36. See Winters *supra* note 5, at 11; ELIOT *supra* note 33.

37. See Carl Jung, *On the Relation of Analytical Psychology to Poetry* (1922), in THE PORTABLE JUNG, *supra* note 9, at 301, 314–15, 318–19 (discussing the unconscious mind and symbolism); Eyster, *supra* note 14, at 108.

38. See JUNG, *supra* note 37.

39. See SIGMUND FREUD, TOTEM AND TABOO 2–3 (James Strachey trans., Routledge & Kegan Paul Ltd. 1950) (including animals and plants as well as objects). Anthropologists have a related concept known as a “fetish,” which differs from the notion of “fetish” as a sexual obsession. See Dan Hunter, *Culture War*, 83 TEX. L. REV. 1105, 1123 (2005) (referring to the anthropological concept).

40. Jung, *supra* note 37, at 301, 318–19; SIGMUND FREUD, DREAM PSYCHOLOGY PSYCHOANALYSIS FOR BEGINNERS 1–23 (The James A. McCann Company 1921) (discussing the symbolic meaning of dreams and dream images); Eyster, *supra* note 14, at 107 (discussing Carl Jung’s theories regarding symbolism); Jacques de Ville, *Mythology and the Images of Justice*, 23 L. & LIT. 324, 327–28 (2011) (discussing Freud and symbolism); see DANIEL KAHNEMAN, THINKING, FAST AND SLOW 56 (Farrar, Straus and Giroux 2011) (referring to “Freudian insights about the role of symbols and metaphors in unconscious associations”).

41. An ouroboros is a snake or dragon eating its own tail.

42. See CAMPBELL, *supra* note 9, at 18–19; see also, e.g., JUNG, *supra* note 37, at 301, 314 (discussing plays and poems in his explanation of psychology).

43. JUNG, *supra* note 37, at 301, 318–19; Eyster, *supra* note 14, at 107 (discussing Carl Jung).

44. See CAMPBELL, *supra* note 9.

bell.<sup>45</sup> All the while, life continued and story continued, and objects weaved their way into both. At times these objects were merely objects just as sometimes cigars are just cigars.<sup>46</sup> And at times they were symbols.<sup>47</sup> Although Jung contends that people cannot completely decipher these symbols because the conscious mind cannot access the subconscious mind, he still contends that the object immerses us in “the deepest springs of life.”<sup>48</sup> While Jung’s idea of a collective unconscious is intriguing, a person need not believe in the idea to know that a story made him laugh at one point and cry at another. From there, one can pinpoint what triggered the laughing or crying, and at its root there may sometimes be an object. If it is a very popular story or one lauded by the critics, then often there may be a consensus that some object evoked emotion in the story and swayed the reader.

One such story is the Coretta Scott King Honor novel, *Like Sisters on the Homefront*; in the book, a cowrie shell passed down several generations symbolizes the protagonist’s realization that her connection to her family is what makes her life special; indeed, this statement itself does not convey the weight of that connection the way that the story and its symbols do.<sup>49</sup> In the book, the teenaged protagonist, Gayle, already has one baby, Emmanuel.<sup>50</sup> After Gayle’s mother coerces her into aborting her second pregnancy, she sends Gayle to live with relatives in the South.<sup>51</sup> Gayle resents having to leave New York.<sup>52</sup> Initially, Gayle’s church-going Southern relatives stand between her and Troy, the man who impregnated her.<sup>53</sup> She writes to Troy, and longs for his attention to make her special in some way.<sup>54</sup> Gayle responds accordingly when her religious cousin Cookie says that their great-grandmother, Great, “gotta Tell before she dies” to one special person.<sup>55</sup> Cookie explains:

“[She has to tell] the family history . . . Someone’s been doing the telling since we got here, adding more as we go along. It’s like talking to our ancestors . . . Cousin our past is in the Telling. Yours too.”

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45. See CHRISTOPHER VOGLER, *THE WRITER’S JOURNEY* (2nd ed., Michael Wiese Productions 1998).

46. *Sometimes a Cigar Is Just a Cigar*, QUOTE INVESTIGATOR (Aug. 12, 2011), <http://quoteinvestigator.com/2011/08/12/just-a-cigar/> (Reportedly, Sigmund Freud said that “sometimes a cigar is just a cigar,” but the veracity of the quote’s origin is doubtful.).

47. See FREUD, *supra* note 40 (discussing a wide variety of symbols).

48. Jung, *supra* note 37, at 301, 321 (discussing the subconscious).

49. See WILLIAMS-GARCIA, *supra* note 4.

50. *Id.* at 19.

51. *Id.* at 3–7, 17–23.

52. *Id.* at 17–20.

53. *Id.* at 17–20, 62.

54. *Id.*

55. *Id.* at 75.

“Zat all? I’ll save yawl the trouble. Once we was slaves then we got free, ran the white folks out the big house, and took over—teach them who not to mess with. End of story.”<sup>56</sup>

In keeping with this cynical attitude, Gayle searches Great’s closet for money to use to return to New York.<sup>57</sup> But a seed of the family connection soon forms when she finds the cowrie shell:

Next she found up a handkerchief coarse with cotton seeds woven into its fabric. When she untied it all she found was a tiny cowrie shell, the kind those “Back to Africa” girls string in their dreadlocks. She rolled it between her finger and her thumb, wondering what made the shell so precious. She knotted the handkerchief as she found it and put it back in the box . . . . Nothing. She put the lid on the cigar box and slid it between the hatboxes, convinced that none of its contents were of value.<sup>58</sup>

Resigned to her lack of funds, Gayle gets to know her family and slowly bonds with her cousin Cookie.<sup>59</sup>

Meanwhile, Gayle cares for the infirm Great.<sup>60</sup> As the story draws near the end, Gayle helps Great into her rocker just before this scene:<sup>61</sup>

Great was saying something, but what? Her lips moved, but no sound came out.

“What’s that, Miss Great?”

. . . .

“It came from Mbeke, torn from her sister, Who told her child Mahalia, Who stole the paper with Mbeke’s slave price . . . .”

“Stop that, Miss Great. You Tellin ain’t you?”

“It came from Mbeke, torn from her sister . . . .”

Gayle covered her ears. “I ain’t listening.”

. . . .

“What ‘they’ calls the Cotton Song be the Calling Up Song. Women sing, pick cotton, call up children from long gone away, call up kinfolk from long gone away.”

“Mbeke sang the Calling Up with her baby, Mahalia, ’longside her, sang how they was gals in the homeland gathering cow shells by the water—”

She knew! She knew! “That shell tied up there in the hanky?”

But Great could not be stopped. “—she sang ‘bout getting kotchted off the land, thrown into the whale’s belly . . . .”

“When the whale spit them out onto the land, Mbeke got torn from her sister. But Mbeke kept one cow shell in her fist and her sister kept the other.”<sup>62</sup>

The shell that Gayle once called “nothing” now bears significance. It is a link to the family’s past and to the two sisters that have been torn apart.

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56. *Id.*

57. *Id.* at 85–86.

58. *Id.* at 86–87.

59. *Id.* at 101, 111–13.

60. *Id.* at 145–51.

61. *Id.* at 151–52.

62. *Id.* at 153–54.

Great continues her telling of each generation through the ages.<sup>63</sup> She tells of a freed ancestor and Civil Rights, and then eventually:

[B]aby girl . . . Gayle Ann . . . blessed . . . with Emmanuel . . . . And time . . . time pass . . . es . . . turns . . . Emmanuel . . . will deliver us . . . .”

She fought to Tell it one last time. Her lips moved, but she was as voiceless as when she began. Finally her lips closed.<sup>64</sup>

Perhaps some readers may cry when they first read this portion of the book. Gayle, however, does not.<sup>65</sup> She chants over and over to hold onto the family history.<sup>66</sup>

As the book winds to a close, Gayle places her baby in his crib:<sup>67</sup>

He made such a picture. Him. The quilt. The squares in the corners. Two shells. The opened gate. The cotton that looked like clouds. The stump.

She let out a gasp. *As many times as [Emmanuel] had wet that thing up! Didn't Cookie know that quilt belonged to the family?*<sup>68</sup>

Gayle has changed. The shell that was once “nothing” is now a part of a family connection that is more important to her than it is to Cookie. However, the once religious Cookie is not interested in the quilt and does not understand the significance of the shells in the same way that Gayle does.<sup>69</sup> Instead, Cookie wants Gayle to cover for her while she sneaks out to meet Stacie late at night.<sup>70</sup> Gayle once would have done the same thing herself. But now she refuses, and tries to block Cookie’s way.<sup>71</sup> Gayle tells Cookie, “Let me save you . . . .”<sup>72</sup>

“Who,’ Cookie sniffled, ‘gonna save you, Cuz?’”

“Yawl,’ Gayle sobbed. ‘All yawl.’”<sup>73</sup>

The story would not have the same emotional weight if Williams-Garcia had simply written, “Gayle really grew to love her great-grandmother after her struggles with her family. She was so sad when her great-grandmother died. But she finally understood all the family’s struggles and how sticking together was important.”

Instead, the cowrie shells convey all the history that the family brought from Africa.<sup>74</sup> They illustrate survivorship and show Gayle how she is part of a bigger story, the Telling.<sup>75</sup> They show the bond between the two sisters torn apart. The shell links the family and shows they will save one another no matter what harm comes their

63. *Id.* 154.

64. *Id.* at 154–55.

65. *Id.* at 155.

66. *Id.*

67. *Id.* at 159.

68. *Id.*

69. *Id.*

70. *Id.* at 160.

71. *Id.* at 160–63.

72. *Id.* at 164.

73. *Id.* at 164.

74. *See id.* at 153–54.

75. *See id.*

way.<sup>76</sup> Thematically, these things make Gayle special and important, not the loser guy who got her pregnant and left her.<sup>77</sup>

Gayle's later reaction to the shells illustrates that she has changed and has digested this theme. Thus the shells help to convey her character growth and to link the earlier scenes to the later scenes. The shells connect several points of the story to each other, reveal character, convey theme, and carry emotional weight.

## B. In Law

Objects can similarly convey these kinds of subtle psychological messages in a trial narrative.<sup>78</sup> Professor James Eyster advises that attorneys follow “the path blazed by Jung and Campbell” and discover objects in the client's story that act as a talisman guiding the client through the journey.<sup>79</sup> Just as the endowed object can convey a theme in a fiction and evoke emotion, it can also convey the theory of the case and evoke emotion if used wisely. For instance, the trapdoor admitted into evidence in the trial of convicted murderer, John Wayne Gacy's house telegraphed the mass grave scene and both the victims' and the defendant's state of mind.<sup>80</sup> This trapdoor led to the crawl space where Gacy took his victims.<sup>81</sup> The trapdoor conveys messages about Gacy and his victims that mere testimony could not.<sup>82</sup> Being the entry to a secret mass grave, the trapdoor opens to the past to remind jurors of death and of the terror that each victim must have felt at the

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76. See *id.*

77. See *id.* at 165.

78. See 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, 769 (2006) (explaining that the fact-finder already has an experience base and that the metaphor is effective because it draws on that experience base); Bruce Ching, *Argument, Analogy, and Audience: Using Persuasive Comparisons While Avoiding Unintended Effects*, 7 J. ASS'N LEGAL WRITING DIRECTORS 311, 312 (2010) (“A well-chosen analogy accomplishes much of the work of persuasion for the advocate, because the analogy implicitly provides background information that the advocate does not have to spend time explaining.”); Berger, *supra* note 9, at 277 (discussing how story and metaphor have played a role in thinking, persuasion, and reasoning since Aristotle).

79. Eyster, *supra* note 14, at 108; see also Robbins, *supra* note 78.

80. See TERRY SULLIVAN WITH PETER T. MAIKEN, *KILLER CLOWN: THE JOHN WAYNE GACY MURDERS* 311, 316, 332, 346, 360 (2d ed. 1993) (mentioning the burial site, trap-door, and the digging involved in constructing the space).

81. See SAMUEL L. AMIRANTE & DANNY BRODERICK, *DEFENDING A MONSTER* 134–36 (Windsor Publishing, 2d ed. 1993) (describing Gacy shoving a victim into the crawl space).

82. See SULLIVAN & MAIKEN, *supra* note 80, at 308, 311–12, 332, 346, 360 (discussing all of the digging efforts and Gacy's own acknowledgement that it demonstrated premeditation); AMIRANTE & BRODERICK, *supra* note 81, at 134–36 (discussing how Gacy shoved his victim in the trap door).

end.<sup>83</sup> But the door also tells Gacy's story.<sup>84</sup> The effort that Gacy expended getting people to dig the crawl space and install the trapdoor shows that Gacy not only premeditated the murders but that he went to great lengths to murder people.<sup>85</sup> Moreover, the door reveals his lack of remorse.<sup>86</sup> Gacy could shove his victims through the trapdoor and leave them buried and forgotten deep in the ground.<sup>87</sup> Finally, the fact that he chose a mass grave shows how he defiled his victims.<sup>88</sup>

In the sections below on theory of the case, structure, and character, I discuss in greater detail how an object can be used to convey each of these things.

### III. EXPLANATION AND DEFINITION OF ENDOWED OBJECTS

An endowed object is a special kind of symbol that has concrete and lasting persuasive power. Endowed objects are single items that play a greater symbolic role in the story by entering the narrative at key points, acting as a catalyst, and revealing character and theme, and they are concrete items that people can hold in their hands.<sup>89</sup> Not every symbol or bit of backdrop is an endowed object. Similarly, an endowed object may be a prop, but the entire scene is not an endowed object. Below, endowed objects are contrasted and compared to other symbols, to metaphors, to metonyms, to objective correlative, and to obtuse objects, all of which are defined and explained below.

#### A. Endowed Objects as Categories of Symbols

The contrast between endowed objects and other symbols illuminates the unique characteristics of endowed objects. An endowed object is just one category of symbols used in narrative.<sup>90</sup> Penguin Reference defines a symbol as an object, a gesture, image, or concept

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83. SULLIVAN & MAIKEN, *supra* note 80, at 311, 316 (mentioning the mass grave).

84. *Id.* at 308, 311–12, 332, 346, 360 (2d ed. 1993) (discussing all of the digging efforts and Gacy's own acknowledgement that it demonstrated premeditation).

85. *Id.*

86. See AMIRANTE AND BRODERICK, *supra* note 81, at 134–36 (discussing how Gacy shoved his victim in the trap door).

87. *Id.*

88. SULLIVAN & MAIKEN, *supra* note 80, at 311, 316 (mentioning the mass grave).

89. See Ketchum, *supra* note 13 (stating that the object should be touched three times and can be held in a person's hand); BLY, *supra* note 13, at 159–62 (discussing using “fascinating props” three times in a story); cf. Winters, *supra* note 5 (contemplating objects that need not be held in one's hands); GARDNER, *supra* note 9, at 182–83 (explaining that repeated images accrue greater psychological and symbolic impact).

90. Compare Williams-Garcia, *supra* note 5 (discussing endowed objects and their characteristics), with J.A. CUDDON, *DICTIONARY OF LITERARY TERMS AND LITERARY THEORY* 884–88 (Penguin Reference 4th ed. 2000) (defining symbols).

that represents something else.<sup>91</sup> An endowed object is a symbol, but it falls within the object category of symbols.<sup>92</sup> It is also a particular type of object symbol. It has meaning beyond its own physical properties; the object is given meaning by the way it has been used in the story, the emotions attached to the object, and the manner in which it may symbolically stand for something other than itself.

Some other categories of symbols include objective correlative, metonym, metaphor, and obtuse object.<sup>93</sup> The difference and overlap between endowed objects and these other symbols is examined below. However, one primary difference that endowed objects have from most symbols is that an endowed object should always evoke theme, character, emotion, and memory.<sup>94</sup> While other symbols may sometimes evoke these things, they need not always.

### 1. *The Difference Between General Metaphors and Endowed Objects*

Generally, a metaphor is “a figure of speech in which one thing is described in terms of another.”<sup>95</sup> In contrast, an endowed object is not merely a figure of speech but an integral component of the story. Moreover, although an endowed object can be metaphorical, unlike the ordinary metaphor, it suffuses a story and is a physical item that a person can see and touch. Thus it has great power at trial because a judge or juror can see and touch it. As a result, the object connects these fact finders to the story, making it seem more real. In contrast, the ordinary metaphor may seem more ephemeral.

When an endowed object represents something other than what it is, then it is a metaphor. A metaphor is an endowed object only when it is a single physical object, and even then, it must share all of the other characteristics of endowed objects. Thus, the cowrie shell above from *Like Sisters on the Homefront* is a metaphor, and it can be held in a person’s hand.<sup>96</sup> It is an endowed object.

But a narrative can include a metaphor that still triggers emotion and memory even though the metaphor is not an endowed object.<sup>97</sup>

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91. CUDDON, *supra* note 90, at 884–88.

92. Compare Williams-Garcia, *supra* note 5 (discussing endowed objects and their characteristics), with CUDDON, *supra* note 90, at 884–888 (defining symbols).

93. See Eyster, *supra* note 14, at 100–13.

94. *Id.*

95. CUDDON, *supra* note 90.

96. Compare WILLIAMS-GARCIA, *supra* note 5, at 87, 153–54, with CUDDON, *supra* note 90, at 507 (defining metaphors).

97. See generally Robbins, *supra* note 78, at 769 (explaining that the fact-finder already has an experience base and that the metaphor is effective because it draws on that experience base); Ching, *supra* note 78, at 312 (“A well-chosen analogy accomplishes much of the work of persuasion for the advocate, because the analogy implicitly provides background information that the advocate does not have

For instance, the Chestnut Tree song in *Nineteen Eighty-Four* is a metaphor for how Winston and Julia betray one another.<sup>98</sup> It jogs the readers' memories, links an early scene with a later one,<sup>99</sup> and may make the reader cry; at least it made this reader cry. In the book, Winston lives in a dystopian world with a totalitarian government that crushes "thoughtcrime," thoughts that could threaten social structure.<sup>100</sup> Winston is an ordinary worker with an intense phobia of rats.<sup>101</sup> But he is fascinated with former counterrevolutionaries, Jones, Aaronson, and Rutherford.<sup>102</sup> He visits the cafe where they congregated, the Chestnut Tree.<sup>103</sup> In that cafe, the "telescreens" play a song:

Under the spreading chestnut tree  
I sold you and you sold me:  
There lie they, and here lie we  
Under the spreading chestnut tree.<sup>104</sup>

As the song played, Winston noticed tears in Rutherford's eyes.<sup>105</sup> But he does not understand the full significance of those tears or heed the warning behind them.<sup>106</sup>

Later, Winston himself becomes a dissident and engages in an affair with a woman named Julia.<sup>107</sup> Soon the thought police arrest Winston and Julia.<sup>108</sup> The thought police agent, O'Brien, tortures Winston and Julia with their greatest fears.<sup>109</sup> O'Brien threatens to place a mask with a cage full of rats on Winston's face.<sup>110</sup> O'Brien details what will happen.<sup>111</sup> He shows Winston the rats.<sup>112</sup> Then he approaches Winston with the mask.<sup>113</sup>

Winston shouts, "Do it to Julia! Do it to Julia! Not me! Julia! I don't care what you do to her. Tear her face off, strip her to the bones. Not me! Julia! Not me!"<sup>114</sup>

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to spend time explaining."); Berger, *supra* note 9, at 277 (discussing how story and metaphor have played a role in thinking, persuasion, and reasoning since Aristotle).

98. GEORGE ORWELL, *NINETEEN EIGHTY-FOUR* 66-70, 244, 256, 259-62 (Plume 1983).

99. *Id.*

100. *Id.*

101. *Id.* at 4, 8.

102. *See id.* at 66-70.

103. *Id.*

104. *Id.* at 68.

105. *Id.*

106. *Id.*

107. *Id.* at 95.

108. *Id.* at 200-13.

109. *Id.* at 232, 252-56.

110. *Id.* at 252-56.

111. *Id.*

112. *Id.*

113. *Id.* at 255-56.

114. *Id.* at 256.



He betrays Julia, and she betrays him in the same way.<sup>115</sup>

At the end, Winston returns to the Chestnut Tree again and hears the song play.<sup>116</sup> Winston's eyes welled up with tears just as Rutherford's once did.<sup>117</sup>

The song has new meaning for Winston and for the reader.<sup>118</sup> Winston sold Julia.<sup>119</sup> Love was not enough.<sup>120</sup> Big Brother has broken him, and he has given up dissidence and rebellion.<sup>121</sup>

Some readers may cry after reading the novel and this scene. That's part of the power of metaphor. However, the cafe and the song are not endowed objects because they are not things that a character can hold in his or her hand.<sup>122</sup> General metaphors are still useful at trial in many instances.<sup>123</sup> All metaphors speak to our subconscious, the part of our minds where we dream and where we make a thousand connections and conclusions without even realizing it.<sup>124</sup> But endowed objects are particularly powerful metaphors because characters in a story can interact with them.<sup>125</sup>

Moreover, weaving an endowed object narrative around a key piece of physical evidence at trial can be useful because jurors can see the

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115. *See id.* at 256, 261 (Later in the novel, Julia explains that she was threatened with something and told her capturers to do it to Winston instead. The author never reveals what it was she was threatened with.).

116. *Id.* at 261.

117. *Id.* at 262.

118. *Id.*

119. *See id.* at 256.

120. *Id.*

121. *Id.*

122. *See* Williams-Garcia, *supra* note 5 (describing endowed objects); *see also* Ketchum, *supra* note 13 (stating that the object should be touched three times and can be held in a person's hand); BLY, *supra* note 13, at 159–62 (discussing using “fascinating props” three times in a story); *cf.* Winters, *supra* note 5 (contemplating objects that need not be held in one's hands); GARDNER, *supra* note 9, at 182–83 (explaining that repeated images accrue greater psychological and symbolic impact).

123. *See* Robbins, *supra* note 78, at 769 (explaining that the fact-finder already has an experience base and that the metaphor is effective because it draws on that experience base); Ching, *supra* note 78, at 312 (“A well-chosen analogy accomplishes much of the work of persuasion for the advocate, because the analogy implicitly provides background information that the advocate does not have to spend time explaining.”); Berger, *supra* note 9, at 277 (discussing how story and metaphor have played a role in thinking, persuasion, and reasoning since Aristotle).

124. *See* Robbins, *supra* note 78, at 769 (explaining that the fact-finder already has an experience base and that the metaphor is effective because it draws on that experience base); Ching, *supra* note 78, at 312 (“A well-chosen analogy accomplishes much of the work of persuasion for the advocate, because the analogy implicitly provides background information that the advocate does not have to spend time explaining.”); Berger, *supra* note 9, at 277 (discussing how story and metaphor have played a role in thinking, persuasion, and reasoning since Aristotle).

125. *See generally* Williams-Garcia, *supra* note 5 (discussing endowed objects and their characteristics).

object. The past is ephemeral just as the Chestnut Tree song is ephemeral. But an object is tangible. It connects judges and jurors back to an elusive past and anchors it in today. For instance, in the trial of Richard Hauptman, convicted kidnapper of the Lindbergh baby, the prosecution showed the jury a ladder found near the scene of the crime, and an expert testified that the wood matched wood in Hauptman's home.<sup>126</sup> By showing the jury the ladder, the prosecution gave them a glimpse of the kidnapping.<sup>127</sup> The ladder also made it more probable that Hauptman kidnapped the child.<sup>128</sup> The ladder also symbolically represents the kidnapping.<sup>129</sup> Thus the object with its probative and symbolic power is more tangible than Winston's song.<sup>130</sup>

## 2. *The Difference Between Metonyms and Endowed Objects*

Also symbolic, a metonym is a name or a single attribute of a thing that stands for the entire thing; the part represents the whole.<sup>131</sup> The lines between metonyms and metaphors concepts are somewhat blurry. However, when an item is a piece of a person or thing and represents that person or thing, it might be categorized as a metonym rather than a metaphor.<sup>132</sup>

Just as an endowed object differs from the ordinary metaphor, it differs from the ordinary metonyms. An endowed object can be a metonym, however, not all endowed objects are metonyms.<sup>133</sup> For instance, "the Crown" stands for the monarchy.<sup>134</sup> A mere reference to

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126. *See State v. Hauptman*, 180 A. 809, 813, 817, 824–27 (1935) (providing the aforementioned evidence of the ladder and including the ladder in the analysis supporting the conclusion that the guilty verdict was not contrary to the great weight of the evidence).

127. *See generally id.* (The court does not make this statement. Rather, seeing this object from the past allows a glimpse of one potentially psychologically suggestive element of that past.).

128. *See id.* (The court included the evidence surrounding the ladder in the analysis that supported the court's conclusion that the verdict was not against the great weight of the evidence.).

129. *See generally id.* (This conclusion is reached via the author's artistic inference based on the story told in the case.).

130. *Compare ORWELL, supra note 98*, at 262 (referring to the Chestnut Tree song), *with Aitken, supra note 2*, at 53 (referring to the boot John Wilkes Booth left behind).

131. *Berger, supra note 9*, at 283; *cf. CUDDON, supra note 90*, at 510 (defining "metonymy," the practice of using a metonym, as opposed to defining metonyms themselves).

132. *Compare Williams-Garcia, supra note 5, with CUDDON, supra note 90*, at 507 (Penguin Reference 1998) (defining metonyms and metaphors).

133. *Compare Williams-Garcia, supra note 5* (describing characteristics of endowed objects), *with CUDDON, supra note 95*, at 507, 510 (defining "metonymy," the practice of using a metonym, as opposed to defining metonyms themselves).

134. *Berger, supra note 9*, at 283.

the “the Crown” or “the bench” is not an endowed object. Moreover, those references will not have the same impact at trial as an object that fact finders can see and hold.

a. *Endowed Object Metonyms in Fiction*

Where a metonym becomes endowed, the lines between metonyms and metaphors might be blurry. The object stands in not just for a character but for the theme, for so many emotions, and for so many relationships.<sup>135</sup> However, some might distinguish metonyms from metaphors since a metaphor is a whole thing that represents another separate whole thing.<sup>136</sup> For instance, in Ernest Hemingway’s *A Moveable Feast*, the pilot fish that clears the way for other fish might be said to be a metaphor that represents Hemingway himself who explored, wrote of his explorations, and cleared the way for others.<sup>137</sup> The pilot fish is not a part of Hemingway in the way that a metonym can be a part of a person.<sup>138</sup>

In contrast, Ysa’s skirt in the novel *Every Time a Rainbow Dies* is both an endowed object and a metonym,<sup>139</sup> and it works overtime in the novel.<sup>140</sup> In the book, the protagonist, Thulani, finds a girl in an alley who has been raped.<sup>141</sup> He later finds the girl’s skirt.<sup>142</sup> The skirt represents the girl, Ysa, who Thulani comes to view not solely for her rape trauma but as a whole person.<sup>143</sup> Thulani first finds the skirt in an alley after Ysa’s rape in the passage below:

He stood up and dusted off the grit from his hands on his shorts. It was then that he saw some figure billowing up from the ground on the side of the Dumpster. He approached it carefully, for it seemed alive. Thulani grabbed the moving thing. His fingers discovered it was merely a piece of cloth.

The thin material slid through his fingers like silk, but it wasn’t silk. It was a fine cotton. Almost sheer. He couldn’t imagine why this fine cloth had been thrown away. When he held it up to the sky, he could see by the way the bottom danced in the breeze that it was a skirt.

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135. Compare Varian Johnson, Lecture at Vermont College of Fine Arts MFA-WCYA Residency: The Metaphor (July 2009) (transcript on file with the author) (using the skirt that is a part of Ysa as an example of metaphor), with Eyster, *supra* note 14, CUDDON, *supra* note 90, at 507, and RITA WILLIAMS-GARCIA, *EVERY TIME A RAINBOW DIES* 17–18 (Harper Collins 2001).

136. See Berger, *supra* note 9, at 284.

137. ERNEST HEMINGWAY, *A MOVEABLE FEAST* 207–11 (Charles Scribner’s Sons 1964); Interview with Bonnie Dubner, in Orlando Florida (January 20, 2012).

138. Compare HEMINGWAY, *supra* note 137, at 207–11, with CUDDON, *supra* note 90, at 507, 510 (defining “metonymy,” the practice of using a metonym, as opposed to defining metonyms themselves).

139. WILLIAMS-GARCIA, *supra* note 135, at 17–18.

140. See Johnson, *supra* note 135 (describing all of the story-work performed by the skirt).

141. WILLIAMS-GARCIA, *supra* note 135, at 8–10.

142. *Id.* at 16–18.

143. Johnson, *supra* note 135; WILLIAMS-GARCIA, *supra* note 135, at 17–18.

Instantly he knew it was hers . . . . He pictured her wearing it.

He opened the skirt fully. It was a free-flowing skirt that was tied, not zippered or buttoned. The tie, a simple strip, had been ripped, yet managed to hang on to the body of the skirt by a few loose threads.<sup>144</sup>

Examining how the dress serves as an endowed object that represents Ysa, novelist Varian Johnson<sup>145</sup> points out the parallels between the skirt and Ysa.<sup>146</sup> Just a few pages before the scene above:

He was alone in the alley, except for her.

He approached her carefully. She was alive but not fully conscious. He could also see that she wasn't a woman, but a girl, like any girl he'd go to school with.

They had left her with her legs still open and no clothes on, except for ripped panties at her ankles. Her top, bright and pink with skinny straps, had been torn from her body. Her plum-colored nipples were sticking out. Her vagina, a crushed rose, was fully exposed, its petals dripping blood. Her face had been messed up. One eye was swollen shut, and her lip was busted.<sup>147</sup>

Johnson explains the parallels between these two scenes as follows.<sup>148</sup> Thulani discovers the dress by the dumpster just as he finds Ysa in the alley. He approaches both the dress and Ysa carefully. The dress seems alive, and Ysa is alive but only semi-conscious. The dress is not silk but normal, everyday cotton. Similarly, Ysa is not a woman but a girl like any normal, everyday girl with whom Thulani attends school. The dress is almost sheer, and Ysa is almost nude. Likewise, the dress is ripped, and Ysa has swollen eye and a busted lip. Johnson concludes, "Ysa's dress doesn't represent the abstract. It represents Ysa."<sup>149</sup>

Johnson notes how the author painstakingly describes all of Ysa's colors.<sup>150</sup> However, the dress appears colorless initially.<sup>151</sup> Not until the chapter's end does Williams-Garcia reveal the skirt's beauty.<sup>152</sup> Johnson writes:

At the Dumpster, he could not fully appreciate the colors. The indigo. The turquoise. The violet and the gold . . . . [I]n the silence and privacy of his bedroom, away from the dark, dirty alley . . . Thulani truly sees this beautiful, colorful skirt . . . . Thulani truly sees Ysa.<sup>153</sup>

144. WILLIAMS-GARCIA, *supra* note 135, at 17–18.

145. A graduate of Vermont College of Fine Arts MFA program in Writing for Children and Young Adults and a former student of Rita Williams-Garcia, Varian Johnson has taught as a professor at St. Edwards University and has taught and presented at Texas State University. See <http://varianjohnson.com/bio/html> (last accessed July 1, 2012).

146. Johnson, *supra* note 135.

147. WILLIAMS-GARCIA, *supra* note 135, at 8–9.

148. Johnson, *supra* note 135.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. Johnson, *supra* note 135 (quoting WILLIAMS-GARCIA, *supra* note 152, at 20–21).

Thus the skirt is a metonym. It is a part of Ysa, and it also represents her.

However, not all endowed objects are metonyms.<sup>154</sup> For instance, in *The Picture of Dorian Gray*, an artist paints a portrait of Dorian Gray.<sup>155</sup> Gray stays ever young and beautiful, but the picture grows ugly with each foul act Gray performs.<sup>156</sup> The picture is an endowed object and a symbol.<sup>157</sup> It represents Gray, but it is not a part of a larger whole the way it would be if it were an article of his clothing or a part of his body.<sup>158</sup> Likewise, not every metonym mentioned in a story will become an endowed object. For instance, a great many narratives may mention “The Crown” in passing or refer to “the bench to represent the judiciary.<sup>159</sup> But these items will only take on greater significance if they are touched or invoked repeatedly like the skirt in *Every Time A Rainbow Dies*.<sup>160</sup>

#### b. *Endowed Object Metonyms in Law*

Endowed object metonyms are already playing a role in trial narratives and have been for ages. For instance, such a metonym linked Dr. Samuel Mudd to the President Abraham Lincoln assassination conspiracy.<sup>161</sup> John Wilkes Booth’s boot made it more probable that Dr. Samuel Mudd conspired with Booth to assassinate President Abraham Lincoln.<sup>162</sup> Dr. Mudd denied being a co-conspirator and denied knowing John Wilkes Booth, the assassin.<sup>163</sup> However, when the military investigator tracking Booth came to search Dr. Mudd’s house, Mudd’s wife gave him Booth’s boot.<sup>164</sup> The boot was inscribed with the name “J. Wilkes.”<sup>165</sup> The boot represents Booth. The tangibility of

154. Compare Williams-Garcia, *supra* note 5 (describing characteristics of endowed objects), with CUDDON, *supra* note 90, at 507, 510 (defining “metonymy,” the practice of using a metonym, as opposed to defining metonyms themselves).

155. OSCAR WILDE, *THE PICTURE OF DORIAN GRAY* (Dover Publications 1993).

156. *See id.*

157. Compare *id.*, with Williams-Garcia, *supra* note 5.

158. *See* WILDE, *supra* note 155.

159. *See, e.g., In re Code of Judicial Conduct (Fin. Disclosure)*, 377 So. 2d 1156, 1157 (Fla. 1979) (emphasis added) (“The question arises as to whether new judges must file within 30 days of their appointment to the *bench*, in accordance with this provision.”); *Hill v. State*, 696 So. 2d 798, 799 n.80 (Fla. Dist. Ct. App. 1997) (emphasis added) (“[T]hus, actual physical presence at the *bench* is not a constitutional requirement, but simply a procedure created by a rule of court to assure total compliance with due process.”).

160. Compare Williams-Garcia, *supra* note 5 (describing characteristics of endowed objects), with WILLIAMS-GARCIA, *supra* note 135 (the book containing the skirt), and Johnson, *supra* note 135 (discussing the symbolic importance of the skirt).

161. *See* Aitken, *supra* note 2, at 53.

162. Aitken, *supra* note 2, at 53.

163. *See* Williams, *supra* note 2, at 263.

164. Aitken, *supra* note 2, at 53.

165. Aitken, *supra* note 2, at 53.

the boot stands in for Booth's physical presence at Mudd's house. Moreover, just as Cinderella left her slipper, Booth left his boot.<sup>166</sup> Thus the abandoned boot evokes Booth's flight from authorities. Further, Booth was comfortable enough to remove his shoes at Mudd's house. Thus the boot conveys familiarity. Additionally, it shows that it was more likely than not that Mudd not only knew Booth but also aided him when Booth was fleeing the authorities after murdering Lincoln.<sup>167</sup> Given that Mudd did not turn in Booth, a suspect accused of killing the president, the boot further tends to prove a conspiracy.<sup>168</sup> Dr. Mudd was convicted and sent to Dry Tortugas.<sup>169</sup>

### 3. *The Difference between Objective Correlative and Endowed Objects*

This tangibility is also why endowed objectives can in some instances be more powerful than objective correlative, which is an entire scene or situation that conveys the characters' psychological interior and emotions without ever naming those emotions. Both endowed objects and objective correlative are ways of revealing a character's subconscious emotional and psychological state, and both can be essential to stories.<sup>170</sup> But objective correlative is a way of revealing that emotional state through the whole scene whereas an endowed object is a single object.<sup>171</sup> T.S. Eliot coined the term "objective correlative."<sup>172</sup> Eliot in his essay on Hamlet writes:

The only way of expressing emotion in the form of art is by finding an "objective correlative"; in other words, a set of objects, a situation, a chain of events which shall be the formula of that *particular* emotion; such that when the external facts, which must terminate in sensory experience, are given, the emotion is immediately evoked.<sup>173</sup>

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166. Compare GAG, *supra* note 1 (Cinderella losing her slipper), with Aitken, *supra* note 2, at 53 (John Wilkes Booth losing his boot).

167. See Aitken, *supra* note 2, at 53–55; see also Williams, *supra* note 2, at 263; *Biography and Images of Dr. Samuel Mudd, Assassination Conspirator*, UNIV. OF MO.-KANSAS CITY SCHOOL OF LAW, <http://law2.umkc.edu/faculty/projects/ftrials/lincolnconspiracy/mudd.html> (last visited July 3, 2012).

168. *Id.*

169. Aitken, *supra* note 2, at 55.

170. Compare Williams-Garcia, *supra* note 5 (describing characteristics of endowed objects), with Tim Wynne Jones, Professor, Vermont College of Fine Arts, Summer 2006 MFA WYCA Residency Lecture: Tell it Slant (Summer 2006) (discussing objective correlative).

171. Compare Wynne Jones, *supra* note 170 (discussing the concept of objective correlative), with Williams-Garcia, *supra* note 5 (describing traits of endowed objects), GARDNER, *supra* note 9, at 36–37 (discussing all the emotion and character traits conveyed by a description of a barn), and Winters, *supra* note 5, at 11–12 (explaining that objective correlative and endowed objects are different).

172. T.S. ELIOT, *Hamlet and His Problems*, SACRED WOOD, ESSAYS ON POETRY AND CRITICISM (Bartlby 2000).

173. *Id.*

The temperature of the air, the objects in the room or on the landscape, the color, feel, and smell of everything, and the characters' interactions with all of these things and one another reveal psychological states.<sup>174</sup>

a. *In Fiction*

In a Vermont College lecture, professor and National Book Award-winning novelist Tim Wynne-Jones discussed objective correlative and presented a passage he had written based on an exercise in John Gardner's *The Art of Fiction*.<sup>175</sup> The exercise instructs, "Describe a lake as seen by a young man who has just committed murder. Do not mention the murder."<sup>176</sup> Depending on the murderer and how he or she felt about the murder, the lake may look very different.<sup>177</sup> Most readers might expect the lake to be murky and holding secrets.<sup>178</sup> But it could also seem like baptismal water.

In literature, Leo Tolstoy effectively uses objective correlative in the culmination of *Anna Karenina*.<sup>179</sup> Anna has left her husband and is ruined in aristocratic Russian society.<sup>180</sup> But she has finally realized that her lover Vronsky's passion for her is rooted in his own vanity and offers none of the promise or escape that she had hoped.<sup>181</sup> Tolstoy lays the foundation for Anna's next move with this scene:

When the train arrived at the station, Anna got off in a crowd of other passengers and, shunning them like lepers, she stopped on the platform, trying to remember why she had come there and what she had intended to do. Everything that had seemed possible to her earlier was now very hard for her to grasp, especially in the noisy crowd of all these hideous people who would not leave her alone. Attendants came running up to her offering their services; young men, stomping their heels on the boards of the platform and talking loudly, looked her over; the people she met stepped aside the wrong way.<sup>182</sup>

On the surface, this passage is about a crowded train station.<sup>183</sup> But underneath the surface, the passage reveals Anna's state of

174. Wynne Jones, *supra* note 170.

175. *Id.*

176. GARDNER, *supra* note 8, at 203.

177. See GARDNER *supra* note 8, at 36–37 ("One does not simply describe a barn . . . . One describes a barn as seen by someone in some particular mood.").

178. Cf. Gardner *supra* note 8, at 36–37 (describing the changes and emotional significance of a description of a barn right a murder).

179. See Letter from Leo Tolstoy to N.N. Strakhov (Apr. 23, 1876), in C.J.G. TURNER, A KARENINA COMPANION 41–42 (1993) ("If I wanted to express in words all that I meant to express by the novel, then I should have to write the same novel as I have written all over again."); see generally LEO TOLSTOY, ANNA KARENINA 814–16 (Richard Pevear & Larissa Volokhonsky trans., Penguin Books 2002).

180. LEO TOLSTOY, ANNA KARENINA (Richard Pevear & Larissa Volokhonsky trans., Penguin Books 2002).

181. *Id.*

182. *Id.* at 767.

183. *Id.*

mind.<sup>184</sup> Shortly after the passage, Anna commits suicide by throwing herself in front of the train.<sup>185</sup> The “noisy crowd” and “monstrous people” represent all the gossipers who have cast Anna out from society.<sup>186</sup> The porter represents her staff and thus her wealth, which can do nothing to save her from her troubles.<sup>187</sup> And the young men represent Vronsky; they are of no real help.<sup>188</sup> She is left with no purpose, no place to go, and no one to turn to, so she ends her life. But if Tolstoy had written just that, the writing would have sounded trite. Moreover, the passage would not have rung true because typically a person’s thoughts reflect less awareness.<sup>189</sup>

While an endowed object can similarly telegraph a character’s state of mind and emotion, it is not the same thing as objective correlative.<sup>190</sup> An endowed object is a single object from the scene,<sup>191</sup> it may even be a part of an overall objective correlative, but unlike objective correlative, it is just one thing that a person can hold in his or her hand.<sup>192</sup> It does not include the whole environment.<sup>193</sup> In her critical thesis on endowed objects, writer Kim Winters notes, “while the objective correlative offers an elegant way to elicit a subjective response, it does not account for the power or grace of a single object to do the job.”<sup>194</sup>

Both categories of symbols resonate in both litigation narratives and fiction narratives. But the single object may stand more clearly for one certain thing and may often work as a great trigger, not just of the memory of what happened before, but of the emotions around the memory.<sup>195</sup>

#### b. *In Law*

At trial, an object can sometimes be stronger proof than an objective correlative. An object can be introduced into evidence, and the fact finders can see it with their own eyes.<sup>196</sup> For instance, in the Timothy McVeigh trial, jurors were shown the t-shirt that McVeigh

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184. *See id.*

185. *Id.* at 768.

186. *See id.* at 767.

187. *See id.*

188. *See id.*

189. *Cf. Wynne-Jones, supra* note 170 (illustrating how ridiculous obvious emotional statements can sound in writing and demonstrating how objective correlative reveals emotion and state of mind more effectively).

190. *See Winters, supra* note 5.

191. Winters, *supra* note 6, at 10.

192. *Id.*

193. *Id.* at 11–12.

194. *Id.* at 11.

195. *See Williams-Garcia, supra* note 5; Winters, *supra* note 5.

196. *See, e.g., U.S. v. Moreno*, 933 F.2d 362, 375 (6th Cir. 1991) (holding that an actual firearm as opposed to a photograph could be admitted at trial); *People v. Blue*,



wore to the bombing.<sup>197</sup> In contrast, objective correlative evidence is often in the form of witness testimony.<sup>198</sup> A judge or jury can question the credibility of a witness,<sup>199</sup> but it is hard for a judge or juror to doubt what they can see with their own eyes.<sup>200</sup> Moreover, while objective correlative is a useful concept, at times it may pose greater challenges than an endowed object; even if the objective correlative evidence is relevant,<sup>201</sup> it might confuse or unfairly prejudice the jury, and the usage of such evidence will, therefore, not be permitted.<sup>202</sup> Imagine that a murder witness testified:

It was a foggy day, a cold day. Surely the lake was cold. Cold and dark. I stared at the lake and wondered whether anything could live there at all. It was like a pool of oil. Even the grass around it was dead. The wind rustled my coat. The cold bit through my scarfs and wool.

If Garrison Keillor did not step in to argue that the witness was copying his *Guy Noir* sketch,<sup>203</sup> opposing counsel would likely object to relevance.<sup>204</sup> The proponent of the evidence can hardly respond, “Your Honor, it is relevant because it symbolizes the feelings about

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- 724 N.E.2d 920, 932 (2000) (holding that clothes can be admitted into evidence when their probative value outweighs potential prejudice).
197. Examination of Deborah Thompson, Louis Hupp, Brett Mills & Ronald Kelly at 38, *U.S. v. McVeigh*, No. 96-CR-68 (D.Colo. trans. 1997), 1997 WL 251969.
198. See, e.g., Brief for U.S. at 9, *Johnson v. United States*, 333 U.S. 10 (1948) (No. 329) (“As we started up the stairs I got a distinct odor of smoking opium. As I proceeded up the stairway the odor became more apparent.”); Brief for Defendant-Respondent at \*8, *Rocklin v. Beigert*, 639 N.Y.S.2d 417 (1996) (No. 1994-09310), 1995 WL 17818730 (“He characterized the weather as balmy and it was dark.”); Reply Brief of Appellants at 8, *McGowan v. L’EXPRESS*, 26 F.3d 1121 (Table) (11th Cir. 1994) (No. 93-6358), 1994 WL 16139087 (“Although it does not definitively equate to ‘contouring,’ Rogers testified that he observed areas of green on LEX 508’s weather radar, indicating precipitation in the path of the aircraft which likely would have contoured on the radar screen.”).
199. Cf. *U.S. v. Scheffer*, 523 U.S. 303, 313 (explaining that weighing the credibility of witnesses is the jury’s role).
200. See *U.S. v. Gloster*, 185 F.3d 910, 913 (D.C. Cir. 1999) (emphasizing “the persuasive power of the concrete”).
201. See FED. R. EVID. 402 (providing for admissibility of relevant evidence); FED. R. EVID. 401 (defining relevant evidence as evidence that has a tendency to make a fact of consequence to the action more or less probable than it would be without the fact).
202. See FED. R. EVID. 403 (allowing exclusion of relevant evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence”).
203. Garrison Keillor is the host of National Public Radio’s *A Prairie Home Companion*, in which he sometimes plays a satirical film noir detective named *Guy Noir*. See *A Prairie Home Companion, Guy Noir*, <http://prairiehome.publicradio.org/programs/2009/04/04/scripts/noir.shtml> (Last visited June 21, 2012).
204. See, e.g., *U.S. v. Fosher*, 568 F.2d 207, 210 (1st Cir. 1978) (holding that mug shots of the defendant could not be admitted because they implied that defendant had a criminal record).

the victim's death." Unless state of mind is an issue, this symbolism could be prejudicial.<sup>205</sup>

Yet a single object might sometimes be probative in and of itself, as illustrated by the discussion above regarding John Wilkes Booth's boot.<sup>206</sup> The boot shows that it was more likely than not that Mudd not only knew Booth, but also that Mudd provided him medical aid when Booth was fleeing the authorities after the murder.<sup>207</sup> Given that Mudd did not turn in Booth, a suspect accused of killing the president, the boot further tends to prove a conspiracy.<sup>208</sup> Thus the object with its probative and symbolic power can come into evidence.<sup>209</sup>

#### 4. *Endowed Objects' Relationship to Obtuse Objects*

An endowed object might be an obtuse object, but it is possible that not all endowed objects are necessarily obtuse objects.<sup>210</sup> Law Professor James Parry Eyster discusses the art concept of the obtuse object in his article, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*.<sup>211</sup> Eyster encourages lawyers to recognize obtuse objects to introduce into the trial narrative.<sup>212</sup> The concept seems to derive from art rather than literature, which is one difference between the two ideas.<sup>213</sup> The concepts are related nonetheless. According to art critics, successful still-life paintings and photos typically have a surprising element that contradicts the otherwise coherent pattern and unsettles the viewers' expectations.<sup>214</sup> "Thus, a single missed stitch in a beautiful embroidery, Marilyn Monroe's birthmark, and one overcooked entree in the midst of a tasty feast all seem more perfect because of their flaws."<sup>215</sup> Eyster describes this incongruent item as an "obtuse object."<sup>216</sup>

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205. See, e.g., *People v. Burrell* 592 N.E.2d 453, 461 (Ill. App. Ct. 1992) (finding that bloodstained police uniforms, while relevant, could be unfairly prejudicial to the jury but holding the error harmless nonetheless); *Fosher*, 568 F.2d at 208.

206. See Aitken, *supra* note 2, at 53–55.

207. See *id.*

208. *Id.*

209. *Id.*

210. Cf. Eyster, *supra* note 14, at 102–03 (discussing obtuse objects).

211. Eyster, *supra* note 14.

212. Eyster, *supra* note 14, at 89 (discussing techniques to utilize obtuse objects).

213. Compare Eyster, *supra* note 14, at 102–03 (discussing the art critics who elaborate on this concept), with Williams-Garcia, *supra* note 5 (describing the concept of endowed objects and explaining how they can represent themes in a fiction narrative).

214. Eyster, *supra* note 14, at 102 (citing J.N. Findlay, *The Perspicuous and the Poignant: Two Aesthetic Fundamentals*, 7 BRITISH J. AESTHETICS 89, 97, 102 (1972); Roland Barthes, *Image, Music, Text* 22–23 (Stephen Heath trans., Farrar, Strauss & Giroux 1977); E. H. Gombrich, *MEDITATIONS ON A HOBBY HORSE AND OTHER ESSAYS ON THE THEORY OF ART* at 28 (Phaidon Press Limited 1978)).

215. Eyster, *supra* note 14, at 102.

216. Eyster, *supra* note 14, at 102.

Unlike the obtuse object, an endowed object need not be incongruent with the rest of the scene, but it can be. However, the endowed object should not be incongruent with the story itself.<sup>217</sup> If that sort of incongruence is required to make an object obtuse, then the two objects will never overlap.

a. *In Fiction*

However, as Eyster describes an obtuse object and discusses how it can be symbolically used at trial, it seems that some objects might be both obtuse within the image of the scene and endowed for purposes of the overall story. For instance, in *Every Time a Rainbow Dies*, Ysa's skirt, mentioned above in the section on metonyms, could be both an obtuse and an endowed object.<sup>218</sup> The colorful skirt flutters in the wind.<sup>219</sup> One gets the sense that it is made of some fine material.<sup>220</sup> It seems out of place in the alley.<sup>221</sup> The alley is not merely dark and dirty; it is a place where a girl has been raped.<sup>222</sup> Yet the skirt itself is beautiful.<sup>223</sup> It contrasts with the alley.<sup>224</sup> This obtuseness seems to be what draws Thulani to the skirt and likely might be what peaks readers' curiosity as well.<sup>225</sup> Thus the skirt is likely an obtuse object, and the discussion above illustrates how the skirt is endowed and how it represents Ysa herself.<sup>226</sup> That being said, while the skirt is incongruent with the alley, it adds to the narrative cohesion of the story itself.

However, it is possible that an endowed object might not need to be as incongruent as an obtuse object although the object will likely always be unique in some way. For instance, in the discussion above regarding how endowed objects resonate, the cowrie shell from *Like Sisters on the Home Front* might not necessarily be an obtuse ob-

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217. See Williams-Garcia, *supra* note 5 (explaining how endowed objects illustrate character and theme).

218. Compare Eyster, *supra* note 14 (describing the concept of obtuse objects and explaining how they can represent themes in a legal narrative), with Williams-Garcia, *supra* note 5 (describing the concept of endowed objects and explaining how they can represent themes in a fiction narrative), and WILLIAMS-GARCIA, *supra* note 135, at 6–11, 17–18.

219. WILLIAMS-GARCIA, *supra* note 135, at 17–18.

220. *Id.*

221. *Id.*

222. *Id.* at 6–11, 17–18.

223. *Id.* at 17–18.

224. *Id.* at 6–11, 17–18.

225. *Id.*

226. Compare Eyster, *supra* note 14, at 102–04 (describing the concept of obtuse objects and explaining how they seem incongruent with the scene), with Williams-Garcia, *supra* note 5 (describing the concept of endowed objects and explaining how they can represent themes in a fiction narrative), and WILLIAMS-GARCIA, *supra* note 135, at 6–11, 17–18, and Johnson, *supra* note 135.

ject.<sup>227</sup> It is in a box full of other odds and ends and seems to belong in the box and to the old woman who saved these artifacts.<sup>228</sup> Similarly, in the movie *The Natural*, Roy Hobbs's baseball bat does not seem obtuse.<sup>229</sup> He is a baseball player, so viewers expect him to have a bat.

*b. In Law*

It seems possible that a piece of evidence could serve as both an obtuse object and an endowed object in a trial narrative. Eyster's own example of a tortured asylum seeker's book bag appears to be both.<sup>230</sup> Eyster tells the story of two students in his immigration law clinic who represented a woman who claimed political persecution and sought asylum.<sup>231</sup> The students both indicated that they were struggling to relate to the client and to her story.<sup>232</sup> The rape and beatings were brutal and overwhelmed the students' imaginations.<sup>233</sup> The woman was from a central African country and was the sister of pro-democracy political party members.<sup>234</sup> As a result of her family's political affiliations, her brothers had been murdered.<sup>235</sup> She had been raped and beaten by soldiers.<sup>236</sup> Unfortunately, this story was too alien to students and, thus, seemed abstract.<sup>237</sup> But finally, in one of their interviews, the client remarked that her book bag was stolen during the attack.<sup>238</sup> The bag's existence and loss surprised the students.<sup>239</sup> Being students themselves, the bag's theft implied a loss of security far more relatable for the students.<sup>240</sup> The client was now someone like them, and they zealously represented her.<sup>241</sup>

Eyster classifies the bag as an obtuse object.<sup>242</sup> These American students were trying to wrap their minds around the idea of a country where people are murdered for their political associations.<sup>243</sup> Then something from their own lives appeared in the story, an ordinary

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227. See WILLIAMS-GARCIA, *supra* note 4, at 153–54 (the scene with the cowrie shells).

228. *Id.*

229. THE NATURAL (Sony Pictures Home Entertainment 2010). That being said, the bat itself is called “Wonderboy,” and Hobbs is old for a baseball player. Thus in that sense it could be obtuse.

230. See Eyster, *supra* note 14, at 102–04, 113–14 (describing the concept of obtuse objects and explaining how they seem incongruent with the scene).

231. Eyster, *supra* note 14, at 113–14.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

book bag representing upwardly mobile expectations.<sup>244</sup> It contrasts with the scene.

The bag is also an endowed object. In the woman's narrative, the bag stands for all the things that she has lost. She has lost an education and thus lost the chance at a successful future in her country.<sup>245</sup> But the bag also contains ideas, and in her country, her family was punished for independent ideas.<sup>246</sup> The bag is a single object, and it stands for something larger than itself.<sup>247</sup> Although Eyster does not discuss in detail how often the bag is mentioned in the narrative, presumably, it took on a larger role after the interview.<sup>248</sup> Regardless, those who are using this article would do well to study Eyster's article as well as its rich with advice on painting pictures for the fact-finder.<sup>249</sup>

## B. How an Object Becomes Endowed

While there may be some overlap between endowed objects and the objects above, an endowed object must go through a process in the story to become endowed.<sup>250</sup> An endowed object may begin its life as an ordinary object, or it may be imbued with symbolism in its creation.<sup>251</sup> If the object is ordinary, it is in some way activated or imbued and then takes on special meaning with each interaction.<sup>252</sup> In fact, a similar concept exists in theatre when actors activate a prop by interacting with it so that the prop takes on dramatic meaning.<sup>253</sup>

The activation may take place in several steps involving the forging of the object perhaps out of materials imbued with significance, the ensorcelling of the object in some ceremony, the chanting or inscribing of "magic words," or the simple interaction with the object.<sup>254</sup> For instance, in the *Lord of the Rings: The Fellowship of the Ring*, Sauron forges the ring in the fires of Mordor and imbues it with his

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244. *Id.*

245. Eyster, *supra* note 14, at 113–14 (discussing importance of obtuse objects to bring a story close to home).

246. *Id.*

247. *Id.*

248. *See id.* (discussing importance of obtuse objects to bring a story close to home).

249. *See generally* Eyster, *supra* note 14 (discussing use of artistry techniques in legal advocacy).

250. *See* Williams-Garcia, *supra* note 5; Winters, *supra* note 5; *see also* Taylor Simpson-Wood, *One Approach to Teaching Maritime Law: The Admiralty Classroom as a Stage*, 55 ST. LOUIS U. L.J. 601, 610 (Winter 2011) (discussing the endowment of props in the classroom).

251. *See* Williams-Garcia, *supra* note 5; Winters, *supra* note 5.

252. *See* Williams-Garcia, *supra* note 5; Winters, *supra* note 5.

253. *See* ANDREW SOFER, *THE STAGE LIFE OF PROPS* 11, 20–24 (The University of Michigan Press 2003); Winters, *supra* note 5, at 11–12.

254. *See* SOFER, *supra* note 253; Winters, *supra* note 5, at 11–12.

malice.<sup>255</sup> He inscribes the ring with magic words. They translate as, “One Ring to rule them all. One Ring to find them. One Ring to bring them all and in the darkness bind them.”<sup>256</sup> Each time the ring is used for gain, it is activated—first by Sauron in his war, later by King Isildor who is killed due to the ring, then by Gollum who withers under the ring’s spell, next by Bilbo Baggins who nearly turns evil, and finally by Frodo Baggins who calls darkness to him every time he wears the ring.<sup>257</sup>

Similarly, in *Cinderella*, the glass slippers are first charmed through the magic spell used by the fairy godmother to conjure the slippers.<sup>258</sup> Cinderella then activates the slippers when she wears them to the ball.<sup>259</sup> Cinderella beguiles the prince and leaves behind a token of her essence, a single slipper.<sup>260</sup>

This endowment can even occur in contemporary realistic fiction. For example, in *The Natural*, Roy Hobb’s bat is endowed in several parts. First, his father dies by the tree from which the bat is carved.<sup>261</sup> Then the tree is struck by lightning.<sup>262</sup> Roy inscribes the bat with a lightning bolt.<sup>263</sup> But when Roy hits the cover off the ball in his first major league game, the bat truly becomes endowed.<sup>264</sup> Afterwards, the ball boy asks Roy to help him make a bat like Roy’s.<sup>265</sup>

This ensorcelling exists in the real world just as it does in the fanciful mind of an artist, and that which exists in the real world exists in legal cases. For instance, Oklahoma City bomber Timothy McVeigh inscribed the words *sic semper tyrannis*—thus always to tyrants—on the t-shirt he wore to the Oklahoma City bombing.<sup>266</sup> This t-shirt was activated when he wore it to the bombing; it became imbued with residue from the making of explosives.

In other instances, a person might imbue an object with status. For example, in the “murder necklace” case, cocaine dealer and music producer Naron Celestine, aka Cole or Cold, had an 18 karat, diamond

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255. THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING (New Line 2010).

256. *Id.*

257. *Id.*

258. GAG, *supra* note 1.

259. *Id.*

260. *Id.*

261. THE NATURAL (Sony Pictures Home Entertainment 2010).

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. Compare Opening Statements of Mr. Hartzler and Mr. Jones at 9, U.S. v. McVeigh, No. 96-CR-68 (D. Colo. trans. 1997), 1997 WL 198070 (discussing the origin of the phrase), with Opening Statements of Mr. Hartzler and Mr. Jones at 40–41, U.S. v. McVeigh, No. 96-CR-68 (D. Colo. trans. 1997) (explaining the meaning of the term and offering a different explanation of its origin).

encrusted medallion made.<sup>267</sup> Upon it, he had inscribed raised white gold letters that spelled out the name of his production company, 3rd Wall ent.<sup>268</sup> A young man named Joe Young, Jr. stole the necklace just as *Lord of the Rings'* King Isildor stole the One Ring from Sauron.<sup>269</sup> When Young lay dying, he told police that "Cole" shot him, and police heard reports that Celestine had "put a hit" out on Young.<sup>270</sup> If such reports were true, the Celestine's actions resemble Sauron's. Sauron pursued those who stole his ring, and "Cold" put out a hit on Young who stole his necklace.<sup>271</sup> In both instances, the jewelry was inscribed, one with power and another with status. In both instances, those inscriptions identified the owners, the necklace more so than the ring. Thus taking the treasure was like taking a part of the owner. Both Sauron and Celestine would have likely sought return of their jewelry. But the inscription makes the insult of the theft all the greater.

#### IV. THE PROCESS OF LOCATING AND CREATING ENDOWED OBJECTS

##### A. The Writer's Process

Ernest Hemingway once said, "There is nothing to writing. All you do is sit down at a typewriter and bleed."<sup>272</sup> A writer probably cannot hope for a more accurate set of instructions for the storytelling process because there is not a precise formula. Story crafters vary in their processes.<sup>273</sup> Some start with an outline, flow chart, or research.<sup>274</sup> Others write from the first sentence to last.<sup>275</sup> Others write fragments here and there.<sup>276</sup> Still others may write a draft, toss it out,

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267. Lisa Demer, *Government takes custody of notorious "murder necklace,"* ANCHORAGE DAILY NEWS, January 20, 2011.

268. *Id.*

269. *Compare* THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING, *supra* note 255, with Demer, *supra* note 267.

270. Lisa Demer, *Government takes custody of notorious "murder necklace,"* ANCHORAGE DAILY NEWS, January 20, 2011.

271. *Compare* THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING, *supra* note 255, with Demer, *supra* note 267.

272. Farai Chideya, "Becoming a Writer," *NPR News and Notes* (August 27, 2007), <http://www.npr.org/templates/story/story.php?storyId=13975722> (last visited Feb. 16, 2012).

273. Alexandra Alter, *How to Write a Great Novel*, WALL STREET J. (Nov. 13, 2009), <http://online.wsj.com/article/SB10001424052748703740004574513463106012106.html>.

274. *Id.*

275. *Id.*

276. *Id.*

and begin anew.<sup>277</sup> Storytellers' processes may even vary from one work to the next. Thus the best a student of story can hope for are examples of the end product, tips and tricks that may have worked for given writers, and a list of a few commonalities in the process.

With respect to endowed objects, writers have offered a few of those tips and tricks. Often the process of endowing an object may be recursive, just as the writing process itself is recursive. The writer visits the dream brain, jots down some fragments, reads with a critical eye and seeks critiques, flags those items that seem problematic, visits the dream brain again, and repeats the whole process in circles until the writing and the object resonate. During that portion where the writer reads with a critical eye, the writer might remember what he or she has learned about objects and make notes. Then, when revisiting the dream brain, the writer might take a good look at the object.

The endowed objects may initially appear in a narrative via subconscious choice;<sup>278</sup> however, the good writer will further explore and edit the story to create the proper resonance. In the beginning, most good writers likely do not sit down and say, "I'm going to create an endowed object in my story."<sup>279</sup> Rather, fiction writers speak of objects simply appearing in their stories.<sup>280</sup> Carl Jung believed the artist or poet often used images that had symbolic meaning outside the creator's conscious.<sup>281</sup> As novelist and writer of *The Art of Fiction*, John Gardner, explains, an author "begins to brood over what he's written, reading it over and over . . . [the author] discovers odd tics that his unconscious has sent up to him, perhaps curious accidental repetitions of imagery."<sup>282</sup> In analyzing this process, Jung's description of the artist's method sounds almost as though it springs from a dream that holds subconscious symbolism that is fairly universal.<sup>283</sup>

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277. *Id.* The author of this article has used this method. It is emotionally difficult to start an entire draft over from the beginning. But the new version received much better critical praise.

278. In describing process, accomplished writers often speak of choices springing from their subconscious or their dream brain. See, e.g., ROBERT OLEN BUTLER, FROM WHERE YOU DREAM 13 (Grove Press 2005) ("Art comes from your subconscious. It comes from the white hot center of you."); see also Janet Burroway, *Introduction to ROBERT OLEN BUTLER, FROM WHERE YOU DREAM 2* (Grove Press 2005) ("And it is in the realm of unconscious rather than that of technique or intellect that the writer seeks fictional truth.").

279. See, e.g., BUTLER *supra* note 278, at 13 ("Art comes from your subconscious; it comes from the white hot center of you."); Burroway, *supra* note 278, at 2-5.

280. See Williams-Garcia, *supra* note 5 (speaking about how objects work best when the writer is least aware of them).

281. JUNG, *supra* note 37, at 301, 314, 318-19, 321.

282. GARDNER, *supra* note 9, at 69; see also Burroway, *supra* note 278, at 2 ("And it is the realm of unconscious rather than that of technique or intellect that the writer seeks fictional truth.").

283. JUNG, *supra* note 37, at 301, 314, 318-19, 321.



Jung speaks of “compulsive artistic choices” controlled by “unconscious will.”<sup>284</sup>

Sometimes the writer may have created an endowed object and not even realize it until after the fact.<sup>285</sup> For instance, in a novel that I am currently revising, I included an endowed object and did not know it until after completing the novel and revising. My protagonist Cori is being molested by her stepfather. He gives her enabler-Mom a rhinestone belt buckle. The belt buckle just stumbled into the story; it was just something that I saw the characters doing. But I did not realize how handy the belt buckle would be until after I revised a go-nowhere chapter. That chapter followed one where Cori told her mother about the abuse. Mom called her a liar and poured dishwater down her throat.<sup>286</sup> The next chapter floundered. Cori got drunk, threw up, and did nothing. My Vermont College advisor, Rita Williams-Garcia, called me out. Professor Williams-Garcia found it pretty unbelievable that after all that anger, Cori would get drunk and do nothing.<sup>287</sup> Moreover, she pointed out that the story had lost momentum. So I stepped into Cori’s character. She was angry.<sup>288</sup> She wanted to do something, but there was nothing she could do without consequences.<sup>289</sup> Her rage had no place to go.<sup>290</sup> That’s when I saw the belt buckle in Cori’s living room:

It taunted her. Cori grabbed it and threw it. It landed on the linoleum in the kitchen and clattered.

Ha! Stupid country belt buckle. Cori shot up from the couch and stomped into the kitchen. One of the rhinestones twinkled on the floor. She snatched the buckle and tromped into the garage. She threw it back down on the cement. She stomped on it. She smashed it with her foot. No more rhinestones would come loose. She seized it and threw it again. It clattered.<sup>291</sup>

I did not set out to create a symbol. Only after I wrote this portion did I realize that the tacky belt buckle represented the manner in which Mom would trade her teenaged daughter for fairly worthless material junk.

Although the writer’s subconscious may initially deliver the object, it’s dangerous to stop after the subconscious vomits words upon the page in a first draft. In these instances, the end result is likely to

284. See JUNG, *supra* note 37, at 301, 314, 318–19, 321; Eyster, *supra* note 14, at 107 (discussing Carl Jung and symbolism); see also Burroway, *supra* note 278, at 2 (discussing the role of unconscious in art).

285. See JUNG, *supra* note 38, at 301, 314, 318–19, 321.

286. Cathren Koehlert-Page, *Disobedient* (2008) (unpublished novel and creative thesis, Vermont College MFA Program in Writing for Children and Young Adults) (on file with the author).

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

seem more like receiving snippets of someone else's disjointed dream.<sup>292</sup> Maybe it's tempting for writers to believe that they are gifted and do not need to edit. However, while the good writer may be gifted, she also edits.<sup>293</sup> For instance, Hemingway rewrote the last chapter of *A Farewell to Arms* seventeen times.<sup>294</sup>

With respect to endowed objects, that revision can sometimes mean focusing on the glass slipper and axing the diamond earrings, the satin gloves, and the silk stockings. At other times it can mean diving more deeply into the dream brain to explore the object anew.<sup>295</sup>

With respect to separating the wheat from the chaff, stories will have objects. But a good story does not hoard.<sup>296</sup> Rita Williams-Garcia advises writers:

They fill in scenery. They perform everyday tasks both vital and mundane . . . Still there is a danger of amassing too much stuff. Then it becomes clutter. Is it just as it is on the surface or will it tie into the plot in some way? If it doesn't tie into the plot the way suggested, then the reader is left with a niggling feeling.

During the throes of writing, it can all be quite exciting as we are collecting material for our scenes. As we think about what lies beneath the object it can become amusing. As we learn about them our characters develop exponentially. We collect and employ objects to help tell ourselves first the story. Then we have a house full of things related to the main characters. We understand the journey of the character.

Then we can sit down with the manuscript to take stock of the warehouse of things. Does it work or does it add to the pile?<sup>297</sup>

In other words, the writer should determine whether the object is central to character or theme in some way.<sup>298</sup>

Once the rare treasure is found, the writer then must explore its meaning. Although writers may be tempted to deliberately plot their use of these objects through use of the rules and definitions included here, a writer might instead use those in self-critique to flag places where the object is absent or awkward.<sup>299</sup> In that phase, the writer might follow the advice of author Carol Bly in her book, *The Passionate Accurate Story*; Bly recommends listing all of the objects that appear in a draft and finding the ones that are the most interesting.<sup>300</sup> Bly recommends that the writer should use the object at least three

292. Cf. BUTLER, *supra* note 278, at 118 (warning against "over-confident" writing).

293. See EUGENE VOLOKH, *ACADEMIC LEGAL WRITING* 105–09 (Foundation Press 4th ed. 2003).

294. JEFFREY MYERS, *HEMINGWAY, A BIOGRAPHY* 215 (Macmillan 1985).

295. See BUTLER, *supra* note 278, at 12; see also Burroway, *supra* note 278, at 2–5 (discussing exploring the dream brain to discover story).

296. See Williams-Garcia, *supra* note 5.

297. See *id.*

298. See *id.*

299. Cf. *id.* (advising applying the rules of objects to the editing phase).

300. BLY, *supra* note 13, at 159.

times.<sup>301</sup> Rather than approaching the object in too formulaic a fashion, the writer may flag the object but then revisit the dream anew. In fact, Pulitzer-Prize-winning novelist Robert Olen Butler explains that technical flaws are the symptoms of bad writing, but that the cause is the failure to explore the dream.<sup>302</sup> He instructs writers to explore art in a “moment-to-moment sensual experience.”<sup>303</sup> Butler asserts, “Art comes from your subconscious. It comes from the white hot center of you.”<sup>304</sup> So he advises invoking a trance and exploring the work with all the senses,<sup>305</sup> which means exploring the object’s role in the scene with all the senses.<sup>306</sup>

Creating an awareness of the characteristics of an object aids this process.<sup>307</sup> However, deliberately creating an endowed object is likely to result in an unnatural feel.<sup>308</sup> The writer runs the risk of heavy-handedness<sup>309</sup> or what Williams-Garcia refers to as “the After-School Special Effect.”<sup>310</sup> As John Gardner writes, “Good description is symbolic not because the writer plants symbols in it but because, by working in the proper way, he forces symbols still largely mysterious to him up into his conscious mind where, little by little, as his fiction progresses, he can work with them and finally understand them.”<sup>311</sup>

However, the screenwriter for the movie *The Polar Bear King* did not heed Gardner’s advice and forced an endowed object into the story without exploring it sufficiently.<sup>312</sup> At the beginning of the movie, a witch turns Prince Valemon into a Polar Bear.<sup>313</sup> Shortly thereafter, he meets the youngest princess of Winterland, and just a few seconds after he meets her, he gives her a necklace saying that he can only

301. *Id.* at 159.

302. *See* BUTLER, *supra* note 278, at 114–15.

303. *See* BUTLER, *supra* note 278, at 12; *see also* Burroway, *supra* note 278, at 2–5 (discussing invoking the dream brain to develop story).

304. BUTLER, *supra* note 278, at 12.

305. BUTLER, *supra* note 278, at 12–21.

306. *See generally Id.* Echoing this advice, Rita Williams-Garcia advised me several times to go back into the scene—back inside the character—and think about what the character really feels and sees. That’s when the objects often reappear for me.

307. *See* Williams-Garcia, *supra* note 5.

308. *Cf.* BUTLER, *supra* note 278, at 116 (warning against “bad from-the-head writing”); GARDNER, *supra* note 8, at 37 (discussing how intellectual study cannot govern what the writer will include).

309. *Cf.* Ian Gallacher, *Thinking Like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 *LEGAL COMM. & RHETORIC: J. ALWD* 109, 123–124 (Fall 2011) (explaining that a metaphor chosen for logical overlap falls short if the writer does not exercise empathy).

310. The author of this article relies on personal knowledge.

311. GARDNER, *supra* note 8, at 36.

312. *Compare* GARDNER *supra* note 8, at 36, with *THE POLAR BEAR KING* (Allumination 2003).

313. *THE POLAR BEAR KING*, *supra* note 312.

give it to the one he marries.<sup>314</sup> He may as well say, “I am handing you an endowed object.” The necklace seems in stark contrast to Gayle’s shells. Gayle labeled the shells as “nothing” when she first saw them.<sup>315</sup> They only took on meaning through the events of the story.<sup>316</sup> The necklace, however, is labeled as an important object from the start and is never defined through the events of the story.<sup>317</sup> Moreover, the necklace does not seem to do much of the story’s work.<sup>318</sup> Viewers know it represents royalty and marriage, but it does not have a history or tell us much else about the characters or the theme.<sup>319</sup>

That being said, an object can be overused, and its symbolism can seem so glaring that readers may feel manipulated.<sup>320</sup> In the popular series, *The Hunger Games*, the writer seems to mock this kind heavy handedness by introducing a symbolic object and then later portraying a political faction exploiting the object in its propaganda.<sup>321</sup> This object is a gold pin of a fictional bird, the mockingjay.<sup>322</sup> The pin is initially resonant and grips the reader.<sup>323</sup> The pin is an important part of the story, and author Suzanne Collins fully exploits it.<sup>324</sup> However, towards the end of the series, some readers may began to feel as though the dissident group had stuck them with the pin a few too many times.<sup>325</sup> Since the protagonist eventually turns against the dissidents, Collins seems to have intended for readers to feel pricked.

The book is set in a future dystopia, and initially, the mockingjay pin symbolizes how the Capitol’s weapons can be turned against it.<sup>326</sup> The Capitol reminds the districts never to rebel again by demanding each year that a boy and a girl are sent from each district as a “trib-

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314. *Id.*

315. WILLIAMS-GARCIA, *supra* note 4, at 87.

316. *Id.* at 87, 153–54.

317. THE POLAR BEAR KING, *supra* note 312.

318. *See id.*

319. *See id.*

320. *See* JUNG, *supra* note 37, at 301, 315 (explaining that less obvious symbols have a greater aesthetic appeal); Gallacher, *supra* note 309, at 123–24 (explaining that a metaphor chosen for logical overlap falls short if the writer does not exercise empathy); SMITH, *supra* note 20, at 239–40 (warning against forcing a metaphor where no real resemblance exists).

321. *See* SUZANNE COLLINS, THE HUNGER GAMES 42–44 (Scholastic Press 2008) (the mockingjay pin is introduced and its background is explained).

322. *Id.* at 42–44.

323. *Id.*

324. SUZANNE COLLINS, CATCHING FIRE 252–53 (Scholastic Press 2009) (Katniss’ designer/stylist creates Katniss a mockingjay costume that “wows” the audience members at the capital when she is interviewed on television).

325. SUZANNE COLLINS, MOCKINGJAY 105–06 (Scholastic Press 2010) (a District 12 propaganda film exploits the mockingjay image).

326. *See* COLLINS, THE HUNGER GAMES, *supra* note 321, at 3–18.

ute.”<sup>327</sup> The tributes then participate in a televised fight to the death; the Roman amphitheater meets *Survivor* and *Project Runway*.<sup>328</sup> Before the protagonist Katniss Everdeen enters the tribute, her friend gives her a mockingjay pin, and readers learn that the Capitol genetically engineered the mockingjays to emulate human speech.<sup>329</sup> The Capitol used the mockingjays as spies against the districts.<sup>330</sup> But the districts then discovered the birds’ abilities and used them to feed false information back to the Capitol.<sup>331</sup> Katniss herself becomes a product of the Capitol when her stylist dresses her and grooms her for her pre-game television appearances.<sup>332</sup> Like all the tributes, she is the Capitol’s message back to the districts, “Don’t rebel. See our power, and how we can torture your children.”<sup>333</sup> But like the mockingjay, Katniss turns against the Capitol.<sup>334</sup> When she and her friend Peeta are the last youths living in the game, they prepare to eat poison berries together rather than killing one another as the Capitol would have them do.<sup>335</sup> The game is interrupted.<sup>336</sup> The Capitol breaks with tradition and announces that there are two victors instead of one.<sup>337</sup> Katniss has shown that a teenager from the districts can defy the Capitol and win.<sup>338</sup> Just as the mockingjays’ words were a message back to the Capitol, Katniss’s defiance is a message back to the districts that the Capitol can be beat.<sup>339</sup> Katniss, an engineered tool of the Capitol, turns against the Capitol like the mockingjays.<sup>340</sup>

But the rebel’s use of the pin starts feeling manipulative when, in the final book, Katniss appears on television in a costume meant to represent the mockingjay.<sup>341</sup> The narrator tells readers at the beginning that the mockingjay is a symbol of rebellion.<sup>342</sup> The mockingjay is used a few times in the first and second books, and then the final book is actually called *Mockingjay*.<sup>343</sup> In the final book, the rebel dis-

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327. *Id.* at 18–19.

328. *Id.* at 42–44.

329. *Id.*

330. *Id.*

331. *Id.* at 67 (Cinna dresses Katniss in the “girl who was on fire” outfit).

332. *Id.*

333. COLLINS, *THE HUNGER GAMES*, *supra* note 321.

334. COLLINS, *MOCKINGJAY*, *supra* note 325, at 31 (Katniss decides to become the mockingjay symbol and fight the capital).

335. COLLINS, *THE HUNGER GAMES*, *supra* note 321, at 344–45 (Katniss and Peeta nearly eat a mouthful of poisonous berries).

336. *Id.* at 344–46.

337. *Id.*

338. *Id.*

339. *Id.*

340. COLLINS, *MOCKINGJAY*, *supra* note 325, at 105–06 (a District 12 propaganda film exploits the mockingjay image).

341. *Id.*

342. *Id.* at 31 (Katniss officially becomes the mockingjay).

343. *Id.*

trict thirteen exploits the symbolism by giving Katniss a mockingjay costume, and she acknowledges that she is the mockingjay.<sup>344</sup> Readers see the heavy hand of District Thirteen.<sup>345</sup> They see one oppressive “president” being replaced with another.<sup>346</sup> Thus readers do not turn against Katniss when, after the rebellion succeeds, she assassinates the new president.<sup>347</sup> Readers dislike how manipulative District Thirteen has been.

## B. The Lawyer’s Process

The process of finding and endowing an object in a litigation narrative should not be manipulative either. Rather, the process is similarly organic and recursive although less rooted in imagination. Law Professor Terrill Pollman once said, “Teaching legal writing is like dropping someone in the middle of China and telling them to learn Chinese and by the way no one around you is speaking it correctly.”<sup>348</sup> The same idea can be true with respect to prescribing a specific process for weaving endowed objects into the trial narrative.

In developing endowed objects in the trial narrative, the lawyer’s process differs less from the fiction writer’s process than some might think and can be just as recursive.<sup>349</sup> This creative, dream brain process, melded with editing can be adapted to trial preparation.<sup>350</sup> The preparation can alternate between intuitive subconscious choices and deliberate editing and examination.<sup>351</sup>

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344. *Id.* at 31, 35.

345. *Id.* at 56–58 (Katniss believes if she doesn’t cooperate with Coin, District 13’s leader, she’s dead).

346. *Id.* at 368–72 (after conquering the capital, Coin elects to have his own hunger games).

347. *Id.* at 372 (Katniss shoots newly appointed President Coin with an arrow, killing him).

348. Terrill Pollman, Professor, University of Las Vegas Nevada School of Law, Bienial Conference of the Legal Writing Institute: A CONVERSATION ABOUT WHAT COGNITIVE SCIENTISTS AND COMPOSITION THEORISTS KNOW THAT WE DON’T ABOUT USING EXAMPLES TO IMPROVE LEARNING (July 2010).

349. See JOHN DERNBACH, *A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD* 168, 205 (3d ed., Aspen Publishers 2007) (explaining that legal writing is recursive rather than linear); Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. OF DET. MERCY L. REV. 207, 213 (Winter 2009) (explaining that while students may view legal writing as linear it is recursive); Cara Cunningham & Michelle Streicher, *The Methodology of Persuasion: A Process-Based Approach to Persuasive Writing*, 13 LEGAL WRITING J. LEGAL WRITING INST. 159, 164, 169 (2007) (discussing how drafting a brief is a recursive process and how the facts are written in tandem with the argument).

350. See Eyster, *supra* note 14, at 113 (discussing importance of obtuse objects in bringing a story close to home).

351. See Dernbach, *supra* note 349, at 168, 205 (explaining that legal writing is recursive rather than linear); Rodriguez, *supra* note 349, at 213 (explaining that while students may view legal writing as linear it is recursive); *The Methodology of Persuasion: A Process-Based Approach to Persuasive Writing*, 13 LEGAL WRITING

Endowed objects will appear in litigation. These objects exist in story because they exist in life.<sup>352</sup> Although not every case will have a piece of evidence that can serve as an endowed object, many cases are likely to have such evidence.<sup>353</sup> There are several examples of “the One Ring,” some treasure jealously guarded by its possessor and coveted by another.<sup>354</sup> Envy overpowered the covetous until they committed some wrong to obtain “the precious” and in so doing harmed the possessor.<sup>355</sup> For instance, in the “murder necklace” case mentioned previously, cocaine-dealer and music producer Naron Celestine, aka Cole or Cold, put a hit on a man named Joe Young for stealing a \$97,000 medallion pendant.<sup>356</sup> Just as Gollum, Bilbo, and Frodo all fought over their desire for the ring, Young, Cole, and Cole’s accomplices all committed dark acts over the necklace.<sup>357</sup> Similar stories of theft or murder for jewelry or other treasures abound.<sup>358</sup> One of the more famous stories involves O.J. Simpson’s kidnapping and robbery of a sports memorabilia dealer who possessed memorabilia once belonging to the Heisman trophy winner-turned-actor-turned-murder-defendant.<sup>359</sup> The One Ring resonates with us in part because such precious items exist in real life.

There is no set outline of the process for identifying the One Ring, glass slipper, or murder necklace. Just as objects may already exist in an early fiction draft, objects are likely already embedded in the client’s story, according to law professor and clinician Jason Eyster.<sup>360</sup> Initially, lawyer has fragments of stories from witnesses and bits and

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J. LEGAL WRITING INST. 164 (2007) (discussing how their prescribed method of persuasive writing is cyclical and recursive); Cunningham & Streicher, *supra* note 349, at 169 (discussing how drafting a brief is a recursive process and how the facts are written in tandem with the argument).

352. See, e.g., Opening Statements of Mr. Hartzler and Mr. Jones, *supra* note 4 (discussing how Timothy McVeigh’s t-shirt manifested his intent); Closing arguments by Mr. Scheck and Mr. Cochran, *supra* note 4 (explaining how an ill-fitting glove proved O.J. Simpson’s innocence).
353. See Eyster, *supra* note 14, at 108 (discussing obtuse objects and the subconscious).
354. See, e.g., *Lure of Mobiles Leads to Murder*, *supra* note 386; Demer, *supra* note 288 (describing a man who was killed for stealing a necklace); Steve Freiss, *As Simpson Robbery Trial Opens, Motive Is the Focus*, *New York Times* (Sept. 15, 2009).
355. See, e.g., Demer, *supra* note 288 (describing a man who was killed for stealing a necklace); Freiss, *supra* note 354 (describing the trial against O.J. Simpson who was accused of stealing back his sports memorabilia).
356. Demer, *supra* note 288.
357. *Id.*
358. See, e.g., *Lure of Mobiles Leads to Murder*, *supra* note 354 (describing how a woman was killed for her necklace); Demer, *supra* note 288 (describing a man who was killed for stealing a necklace); Freiss, *supra* note 354 (describing the trial against O.J. Simpson who was accused of stealing back his sports memorabilia).
359. David Kihara, *Goldmans Laud Sentence*, *Las Vegas Review J.* (Dec. 6 2008); Freiss, *supra* note 354.
360. Eyster, *supra* note 14, at 105 (discussing obtuse objects embedded in cases).

pieces of evidence, much like the fragments of the writer's disjointed dream. Writing about the related concept of "obtuse objects," Eyster recommends vigilantly seeking the objects out.<sup>361</sup> From there, Eyster explains that there are two methods to discovering the obtuse objects: paying attention to objects that evoke discomfort or starting with the theory of the case.<sup>362</sup>

In the first method, the attorney pays attention to each object mentioned and waits for one that makes him or her feel uncomfortable.<sup>363</sup> With an endowed object, it's possible that the attorney may feel resonance rather than discomfort.<sup>364</sup> In seeking the object, the attorney can review written testimony, photographs, or physical evidence.<sup>365</sup> When interviewing the client, witnesses, and collaterals, the lawyer must search for physical details.<sup>366</sup> That means inquiring about such things as the contents of a bag, desk, purse, room, and so on.<sup>367</sup> When an object is mentioned that seems out of place, surprising, or striking in some way, the attorney must focus on ascertaining the reason for the object's presence.<sup>368</sup> In this sense, attorneys are still in the early draft stage of their story. But it may be that the lawyer has already gathered a fair amount of discovery, and just as Carol Bly recommends, the lawyer can list all the objects mentioned in depositions, produced in discovery, collected by police, or otherwise existing in some form or fashion.<sup>369</sup>

With respect the second method, Eyster recommends beginning with the theory of the case, applying it to the client's story, and then searching for an object that thematically represents this theory.<sup>370</sup> Again, with respect to an endowed object, the lawyer might also ponder which pieces of evidence develop a witness's "character," evoke an appropriate emotional response, and/or create structural continuity. During this search, Eyster recommends looking for an ironic object because an obtuse object is out of place.<sup>371</sup> While Eyster recommends finding an object that ironically contrasts the scene, an endowed object may sometimes simply be resonant.<sup>372</sup> That being said, obtuse objects

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361. *Id.*

362. *Id.*

363. See also BUTLER *supra* note 278, at 10–11 (quoting Akira Kurosawa as saying, "to be an artist means never to avert your eyes.").

364. Cf. Williams-Garcia, *supra* note 5 (describing endowed objects).

365. See Eyster, *supra* note 14, at 104–05 (discussing how to find obtuse objects).

366. Eyster, *supra* note 14, at 105 (discussing how to distinguish obtuse objects).

367. *Id.*

368. *Id.*

369. See BLY, *supra* note 13.

370. Eyster, *supra* note 14, at 105.

371. *Id.*

372. *Id.*



can be endowed and can in their own fashion underscore the theory of the case.<sup>373</sup> As Eyster says:

For example, where one is arguing that the government is persecuting a client for her political opposition, a paperweight given to her father by the country's president, with the etched remark 'To my good friend and comrade,' seems ironic when compared to the government's alleged persecution of the daughter. Upon closer reflection, however, it points out the dismay of the government at a rebellious child of a close contact of the president. It also solidifies the claim that the government knows who she is and is more likely to persecute her in the future, should she return to that country.<sup>374</sup>

Regardless of where the attorney begins in searching for an endowed object, the attorney must edit the narrative in the same way that the writer edits. Just as a story should not hoard, a trial should not hoard.<sup>375</sup> Ample evidence is good, but the evidence should all underscore the theory of the case in some way rather than being so much clutter. For instance, the evidence became cumbersome in *ILC Peripherals Leasing Corp. v. International Business Machines Corp.* when the court admitted more than 2,300 exhibits.<sup>376</sup> The jury deliberated for nineteen days and became deadlocked.<sup>377</sup> Thus the court declared a mistrial.<sup>378</sup>

Whatever the starting point for locating the object, the attorney must consider how the object relates to the theory of the case, the development of key figures' "character," the structure of the trial narrative, and the narrative's emotional effect.<sup>379</sup> An object that accomplishes one or more of these tasks should be further explored. Like the writer, the lawyer might review his or her notes or trial

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373. Compare Williams-Garcia, *supra* note 5 (explaining that endowed objects can symbolize the theme and referencing examples of objects that seem to contrast the scene), with Eyster, *supra* note 14 (explaining that obtuse objects contrast the scene and represent the theory of the case in some manner).

374. Eyster, *supra* note 14, at 105 (discussing how to distinguish obtuse objects).

375. See Kathleen M. McKenna, Esq., Proskauer Rose LLP, *Georgetown University Law Center Continuing Legal Education Litigating Employment Cases: Views from the Bench: Trial Tips* (October 14, 2004); *Developments in the Law: The Civil Jury*, 110 HARV. L. REV. 1408, 1513 (1997); Note, *The Case for Special Juries in Complex Civil Litigation*, 89 YALE LAW J. 1155, 1157-58, n.16 (May 1980) (discussing how overwhelming evidence can be confusing for juries); cf. Michael Smith, *supra* note 20, at 236 (warning against overuse of metaphors).

376. *ILC Peripherals Leasing Corp. v. Int'l Business Machines Corp.*, 458 F. Supp. 423, 444 (D.C. Cal. 1978). Similarly, in *U.S. v. Alper*, the court had already admitted 150 exhibits into evidence, and the court of appeals upheld the trial courts refusal to admit additional exhibits that were cumulative of evidence already presented. *U.S. v. Alper*, 449 F.2d 1223 (3d Cir. 1971). The court noted, "In a multidendant case involving numerous exhibits the trial judge must be vested with a reasonable discretion to exclude cumulative and possibly confusing evidence." *Id.*

377. *Id.*

378. *Id.*

379. See Eyster, *supra* note 14, at 105 (explaining the weight that obtuse objects can carry); Williams-Garcia, *supra* note 5.

notebook with a critical eye and flag the loose hanging threads regarding an object.

Then it is time to dive back into the story in the same way that the writer does.<sup>380</sup> Like the writer, the lawyer must tell a “true” story, a story that is not only supported by the evidence but that rings true to judge or jury. Thus, the same concerns about heavy-handedness apply to trial as well; a jury should not feel as though the lawyer is manipulating them.<sup>381</sup> The lawyer must revisit the story with all the senses. If possible, the attorney is looking more closely at the object, feeling it, smelling it, and subjecting it to tests.<sup>382</sup> The attorney is gathering more information. Sometimes the attorney takes the witnesses back to the story of the object and has them look more closely at their memories regarding it.<sup>383</sup> Regardless, the lawyer must develop enough empathy to see the object in the story as though she was experiencing the object and the story for herself.<sup>384</sup> Again, this whole process may circle several times before the lawyer is ready to try the case.<sup>385</sup> Since a trial is live, the lawyer will even continue to edit as the trial itself progresses.<sup>386</sup>

## V. ENDOWED OBJECTS AND THEME AND THEORY

Part of the power of these objects in trial and in a story is that they represent the theme or the theory of the case. For example, Westerners see a glass slipper and likely think of Cinderella and all that her story represented.<sup>387</sup> Similarly, when I say, “the glove,” more

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380. See Eyster, *supra* note 14, at 105 (discussing eliciting information about the object).

381. Valerie P. Hans and Krista Sweigart, *Jurors Views of Civil Lawyers: Implications for Courtroom Communication*, IND. L.J. 1297, 1317-1322 (1993) (indicating the jurors evaluated credibility of an attorney negatively when they viewed the attorney as “cold,” “calculating,” and overly dramatic or exaggerating).

382. See *id.* (discussing eliciting information about the object).

383. See *id.* (discussing eliciting information about the object).

384. Gallacher, *supra* note 339, at 112, 138, 151 (explaining that a metaphor falls short if a lawyer fails to use empathy and chooses for logical overlap alone and that a lawyer requires empathy to understand witnesses and clients).

385. See DERNBACH, *supra* note 349, at 168, 205 (explaining that legal writing is recursive rather than linear); Rodriguez, *supra* note 349, at 213 (explaining that while students may view legal writing as linear it is recursive); Cunningham & Streicher, *supra* note 349, at 169 (discussing how drafting a brief is a recursive process and how the facts are written in tandem with the argument).

386. See Gallacher, *supra* note 309, at 123-24 (explaining that a metaphor chosen for logical overlap falls short if the writer does not exercise empathy); Lieutenant Colonel Daniel G. Brookhart, “Planning Is Everything” *Purpose Driven Trial Preparation*, ARMY LAW 49, 50 (Feb. 2009) (recommending planning with some flexibility).

387. Katherine J. Roberts, *Once Upon the Bench: Rule Under the Fairy Tale*, 13 YALE J.L. & HUMAN. 497, 506 (2001) (stating that not many Westerners, adults or children, have not heard of Cinderella).

often than not both attorneys and non-attorneys know that I am talking about the O.J. Simpson case. These small objects plant themselves in the subconscious where they sit quietly evoking all of the details and conclusions necessary to support a theme or theory of the case.

### A. Endowed Objects and Fiction Themes

Cinderella's glass slipper conveys the theme of compliant grace in the face of aggression.<sup>388</sup> It is tempting to think that as scholars, lawyers, or judges that we are immune to this thematic power carried in symbols. But in the book *Thinking Fast and Slow*, Daniel Kahneman gives readers a series of quizzes to illustrate how symbols play a constant role in our thinking.<sup>389</sup> It might be tempting for scholars and psychologists to cluck their tongues at how people are susceptible to symbols, but in fact Kahneman explains that sometimes it is efficient to jump to conclusions.<sup>390</sup> For instance, if people were to question whether every traffic sign really represented a traffic rule, then they would likely never move forward and would have a great many car accidents. Thus even the most intelligent people accept symbols. The Cinderella symbol has been around for centuries.<sup>391</sup> Its theme may deeply plant itself in a readers' subconscious despite what their logical left-brains know very well. Those slippers ensorcel readers.

Glass is sparkling and conveys beauty. Shiny, pretty things—WANT! People attach millions of dollars of want to that which is shiny and pretty.<sup>392</sup> Developmentally, shiny princess accessories are appealing to the three- to five-year-old set; in fact, Disney's princess line was already a three billion dollar industry in 2006.<sup>393</sup> Moreover, that basic want then gets reinforced by social pressure, education, and development, as professor Lyn Mikel Brown notes that with 25,000 princess costumes on the market, children have few other toys from which to choose.<sup>394</sup> Thus, it might even be natural to fear criticizing

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388. See GAG, *supra* note 1 (this theme is portrayed in a more positive light in this story); HEWET, *supra* note 1 (this theme is portrayed in a more positive light in this story).

389. KAHNEMAN, *supra* note 40.

390. *Id.* at 79.

391. One account claims that the story dates back to Egypt. *The Original Cinderella Story*, <http://www.perankhgroup.com/cinderella.htm> (last accessed Sept. 14, 2012).

392. See MOST EXPENSIVE DIAMOND, <http://mostexpensivediamond.org> (last accessed Sept. 14, 2012) (listing the price tags for the most expensive diamonds in the world).

393. See Peggy Orenstein, What's Wrong with Cinderella?, N.Y. TIMES MAGAZINE, Dec. 24, 2006.

394. *Id.*

Cinderella's theme.<sup>395</sup> The critic may wonder, "Do I have to give up that shiny, pretty slipper that I want so much? Will I be excluded from society if I do?"<sup>396</sup>

But the glass slippers are not merely sparkling and shiny societal totems. Because the glass is fragile, Cinderella must have grace to dance in the slippers. Thus she is appealing. Young women want to be her.<sup>397</sup> They want those slippers<sup>398</sup>—shiny and thus beautiful, fragile and thus graceful. But, the slippers tie "shiny, beautiful, and graceful" to "dainty and fragile."

The fragility of the glass conveys daintiness.<sup>399</sup> Cinderella is similarly meek and dainty.<sup>400</sup> For instance, in Henry Hewett's version of the story, after detailing the list of chores that Cinderella must perform, Hewett writes, "the poor thing bore this ill treatment very meekly, and did not dare complain to her father."<sup>401</sup> The theme itself is virtuous in some ways. Often meekness is labeled as "sweetness," which is equated with kindness. Kindness is a likable trait, and thus Cinderella herself is likable for seeming kind. Moreover, this notion of meekness as kindness is perhaps attractive to parents in some ways; for instance, even writer Peggy Orenstein who criticizes aspects of Cinderella, acknowledges that she can get her child to use the toilet by saying that princesses use the potty.<sup>402</sup> Compliant children are easy.

However, those shoes also must hurt.<sup>403</sup> Dancing in them for hours surely must be a torture.<sup>404</sup> That torture is not mentioned in the story.<sup>405</sup> Perhaps readers are meant to overlook it. A positive take on the story might be that readers are supposed to overlook it the same way a woman overlooks labor pains. It is just one of the things

395. For years, I have wanted to write a dark comedy novel based on Cinderella. Yet despite that I still love shiny and pretty things myself. That slipper is planted in the nethers of my own subconscious. It is just that I am aware now of their effect.

396. See Miriam A. Cherry, *How to Succeed in Business Without Really Trying (Cases): Gender Stereotypes and Sexual Harassment Since the Passage of Title VII*, 22 HOFSTRA LAB. & EMP. L.J. 533, 547 (2005) (stating the dominant culture adopts the Cinderella theme).

397. See Orenstein, *supra* note 393 (discussing the popularity of Cinderella costumes).

398. See *id.* (discussing the popularity of Cinderella costumes).

399. See HEWETT, *supra* note 1, at 15 (referring to the slippers as dainty).

400. See *id.* (referring to the slippers as dainty and Cinderella as meek).

401. *Id.* at 28.

402. Orenstein, *supra* note 393.

403. See Robert Condlin, "Every Day and in Every Way We are Becoming Meta and Meta," or *How Communitarian Bargaining Theory Conquered the World (of Bargaining Theory)*, 23 OHIO ST. J. ON DISPUTE RESOL. 231, 299 (2008) (stating that glass slippers pinch).

404. Compare Condlin, *supra* note 403, at 299 (2008) (stating that glass slippers pinch), with HEWETT, *supra* note 1, at 28 (implying that she danced for hours), and JACOB GRIMM AND WILHELM GRIMM, WILHELM, GRIMM'S FAIRY STORIES at 89 (Cupples & Leon Company, 1922) (stating that she danced until a late hour).

405. GRIMM & GRIMM, *supra* note 404.

that women must endure for something beautiful. But perhaps many women overlook it the way that they overlook spousal abuse, pretend that a rape never happened, and ignore the income disparity between women and men.<sup>406</sup> Nonetheless, there is something to be said for enduring discomfort to achieve some greater good. For instance, an attorney for child protective services might be happy to stay up all night working on an emergency. However, in Cinderella's case, she endures the pain to appear pretty and graceful.<sup>407</sup>

Another problem with the slipper and theme is that Cinderella's fairy Godmother magically appeared and conjured the slipper.<sup>408</sup> Thus, the message is that if a young woman is sweet and kind each time abuse is doled out, someone will eventually appear from thin air to rescue her.<sup>409</sup> However, this approach fails to take into account just how far the various abusers of the world will push someone who is

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406. See Hilary M. Schor, *Storytelling in Washington, D.C.: Fables of Love, Power, and Consent in Sexual Harassment Stories*, 65 S. Cal. L. Rev. 1347, 1348–49 (1992) (explaining how stories like Cinderella romanticize sexual harassment and lead women to consent to things to which they might not otherwise consent); Judy Sobin, *Volunteer Legal Services Hawai'i News Letter Executive Director's Report Spring 2003*, 7 HAW. B.J. 25, 27 (March 2003) (reporting that many domestic violence victims choose to stay in their relationships); Brande Stellings, *The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship*, 28 HAR. C.R.-C.L. L. Rev. 185, 205, n.90 (1993) (discussing how rape becomes invisible because men do not have a context for envisioning victimhood and how women typically do not report rape as a result of its invisibility); *Equal Pay, Comparable Work, and Job Evaluation*, 90 YALE L.J. 657, 658 (1981) (explaining that women working full-time have made only sixty percent the amount that men made in the past sixty-five years); see also *Rape and sexual assault: Reporting to police and medical attention, 1992–2000* [NCJ 194530], retrieved from the U.S. Department of Justice, Office of Justice Programs, Bureau of Statistics, <http://bjs.ojp.usdoj.gov/content/pub/pdf/rsarp00.pdf> (reporting over a hundred thousand reported rapes each year between 1992–2000); National Institute of Justice & Centers for Disease Control & Prevention, *Prevalence, Incidence and Consequences of Violence Against Women: Findings from the National Violence Against Woman Survey*, 1998 (reporting that one in every six women has experienced attempted or completed rape in her lifetime).

407. Compare Robert Condlin, *supra* note 403, at 299 (stating that glass slippers pinch), with HEWET, *supra* note 1, at 28 (implying that she danced for hours), and GRIMM & GRIMM, *supra* note 404, at 62 (stating that she danced until a late hour); see also Cherry, *supra* note 396, at 547 (stating that some women will try to attain unrealistic beauty standards to achieve Cinderella dreams).

408. See CHARLES PERRAULT, *CINDERELLA, OR THE LITTLE GLASS SLIPPER* (Marcia Brown, 1954).

409. See generally GAG, *supra* note 1; HENRY W. HEWET, *CINDERELLA*; see also COLETTE DOWLING, *THE CINDERELLA COMPLEX* (1981) (encouraging women to become independent rather than waiting to be saved); Schor, *supra* note 406, at 1348–49 (explaining how stories like Cinderella romanticize sexual harassment and lead women to consent to things to which they might not otherwise consent).

sweet and accommodating.<sup>410</sup> If an aggressor's goal is simply to get what he wants, then he will take advantage of a compliant person. For instance, someone like serial killer Ted Bundy likely will not change his mind just because someone was sweet.<sup>411</sup> Rather, he and all the other bullies of the world will target those who are compliant.<sup>412</sup> In fact, in one study imprisoned child abusers even listed compliance as one of the traits they use to identify victims.<sup>413</sup> But in Cinderella's world, a fairy godmother magically saves her.<sup>414</sup> In our world, for so many women, children, and especially men who are forced into the role of rescuer,<sup>415</sup> no fairy godmother ever came to the rescue.<sup>416</sup> Moreover, there is something empowering about rescuing oneself.<sup>417</sup>

Cinderella's reward for enduring the slippers is a prince.<sup>418</sup> The story assumes that the prince should be an end goal. But readers know little about him other than that he is a prince,<sup>419</sup> so he is royalty and thus a potentially wealthy and powerful person who is a part of a caste system that judges people by their bloodlines.<sup>420</sup> The fact that he is wealthy and powerful also means that he is in a position to help Cinderella. Maybe he is a kindly monarch and a noble rescuer. Then again, perhaps he targets Cinderella for the same reason that the stepmother and stepsisters do, he can push her around. She will do what he says with a smile. After all, in his kingdom it does not appear that he is helping every destitute person, only the pretty girl who

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410. See Richard Fossey, *Law, Trauma, and Sexual Abuse in the Schools: Why Can't Children Protect Themselves?*, 91 EDUC. LAW REP. 443, 450–51 (Aug. 1994) (listing compliance as one of the primary traits abusers seek in a victim).

411. See *id.* (listing compliance as one of the primary traits abusers seek in a victim); see also Samuel H. Pillsbury, *Evil and the Law of Murder*, 24 U.C. DAVIS L. REV. 437, 470 (1990) (explaining that Ted Bundy included vulnerability in his criteria for selecting victims).

412. See Fossey, *supra* note 410, at 450–51 (listing compliance as one of the primary traits abusers seek in a victim).

413. See *id.*

414. See PERRAULT, *supra* note 408.

415. Cf. Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 EUR. J. INT'L L. 253, 270 (2007) (explaining that men are conditioned to not view themselves as potential victims of sexual abuse).

416. See *id.* (discussing the prevalence of sexual violence against men in armed conflict).

417. DOWLING, *supra* note 409 (encouraging women to become independent).

418. PERRAULT, *supra* note 408; HEWET, *supra* note 1, at 17; GRIMM & GRIMM, *supra* note 404, at 63–64.

419. PERRAULT, *supra* note 408; HEWET, *supra* note 1; GRIMM & GRIMM, *supra* note 404, at 63–64.

420. See Andrew Majeske, *Equity in Book V of Spenser's the Faerie Queene*, 18 L. & LIT. 69, 90 (2006) (mentioning the tracing of royal bloodlines); Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985, 1001 (1990) (using the term "caste" in reference to royalty).

charms him at the dance.<sup>421</sup> Indeed, he carries around a symbol of Cinderella, the glass slipper, and thus seems to consent to those things that the slipper represents. The problem is that readers do not know which of these things the prince is, and Cinderella does not know him well enough to know either. Moreover, if her father is the one who taught her to judge character, he probably is not the best person to do so, having married the evil stepmother.

To conquer the thematic power that the slippers hold over the subconscious, readers may have to choose what they will love about the slippers and reject the rest. The logic brain must reconcile with the right brain for readers to internalize the difference between being kind and smiling when someone tries to bully them. It is fine to like shiny and pretty things as long as they do not hurt us. It can be desirable to endure pain as long as it is for the right reasons. In deconstructing the slippers, one shatters their spell. But because endowed objects can wield such great thematic power, to destroy them the writer must sometimes shatter them, or throw them into them into the fires of Mt. Doom, as with the One Ring. That is why the objects work well as vehicles for theme.

## B. Endowed Objects and Theory of the Case

Just as an object can symbolize the theme of a story, it can represent the theory of the case. As Jason Eyster illustrates, the asylum seeker's book bag represented his students' theory of the case. In the woman's narrative, the bag stands for all the things that she has lost.<sup>422</sup> She has lost an education and thus lost the chance at a successful future in her country.<sup>423</sup> But the bag also contains ideas, and in her country, her family was punished for independent ideas.<sup>424</sup>

Similarly, Timothy McVeigh's t-shirt represents the theory of the prosecution's case against him. McVeigh plotted against a government of the people for a long time and that plot culminated in the bombing of the Murrah Building and the killing of innocent American men, women, and children.<sup>425</sup> To the bombing, he wore a shirt that portrayed blood drops and quoted Lincoln assassin, John Wilkes Booth. The time that McVeigh took to make the shirt itself symbolizes his long plot. The well-researched quotes and images also represent planning and plotting.<sup>426</sup> Abraham Lincoln represents abolition of slavery and thus stands for a government by all people as equals. The

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421. See generally Perrault, *supra* note 408; HEWET, *supra* note 1, at 10-18; GRIMM & GRIMM, *supra* note 404, at 63-64.

422. See Eyster, *supra* note 14, at 113-14.

423. *Id.*

424. *Id.*

425. Opening Statements of Mr. Hartzler and Mr. Jones, *supra* note 4.

426. See *id.* at 9 (describing the shirt and also discussing his planning).

blood represents both Lincoln's death and the deaths of Murrah Building victims. The quote itself represents anti-Lincoln sentiment and anti-government sentiment.<sup>427</sup> Finally, the explosives residue represents the bombing.<sup>428</sup>

## VI. ENDOWED OBJECTS AND CHARACTER

### A. Fiction Character

Not only can an endowed object convey the story's theme, but it can also speak volumes about a character.<sup>429</sup> For instance, the slipper in Cinderella above tells readers much about her.<sup>430</sup> Readers know that she likes pretty things and that she is graceful enough to dance in the glass slippers.<sup>431</sup> They know that she does not complain and that she likes the prince enough to dance with him for hours in those slippers.<sup>432</sup>

Similarly, the cowrie shell in *Like Sisters on the Home Front* tells the reader a lot about Gayle and about Great.<sup>433</sup> Initially, the reader may find Great to be someone sentimental based on her box of odds and ends.<sup>434</sup> Gayle's reaction to the shell tells the reader that Gayle is not sentimental.<sup>435</sup> Later, when the reader learns the meaning behind the shells, the reader sees that Great is not just sentimental;<sup>436</sup> Great is the keeper of an important family history.<sup>437</sup> Gayle's changed reaction to the shell shows how her attitude toward the family has changed.<sup>438</sup>

### B. Endowed Objects and Witness or Party Character

Evidence used as an endowed object in the trial narrative can reveal the character of witnesses or parties in much the same way. For instance, the trapdoor in the John Wayne Gacy case shows that Gacy planned the killings, went to great lengths to kill, and then walked away without remorse.<sup>439</sup> Similarly, the t-shirt that convicted Oklahoma City bomber Timothy McVeigh wore to the bombing tells

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427. *Id.*

428. *Id.* (mentioning the explosives residue).

429. Williams-Garcia, *supra* note 5.

430. See GAG, *supra* note 1.

431. *Id.*

432. *Id.*

433. WILLIAMS-GARCIA, *supra* note 4, at 87, 153-54.

434. *Id.* at 87.

435. *Id.* at 87.

436. *Id.* at 153-54.

437. *Id.* at 153-54.

438. *Id.* at 87, 153-54.

439. See SULLIVAN *supra* note 80, at 360 (discussing the digging efforts and Gacy's own acknowledgement that it demonstrated premeditation).



jurors a lot about McVeigh.<sup>440</sup> McVeigh inscribed the words, *sic semper tyrannis*, on the t-shirt.<sup>441</sup> These words mean, “thus always to tyrants.”<sup>442</sup> The words imply that McVeigh viewed the government as tyrannical.<sup>443</sup> Moreover, these words were the same words that John Wilkes Booth used when he shot President Abraham Lincoln.<sup>444</sup> Thus, this history suggests that McVeigh identified with Booth and saw his illegal action as justified in the same way that Booth did.<sup>445</sup>

## VII. ENDOWED OBJECTS AND STORY STRUCTURE

### A. Fiction Structure

Joseph Campbell and Chris Vogler have applied the idea of subconscious metaphors to fiction and have identified how these metaphors play a role in the very structure of stories throughout the ages.<sup>446</sup> In *The Writer’s Journey*, Vogler breaks the protagonist’s story into twelve phases: (1) “the ordinary world”; (2) “the call to adventure”; (3) “the refusal of the call”; (4) “the meeting with the mentor”; (5) “the first threshold”; (6) “tests, allies, and enemies”; (7) “approach to the inmost cave”; (8) “the ordeal”; (9) “seizing the sword”; (10) “the road back”; (11) “resurrection”; and (12) “return home with the elixir.”<sup>447</sup> Although the word “journey” is used, these phases are metaphorical and Vogler provides examples regarding how this structure can play a role in any good story.<sup>448</sup>

Objects naturally tend to weave their way in to the following phases: the meeting with the mentor, the inmost cave, the ordeal, and seizing the sword. For instance, in the fourth phase of the hero’s journey, the meeting with the mentor, which occurs in Act One,<sup>449</sup> “the Shaman of the tribe presses something into your hand, a magic gift, a potent talisman that will protect us and guide us on the quest.”<sup>450</sup> Vogler explains that this phase involves meeting with a mentor to

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440. See Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4.

441. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4, at 9; see also opening Statements of Mr. Hartzler and Mr. Jones, *supra* note 4, at 40–41 (explaining the meaning of the term and offering a different explanation of its origin).

442. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4, at 40–41 (explaining the meaning of the term and offering a different explanation of its origin).

443. *Id.*

444. *Id.*

445. *Id.*

446. See VOGLER, *supra* note 45; CAMPBELL, *supra* note 9.

447. See VOGLER, *supra* note 45, at 12, 26, 178, 184.

448. See VOGLER, *supra* note 45.

449. See *id.* at 117, 212–13.

450. *Id.*

overcome reluctance to change and to take the journey.<sup>451</sup> The mentor provides advice and sometimes provides a gift.<sup>452</sup> For instance, Vogler explains that in *The Wizard of Oz*, Dorothy meets with her mentor, Glinda the Good Witch, who gives Dorothy the ruby red slippers from off of the feet of the Wicked Witch of the East.<sup>453</sup> As Dorothy passes through the phases of the journey, in Act Two, she approaches the inmost cave, the place where the biggest change, the ordeal, is about to occur. Sometimes the inmost cave is the den of the enemy.<sup>454</sup> Other times, it may just be the place where the protagonist confronts his or her deepest conflict.<sup>455</sup> In Dorothy's case, the inmost cave is the castle of the witch.

Dorothy reaches the inmost cave and faces the ordeal where her red slippers again play a role.<sup>456</sup> The ordeal occurs in the middle of Act Two and is a phase of the journey where the hero faces a central crisis, and typically there is a symbolic death in this phase.<sup>457</sup> Vogler identifies Dorothy's ordeal as her confrontation at the castle of the Wicked Witch of the West.<sup>458</sup> During this phase, the witch seeks the return of her sister's ruby red slippers.<sup>459</sup> Dorothy refuses and douses the witch with a bucket of water.<sup>460</sup> The water causes the witch to melt and kills her.<sup>461</sup>

Dorothy then embarks on the next phase of the journey in Act Three.<sup>462</sup> Vogler actually names this phase "seizing the sword."<sup>463</sup> Thus, object possession defines the phase. Vogler explains that in this stage the hero aggressively takes an item from the special world that the hero has visited during the journey. Vogler writes:

The idea of a hero Seizing the Sword comes from memories of stories in which heroes battle dragons and take their treasure. Among the treasures there may be a magic sword, perhaps the sword of the hero's father, broken or stolen by the dragon in previous battles . . . . But a sword is only one of many images for what is being seized by the hero at this step . . . .<sup>464</sup>

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451. *Id.* at 117–26.

452. *Id.*

453. *THE WIZARD OF OZ* (Warner Home Video 2009); *see also* VOGLER, *supra* note 45, at 123 (Glinda, the mentor, gives Dorothy the ruby red slippers).

454. VOGLER, *supra* note 45.

455. *Id.*

456. *See id.* at 178.

457. *See id.* at 159–78, 194.

458. *See id.* at 178; *see also* *THE WIZARD OF OZ*, *supra* note 453 (Dorothy is confronted by the Wicked Witch of the West at the castle).

459. *THE WIZARD OF OZ*, *supra* note 453.

460. *Id.*

461. *Id.*

462. *See* VOGLER, *supra* note 45; *see also* *The Wizard of Oz*, *supra* note 453 (Dorothy sets off to find the Wizard of Oz to send her home).

463. *See* VOGLER, *supra* note 45, at 184.

464. *See id.* at 185.

Vogler goes on to explain that the sword could instead be any number of other items, such as the Holy Grail. He explains that the object can be purchased with the hero's life or stolen, but, either way, the hero must earn the item and must take it.<sup>465</sup> The hero achieves self-realization along with new perceptions and abilities during this phase.<sup>466</sup> The hero uses the sword or other object to complete the quest.<sup>467</sup>

In Dorothy's case, the sword is the witch's broom, which she will use as payment to the Wizard of Oz for her passage home.<sup>468</sup> However, the slippers play a role again in this phase of Dorothy's journey. The witch has demanded the slippers. But Dorothy escapes with her ruby red slippers intact.<sup>469</sup>

In the final phase of the journey, Dorothy returns home with the elixir.<sup>470</sup> Again, in naming this phase, Vogler contemplates object possession.<sup>471</sup> The elixir itself is not always an object.<sup>472</sup> It may be simple wisdom that the protagonist carries home.<sup>473</sup> Or as Vogler illustrates, it may be the holy grail; either way, the hero is finally transformed by the journey in this phase.<sup>474</sup> In Dorothy's case, the elixir is knowledge, but her ruby red slippers pay off once again.<sup>475</sup> To finally return home, she clicks the heels of her slippers three times and says, "[t]here is no place like home."<sup>476</sup> Thus, the slippers connect the end of the journey to the beginning and the middle.<sup>477</sup> By playing a role in each of these phases of the journey, the slippers have woven a narrative through-line.

While Vogler's version of journey structure contemplates objects, there are no set rules for all of the exact points at which an endowed object must come into the story. Nonetheless the object can be used to

465. *See id.*

466. *See id.* at 184–88.

467. *See id.* at 181–91.

468. *See id.* at 190–91; *see also* THE WIZARD OF OZ, *supra* note 453 (Dorothy gives the witch's broom to the Wizard of Oz).

469. *See* VOGLER, *supra* note 45, at 178, 190–91. Vogler does not specifically mention that Dorothy's slippers are intact when she escapes; however, they are intact in the movie. THE WIZARD OF OZ, *supra* note 453.

470. *See* VOGLER, *supra* note 45, at 234; *see also* THE WIZARD OF OZ, *supra* note 453 (Dorothy returns home with a new found knowledge).

471. *See* VOGLER, *supra* note 45, at 221–35.

472. *See id.* at 229.

473. *See id.*

474. *See id.* at 228.

475. *See id.* at 234; *see also* THE WIZARD OF OZ, *supra* note 453 (Dorothy's ruby red slippers brought her back to Kansas).

476. *See* VOGLER, *supra* note 45, at 234; *see also* THE WIZARD OF OZ, *supra* note 453 (clicking Dorothy's ruby red slippers three times sent her back to Kansas).

477. *See generally* VOGLER, *supra* note 45, at 190–91; THE WIZARD OF OZ, *supra* note 453.

create narrative continuity.<sup>478</sup> A gift given early in the story often takes on special meaning only in the seizing the sword phase of the journey.<sup>479</sup> For instance, in the section above on endowed objects and resonance, the cowrie shell in *Like Sisters on the Home Front* is labeled as “nothing” by Gayle.<sup>480</sup> It is only when she makes her way into Great’s inmost cave and hears the Telling that the cowrie shell becomes special to her.<sup>481</sup> At that point, Gayle has seized the sword. Later when she sees her son lying on the cowrie shell blanket, Gayle has returned home with the elixir of knowledge.<sup>482</sup> She shares her gift with Cookie when she prevents Cookie from betraying her beliefs.<sup>483</sup>

By introducing the object early in the story, the writer can link the first act to the central conflict in Act Two and the Final Act. By including the object in these phases, the writer makes the object significant to the reader.<sup>484</sup> The shell would not seem to mean anything to Gayle during the Telling if she had not seen it previously in the box.<sup>485</sup> But importantly, the shell also jogs the reader’s memory of the previous phase of Gayle’s journey.<sup>486</sup> Gayle cries out, “She knew! She knew! ‘That shell tied up there in the hanky?’”<sup>487</sup> These words remind the reader of a time when Gayle did not value Great or the family’s history.<sup>488</sup> Thus readers feel the weight of Gayle’s change. If, instead of using the shell, Williams-Garcia had written, “Gayle remembered before that she did not care about Great or the family’s history,” readers would likely feel annoyed rather than tearful. Likewise, when Gayle sees the shell embroidered on the family quilt at the end, she reacts.<sup>489</sup> “She let out a gasp. *As many times as [Emmanuel] had wet that thing up! Didn’t Cookie know that quilt belonged to the family?*”<sup>490</sup> Again, the shell draws a connection for the reader.<sup>491</sup>

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478. Compare VOGLER, *supra* note 45 (discussing objects in various phases of the journey and providing examples of objects that appear in several phases), with WILLIAMS-GARCIA, *supra* note 5 (using examples to illustrate how objects can play a transformative role in the story).

479. See VOGLER, *supra* note 45, at 184–92.

480. WILLIAMS-GARCIA, *supra* note 4, at 87.

481. See *id.* at 153–54.

482. WILLIAMS-GARCIA, *supra* note 4, at 159.

483. WILLIAMS-GARCIA, *supra* note 4, at 160–64.

484. Compare Williams-Garcia, *supra* note 5 (discussing traits of endowed objects), with VOGLER, *supra* note 45 (discussing the hero’s journey structure and mentioning throughout how gifts and talismans can sometimes play a role in this structure).

485. See WILLIAMS-GARCIA, *supra* note 4, at 153–54.

486. *Id.*

487. *Id.*

488. *Id.*

489. See *Id.*

490. *Id.*

Once the family and the shell were nothing to Gayle.<sup>492</sup> Later, she learns the significance of both.<sup>493</sup> Her reaction at the end illustrates that she has returned with the elixir; she values her family now.<sup>494</sup>

Despite how prescriptive this structure description can sound, it is merely descriptive. Although the writer can identify these flaws with the left brain during editing, as Robert Olen Butler notes, the flaws of writing are a result of the failure to explore the dream. So the writer can note the object's absence when it's jarring. But then the writer must visit the dream anew to discover whether the story really has a covie shell or it's actually a key chain or something else entirely.

## B. Structure at Trial

Similarly, an endowed object can weave a thread through journey fabric at trial and create structural continuity.<sup>495</sup> In fact, Professor Ruth Anne Robbins has already written an entire article recommending the use of journey theory in legal narratives.<sup>496</sup> Further building on the idea of using narrative structure in trials, Professor Stefan Krieger and Clinical Fellow Reza Rezvani have illustrated how movie storyboarding can be used to plan trial narrative structure.<sup>497</sup> They speak of dividing the trial into three different acts.<sup>498</sup> However, since a trial proceeds witness by witness, a trial will not necessarily always start chronologically with Act One, progress to Act Two, and end with Act Three.<sup>499</sup> Rather, each witness may have his or her own story to tell that fits into the larger narrative.<sup>500</sup> So Witness One will have an individual Act One, Two, and Three.<sup>501</sup> However, Witness One may only present parts of the larger narrative.<sup>502</sup> Witness Two then has his or her own Act One, Two, and Three, which also form a part of the larger narrative.<sup>503</sup>

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491. Compare *id.* at 87, 159, with VOGLER, *supra* note 45 (discussing the hero's journey structure and mentioning throughout how gifts and talismans can sometimes play a role in this structure).

492. See WILLIAMS-GARCIA, *supra* note 5, at 87.

493. WILLIAMS-GARCIA, *supra* note 4, at 153–54.

494. Compare Williams-Garcia, *supra* note 4, at 159 (presenting the overall scene so that the reader senses that Gayle values her family), with VOGLER, *supra* note 45, at 231–35 (discussing how the elixir represents the transformation of the protagonist).

495. See Robbins, *supra* note 78, at 793.

496. See *id.*

497. Krieger & Rezvani, *supra* note 25.

498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

503. *Id.*

Given this structure, an endowed object can serve as a transition and jog the judge or jury's memory back to a previous witness. So for instance, Witness One discusses the object in Act One. Later, Witness Two returns to Act One of the larger narrative, that witness may discuss the object as well or perhaps the object is introduced into evidence at that point. The object then links the narrative for the factfinder. When an object plays a large role like this one and represents the theme, it can weave a through-line at several key points. Although there are no set rules dictating when an object must appear in story or in trial, objects may sometimes naturally fit at certain story points.

An object important enough to represent the theory of case can also resonate in the summaries of the larger narrative in the opening and closing. The opening can be a narrative that follows journey structure.<sup>504</sup> The object might be introduced early in the narrative as a gift during the meeting with the mentor phase of the journey, which occurs in Act One and is the phase of the journey that involves receiving information, advice, or encouragement.<sup>505</sup> The term "gift" is symbolic here and can refer to an object uncovered in an investigation.<sup>506</sup> The mentor in this instance could be the invisible embodiment of wisdom used in the investigation.<sup>507</sup> The object might be used again during the central conflict, otherwise known as the ordeal, the middle of the story and point at which some symbolic death occurs.<sup>508</sup> Finally, the object might play a role in the resolution in Act Three, the return home with the elixir, that phase in which the hero is transformed by the journey.

None of these suggestions are rules etched in stone rather they are dramatic beats where the object is likely to naturally play a role in the organization of a non-fiction story. As discussed in the portion on process, the attorney can flag these points in editing the trial notebook and drafts of opening and closing remarks.<sup>509</sup> However, visualizing this non-fiction story is key to ensuring that the object fits into the story organically.

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504. *See generally* Robbins, *supra* note 78 (discussing journey structure at trial); *see also* Linda H. Edwards, *Once Upon a Time in Law, Myth, Metaphor, and Authority*, 77 TENN. L. REV. 883, 888–89 (2010) (explaining that client stories lend themselves to journey structure).

505. *See* Robbins, *supra* note 78, at 792 (discussing receiving a gift at this phase); VOGLER, *supra* note 45, at 117–21.

506. *See generally* VOGLER, *supra* note 45, at 117–21.

507. *Id.*

508. *Compare* Robbins, *supra* note 78 (discussing journey structure at trial), *with* Edwards, *supra* note 504, at 888–89 (explaining that client stories lend themselves to journey structure), *and* VOGLER, *supra* note 45, at 159–79.

509. *See supra* Part IV.

If the object is aligned with the theory of the case and with the evidence, the object is likely to be relevant at key points in the trial itself. The narrative use of the object during trial must be accurate and must comport with the rules of evidence and procedure.<sup>510</sup> Witnesses who encountered the object prior to trial can testify regarding the object if their testimony is relevant. Thus, Jailer Marsha Moritz could testify that she witnessed Timothy McVeigh wearing the t-shirt, which is discussed in greater detail below.<sup>511</sup> Similarly, if the witness has relevant expertise regarding the object or relevant and admissible knowledge about the object, the witness can testify.<sup>512</sup> Therefore, FBI chemist Steven Burmeister, could testify regarding the explosives test that he performed on Timothy McVeigh's t-shirt.<sup>513</sup> An attorney cannot simply elicit evidence regarding the object at a given point based on narrative structure alone. However, where the theory of the case, the object, and the evidence are aligned, the object will often naturally enter the narrative at key structural points. Finally, when the attorney closes, the attorney can reference the evidence regarding the object again. Thus the object weaves a thread of continuity through the narrative at trial.

The prosecution effectively weaved the t-shirt worn by Oklahoma City bomber, Timothy McVeigh, into the structural fabric of trial narrative that led to McVeigh's conviction.<sup>514</sup> The t-shirt served as an

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510. See, e.g., FED. R. EVID. 401 (providing for admissibility of relevant evidence); FED. R. EVID. 403 (allowing exclusion of relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence"); FED. R. EVID. 901 (providing that a proponent of evidence must provide evidence to support a finding that the evidence is what it claims to be and providing that a witness with knowledge can testify that the item is what it is claimed to be).
511. See Examination of Ronald Kelly, Marsha Moritz & Vivian Dewyse at 36, 40, *United States v. McVeigh*, 118 F. Supp. 2d 1137, (D. Colo. 1997) (96-CR-68), 1997 WL 256985, at \*43, \*49.
512. See FED. R. EVID. 401 (defining relevant evidence as evidence that has a tendency to make a fact of consequence to the action more or less probable than it would be without the fact); FED. R. EVID. 402 (providing for admissibility of relevant evidence); FED. R. EVID. 602 (providing that every person is competent to be a witness unless the rule provide otherwise); FED. R. EVID. 702 (allowing expert witnesses to testify under certain conditions).
513. See Examination of Steven Burmeister at 32-40, *U.S. v. McVeigh*, No. 96-CR-68 (D.Colo. trans. 1997), 1997 WL 257567.
514. See Examination of Danny Atchley & Charles Hanger, *United States v. McVeigh*, 118 F. Supp. 2d 1137 (D. Colo. 1997) (No. 96-CR-68), 1997 WL 203457 at \*25; Examination of Steven Burmeister, *supra* note 513, at 32-42; Examination of Ronald Kelly, Marsha Moritz & Vivian Dewyse, *supra* note 511; Lois Romano & Tom Kenworthy, *Prosecutor Paints McVeigh as 'Twisted' U.S. Terrorist*, WASHINGTON POST (April 25, 1997), <http://www.washingtonpost.com/wp-srv/nation/longterm/oklahoma/stories/ok042597.htm>. Commentators seem to agree that the prosecution litigated the case extremely well. See Transcript of *Expedi-*

endowed object in the trial.<sup>515</sup> McVeigh was a former United States Army soldier who had grown embittered over what he saw as oppressive government control.<sup>516</sup> McVeigh traveled to gun shows, and his hostility towards the government grew.<sup>517</sup> Along the way, he met allies in his conspiracy against the government and formed a plan to bomb a government building in Oklahoma.<sup>518</sup> McVeigh's bomb killed 149 adults and 19 children.<sup>519</sup>

The day of the bombing, McVeigh wore a t-shirt inscribed with the words *sic semper tyrannis*.<sup>520</sup> Like the inscription on the One Ring, these words were magic words. John Wilkes Booth uttered these same words the day he assassinated President Lincoln, *sic semper tyrannis*, "Thus always to tyrants."<sup>521</sup> Later testing revealed explosives residue on the shirt.<sup>522</sup> Investigators and prosecutors turned McVeigh's talisman against him.<sup>523</sup>

As recommended above, the prosecution created a structural through-line by using the shirt in their opening statement, direct examination, and closing argument.<sup>524</sup> With respect to the opening, Prosecutor Joseph Hartzler created a narrative that followed journey structure. The State served as an invisible protagonist in this narrative.<sup>525</sup>

As the search for the bomber developed, Trooper Charles Hanger's encounter with McVeigh serves as a meeting with the mentor, the teaching, learning, and gift-giving phase of the journey.<sup>526</sup> The State

*ent Prosecution*, PBS NEWSHOUR (May 21, 1997), [http://www.pbs.org/newshour/bb/law/may97/mcveigh\\_5-21.html](http://www.pbs.org/newshour/bb/law/may97/mcveigh_5-21.html).

515. See Williams-Garcia, *supra* note 5 (discussing characteristics of endowed objects); Examination of Danny Atchley & Charles Hanger, *supra* note 538, at 25; Examination of Steven Burmeister, *supra* note 513, at 32–42; Examination of Ronald Kelly, Marsha Moritz & Vivian Dewyse, *supra* note 511, at 43, 49.

516. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4, at 10.

517. *Id.* at 13–15.

518. *Id.* at 10–15.

519. See Romano & Kenworthy, *supra* note 514.

520. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4, at 8, 30–31.

521. *Id.*

522. *Id.* at 7

523. See *id.* at 7, 23.

524. See *id.*; examination of Danny Atchley & Charles Hanger, *supra* note 514, at 25; examination of Steven Burmeister, *supra* note 513, at 32–40; examination of Ronald Kelly, Marsha Moritz, & Vivian Dewyse, *supra* note 511, at 43, 49.

525. Hartzler begins with an ordinary day in the life of a citizen dropping her child off at daycare in the Federal Building. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4. The State is called to adventure when a bomb blows up the building. *Id.* The call is a call to prosecute the person responsible. *Id.* The refusal occurs during the seventy-five minutes before the State arrests McVeigh, at that point it's uncertain whether law enforcement will find the person responsible. *Id.*

526. *Id.*



learned much about McVeigh in that initial encounter and received a gift, an object, the t-shirt. Hartzler describes it as follows:

And the T-shirt he was wearing virtually broadcast his intention. On its front was the image of Abraham Lincoln; and beneath the image was a phrase about tyrants, which is a phrase that John Wilkes Booth shouted in Ford's Theater to the audience when he murdered President Lincoln. And on the back of T-shirt that McVeigh was wearing on that morning, the morning of bombing, the morning that he was arrested, was this phrase: It said, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."<sup>527</sup> And above those words was the image of a tree. You'll see that T-shirt; you'll see the tree; you'll see the words beneath the tree, and you'll notice that instead of fruit, the T-shirt—the tree on the T-shirt bears a depiction of droplets of scarlet-red blood.<sup>528</sup>

Thus, just as Dorothy was gifted with the witch's slippers during the meeting with the mentor, the State was gifted with McVeigh's t-shirt during its own meeting with the mentor. The investigation was still incomplete at that point in the story. But the shirt served as a potential seed in the mind of the jurors. The reference to blood connects McVeigh to death. The quote from John Wilkes Booth links McVeigh to assassination and illegality. Wilkes Booth assassinated the legal president of the United States, a high symbol of government.<sup>529</sup> History views the president he assassinated as a hero.<sup>530</sup> Yet McVeigh quotes Booth, not Lincoln.<sup>531</sup> Since McVeigh also quoted Thomas Jefferson,<sup>532</sup> highlighting Booth, who killed an unarmed man, is important. This reference to Booth is a reminder that McVeigh also killed unarmed men, women, and children.<sup>533</sup> These thoughts distinguish McVeigh from American revolutionaries. Thus, the shirt creates a perception of anti-government sentiment and antagonism.<sup>534</sup> Rather than giving jurors the whole information dump contained in this paragraph, Hartzler let the shirt do the work for him and described it.<sup>535</sup> Hartzler proceeded forward in his story and describes the State's allies, witnesses, and the State's enemies, Mc-

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527. McVeigh was actually quoting Thomas Jefferson. Michael C. Dorf, *What Does the Second Amendment Mean Today?*, 76 CHI.-KENT L. REV. 291, 321 (2000); see also Carl T. Bogus, *The Hidden History of the Second Amendment*, 31 U.C. DAVIS L. REV. 309, 391 (1998) (examining whether Jefferson was an insurrectionist).

528. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4, at 7.

529. See James Grafton Rogers, *Review*, 57 YALE L.J. 158, 160 (1947) (reviewing LLOYD PAUL STRYKER, FOR THE DEFENSE: THOMAS ERSKINE, THE MOST ENLIGHTENED LIBERAL OF HIS TIMES (1947) (mentioning that Booth murdered Lincoln)).

530. Cf. Ian Bartrum, *The Constitutional Canon As Argumentative Metonymy*, 18 WM. & MARY BILL RTS J. 327, 388 (2009) (referring to the heroic narrative surrounding Lincoln's preparation for the Gettysburg address).

531. Opening Statements of Mr. Hartzler and Mr. Jones, *supra* note 4.

532. See Dorf, *supra* note 527, at 347; see also Bogus, *supra* note 527, at 391 (1998) (examining whether Jefferson was an insurrectionist).

533. See Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4.

534. See *id.*

535. See *id.* at 7.

Veigh's accomplices.<sup>536</sup> Hartzler described the approach to the inmost cave, the days and preparations that occurred just before the bombing.<sup>537</sup>

The shirt appeared again when Hartzler progressed to the central conflict, the ordeal, that phase of the journey where death or symbolic death occurs. The bomb killed women and children in the Murrah Building.<sup>538</sup> The protagonist, the State, discovered key evidence in the rubble.<sup>539</sup> It is at this point in his opening that Hartzler mentioned explosives expert, Steven Burmeister. Burmeister tested McVeigh's t-shirt.<sup>540</sup> The shirt contained explosives residue.<sup>541</sup> Earlier during the meeting with the mentor, Hartzler painted a picture of McVeigh wearing the shirt.<sup>542</sup> Now the explosives residue on the shirt linked the ordeal to the meeting and linked McVeigh to the crime in much the same way that the cowrie shells linked Gayle's ordeal to her meeting. The shirt linked McVeigh to the crime.

The shirt wields particularly great power in that point of the narrative because it already represented McVeigh's intentions and his state of mind. Thus the explosives residue does not seem like mere circumstantial evidence. In actuality, this evidence is circumstantial.<sup>543</sup> But because of the shirt's already symbolic power, this testimony is connected to McVeigh's guilty state of mind.

From there, Hartzler's narrative included other phases of the journey. Then finally, the State returned with the elixir. In this instance, the elixir was the knowledge that the State learned on its journey as invisible protagonist. Hartzler explained how that knowledge, the evidence, would intersect with the judge's instructions to the jury.<sup>544</sup> In this phase, Hartzler did not explicitly mention the shirt. Rather, he referenced McVeigh's historical quotes and contrasted McVeigh's actions with those of true patriots.<sup>545</sup> These ideas are thematically related to the shirt. Thus, the opening endowed the t-shirt and included it in key phases of the journey. It served as a link between the beginning or the meeting with the mentor, the ordeal in the middle, and the end, the return with the elixir.

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536. *Id.*

537. *Id.*; see also VOGLER, *supra* note 45, at 145-57.

538. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4.

539. *Id.* at 21.

540. *Id.*

541. *Id.* at 7.

542. *Id.* at 21.

543. See *United States v. Henderson*, 693 F.2d 1028, 1031 (11th Cir. 1982) (explaining that fact-finders have to draw inferences regarding circumstantial evidence); *Gabriel v. Benitez*, 390 F. Supp. 988, 992 (D.P.R. 1975) ("By circumstantial evidence we mean of course proof of a chain of circumstances pointing to the existence or non-existence of certain facts.").

544. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4, at 26-27.

545. *Id.*

During direct examination, prosecutor Scott Mendlehoff delivered on prosecutor Hartzler's promise. He introduced the first sighting of the shirt via the witness trooper Charles Hanger.<sup>546</sup> Hanger stopped McVeigh for driving a car without a tag on the rear bumper.<sup>547</sup> After discovering McVeigh's weapons, he arrested him.<sup>548</sup> When Hanger arrested McVeigh, he was wearing the shirt.<sup>549</sup> Hanger viewed the shirt in front of the jury and verified that it was the same shirt that McVeigh wore on the day of the arrest.<sup>550</sup>

This arrest scene continued during jailer Marsha Moritz's testimony.<sup>551</sup> The court admitted McVeigh's arrest photo into evidence.<sup>552</sup> The photo featured McVeigh wearing the shirt.<sup>553</sup> Hence the shirt again acted as a structural link; it tied the Hanger and Moritz testimony to the mentor phase of the prosecution's opening narrative. At this point, the prosecution had already crafted the shirt into a symbol of McVeigh's state of mind and as evidence that he bombed the Murrah Building.<sup>554</sup> By showing the jury McVeigh's arrest photo with the shirt, the prosecution opened a window into the past. The jury could glimpse the past and see McVeigh wearing the shirt for themselves.

Then explosives technician Brett Mills showed the actual shirt itself to the jury.<sup>555</sup> Delivering again on the promises made in the opening, the State later used the shirt to link Hanger's and Moritz's testimony to that of FBI chemist Steven Burmeister.<sup>556</sup> Burmeister testified that the shirt tested positive for explosives residue.<sup>557</sup> This testimony not only linked the two witnesses, but it linked Burmeister's testimony to the ordeal phase of the larger narrative provided in the closing.

Finally, the prosecution tied the narrative together by mentioning the shirt again in their closing argument.<sup>558</sup> Prosecutor Larry Mackey argued:

Tim McVeigh picked his clothes for the bombing as carefully as he picked that which he took with him. You saw Mr. McVeigh's T-shirts more than once.

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546. Examination of Danny Atchley & Charles Hanger, *supra* note 514, at 25.

547. *Id.* at 6-7.

548. *Id.* at 10.

549. *Id.* at 25.

550. *Id.*

551. Examination of Ronald Kelly, Marsha Moritz, and Vivian Dewyse, *supra* note 511, at 32.

552. *Id.* at 42-43.

553. *Id.*

554. Opening Statements of Mr. Hartzler & Mr. Jones, *supra* note 4.

555. Examination of Deborah Thompson, Louis Hupp, Brett Mills & Ronald Kelly, *supra* note 197, at 38.

556. *See* Examination of Steven Burmeister, *supra* note 513, at 32-40.

557. *Id.*

558. Closing Argument at 6, United States v. McVeigh, 923 F. Supp. 1310 (D. Colo. 1997) (No. 96-CR-68), 1997 WL 280943.

You remember the T-shirt of the likeness of Abraham Lincoln. This is the shirt that Mr. McVeigh was wearing on the day of the bombing. On the back the expressions, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants," and droplets of blood fall from the tree; and on the front side, President Lincoln and the Latin phrase, "Sic semper tyrannous," thus always to tyrants.

[O]n the front of the T-shirt that Tim McVeigh was wearing on the day of the bombing . . . there's a photo of President Lincoln, President Lincoln, a man who was assassinated, assassinated by a man who snuck up behind him and put a bullet in the back of his brain, President Lincoln, a victim who didn't know what hit him, victims just like inside the Murrah Building. On April 19, 1995, Tim McVeigh drove his truck bomb to Oklahoma City and drove away wearing a T-shirt with the words of an assassin on the front.<sup>559</sup>

By mentioning the Lincoln assassination, Mackey again reminded the jury that McVeigh stood in the shoes of the antagonist and not the hero. Thus, the shirt served as a hero's elixir in the overall completion of the story.

## VIII. ENDOWED OBJECTS USED AGAINST THE PROPONENT

Once such a powerful symbol is created, it can be dangerous in the wrong hands. Sometimes an object that may appear to be a gift or a coveted treasure can be turned against the person who wields it, like the One Ring. Such an object poses a danger to its bearer in story. In trial, such an object can pose a danger to its proponent.

### A. Endowed Object Turned Against the Object's Proponent in Fiction

In fiction, Desdomona's handkerchief in *Othello* is an endowed object turned against its proponent, Iago. At first, the "napkin" seems unimportant. Desdemona tries to use it to lessen Othello's headache, but Othello brushes it aside saying it is too little.<sup>560</sup> After they leave, Iago picks it up and says that he will create a great deception with the little cloth.<sup>561</sup> He plans to use the handkerchief to frame Othello's new wife Desdemona and destroy Othello.<sup>562</sup> Thus, the seemingly insignificant item grows in importance. Iago plants seeds of doubt in Othello's mind.<sup>563</sup> Then Iago tricks his wife, Emilia, into stealing Desdemona's handkerchief.<sup>564</sup> Her "napkin" as Desdemona calls it was her first gift from her husband.<sup>565</sup> It belonged to his mother and

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559. *Id.*

560. WILLIAM SHAKESPEARE, *OTHELLO*, act 1, sc. 3.

561. *Id.*

562. *Id.*

563. *Id.*

564. *Id.*

565. *Id.*

is embroidered with strawberries.<sup>566</sup> Iago plants the handkerchief on Cassio thus framing Desdemona.<sup>567</sup> So Othello's friend, Rodrigo, confronts Cassio.<sup>568</sup> Cassio kills Rodrigo in the confrontation.<sup>569</sup>

Then Othello kills his wife Desdemona.<sup>570</sup> But Emilia sees him and calls for help.<sup>571</sup> Iago arrives to help in time to hear Othello speak:

'Tis pitiful; but yet Iago knows  
That she with Cassio hath the act of shame  
A thousand times committed; Cassio confess'd it:  
And she did gratify his amorous works  
With that recognizance and pledge of love  
Which I first gave her; I saw it in his hand:  
It was a handkerchief, an antique token  
My father gave my mother.<sup>572</sup>

Emilia is stunned.<sup>573</sup> She then confesses that Iago begged her to steal the handkerchief for him and that she did it.<sup>574</sup> Iago stabs his wife, Emilia.<sup>575</sup>

Othello wounds Iago with his sword.<sup>576</sup> Cassio enters and proclaims that Iago planted the handkerchief in his chamber and that Iago's plotting caused Rodrigo's death.<sup>577</sup> The proof that Iago proposed has undone him.<sup>578</sup> He is wounded.<sup>579</sup> He has lost his wife, and he is revealed as a betrayer.<sup>580</sup> Thus the handkerchief that Iago used to make his case was turned against him in the end. This is often the danger that endowed objects pose to story characters. Glass slippers can be turned against stepsisters. The One Ring can turn against its bearer, and magic mirrors can say that someone else is prettier.

## **B. Endowed Object Turned Against the Proponent at Trial**

The leather glove in the O.J. Simpson murder trial is much like the handkerchief in Othello in that it was turned against its proponent,

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566. *Id.*

567. *Id.*

568. *Id.* at act 5, sc. 1.

569. *Id.*

570. *Id.* at act 5, sc. 2.

571. *Id.*

572. *Id.*

573. *Id.*

574. *Id.*

575. *Id.*

576. *Id.*

577. *Id.*

578. *Id.*

579. *Id.*

580. *Id.*

the prosecution.<sup>581</sup> Mr. Simpson was accused of murdering his ex-wife, Nicole Brown Simpson and her friend, Ron Goldman.<sup>582</sup> The prosecution staked much of its case on the glove, and prosecutor Marcia Clark said in her argument to the jury that the prosecution found “everything” on the glove.<sup>583</sup>

Detective Mark Fuhman testified that he found a bloody leather glove at the scene of the murder<sup>584</sup> and that he found another bloody glove at Simpson’s residence.<sup>585</sup> The prosecution produced a sales receipt showing that Nicole Brown Simpson had bought a pair of these same unique gloves.<sup>586</sup> Only Bloomingdales sold these gloves, and between 1982 and 1992 the chain had purchased only about 1,000 pairs.<sup>587</sup> Thereafter, the model was discontinued.<sup>588</sup> The prosecution proffered photographs showing Simpson wearing the same type of gloves at sporting events.<sup>589</sup>

Prosecutor Christopher Darden believed that the jury needed to see the gloves on Simpson’s hands.<sup>590</sup> However, Defense Attorney

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581. See Heinzelman, *supra* note 3, at 202 (comparing the glove to the handkerchief and Simpson to Othello); Peterson, *supra* note 3, at 790 (comparing the glove to the handkerchief and Simpson to Othello).

582. Gallacher, *supra* note 309, at 997 (1997).

583. Closing Argument by Ms. Clark & Mr. Darden, *People v. Simpson*, No. BA097211 (Cal. Super. Ct. 1995), 1995 WL 672671.

584. See George Fisher, *The O.J. Simpson Corpus*, 49 STAN. L. REV. 971, 1003 (1997) (citing Examination of Mark Fuhman at 37, *People v. Simpson*, No. BA097211 (Cal. Super. Ct. 1995), 1995 WL 106322); see also *The O.J. Simpson (Civil) Trial: Direct Examination*, 841, PLI: LITIG. & ADMIN. PRAC. SERIES 761 (Dec. 1, 2010) (containing the transcript of the testimony of Thomas Lange, who testified at the later civil trial that a glove was found at the crime scene).

585. Charles R. Nesson & Michael J. Leotta, *The Fifth Amendment Privilege Against Cross-Examination*, 85 GEO. L.J. 1627, 1653–1654 (1997) (citing testimony of Fuhman regarding discovery of glove at Simpson’s home); see also Fisher, *supra* note 616, at 1002 (stating that the glove was moist when Fuhman found it in the walkway).

586. Fisher, *supra* note 616, at 998–99 (citing Examination of Lakshmanan Sathyavagiswaran, Brenda Vemich, & Richard Rubin at 7–9, *People v. Simpson*, No. BA097211 (Cal. Super. Ct. 1995), 1995 WL 364726).

587. *Id.*

588. *Id.*

589. Fisher, *supra* note 616, at 999 (citing Examination of Mark Krueger, Bill Renkin, Kevin J. Schott, Stewart West, Michael Romano, Debra Guidera, & Gary Sims); Examination of Mark Krueger, Bill Renkin, Kevin J. Schott, Stewart West, Michael Romano, Debra Guidera, & Gary Sims at 15–16 (testimony of Renkin: brown gloves on January 6, 1991); *id.* at 25–26 (testimony of Schott: black gloves in 1993); *id.* at 33, 35 (testimony of West: black gloves in December 1993); *id.* at 38 (testimony of Guidera: dark brown or black gloves in December 1993); *id.* at 35, 37 (testimony of Romano: black gloves in January 1994).

590. Stephen D. Easton, *Lessons Learned the Hard Way from O.J. and “The Dream Team”*, 32 TULSA L.J. 707, 732 (1997) (reviewing CHRISTOPHER A. DARDEN, IN CONTEMPT (Regan Books, an Imprint of Harper Collins Publishers, Inc. 1996)).

Johnny Cochran insisted that his client wear latex gloves.<sup>591</sup> Simpson struggled to get the gloves on and said, "They don't fit."<sup>592</sup>

In his closing argument, Cochran, said that the prosecution's strategy changed after Simpson tried on the gloves.<sup>593</sup> "You will always remember those gloves, when Darden asked him to try them on, didn't fit."<sup>594</sup> Cochran added, "If it doesn't fit, you must acquit."<sup>595</sup> Thus the gloves represented the defense's theory of the case.

The jury acquitted Simpson,<sup>596</sup> and the gloves became international news.<sup>597</sup> The popular television sitcom, *Seinfeld*, even parodied the gloves in a scene where a Johnny Cochran look-alike has a female defendant try on a bra that is too small.<sup>598</sup> One juror said after the trial, "In plain English . . . the glove didn't fit."<sup>599</sup> Although two of the jurors said that the glove was not their reason for acquittal,<sup>600</sup> the glove was a famous international symbol, and Simpson walked free.

Simpson's case seems to parallel *Othello* in some respects, and the two objects overlap.<sup>601</sup> It seemed that the prosecution had him. Just as Iago used the handkerchief to prove that Cassio was having an affair with Desdemona, the prosecution used the glove in an attempt to prove that Simpson killed his wife.<sup>602</sup> For the prosecution, the glove was also like John Booth's boot at Samuel Mudd's house.<sup>603</sup>

However, just as the handkerchief was Iago's undoing, so too the glove might have been the prosecution's undoing in the Simpson

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591. *Id.*

592. See also Roberto Aron, Julius Fast and Richard B. Klein, *Courtroom Communication Lessons from the O.J. Simpson Trial*, Trial Communication Skills § 37:15 (2d ed.) (explaining that Simpson struggled to get the gloves on and then said, "They don't fit," within the hearing of the jury).

593. Closing arguments by Mr. Scheck and Mr. Cochran, *supra* note 4.

594. *Id.*

595. *Id.*; Fisher, *supra* note 616, at 997; see also Trial Communication Skills § 37:15 (2d ed.).

596. Ian Gallacher, *supra* note 309, at 129.

597. See, e.g., 'Bloody Glove Evidence' Pressures OJ's Lawyers, SOUTH CHINA MORNING POST (Oct. 30, 1996); *New Defence for O.J. Simpson*, THE AGE (AUSTRALIA), July 19, 1994.

598. SEINFELD: THE CADDY (Sony Pictures Home Home Entertainment Nov. 21, 2006).

599. Fisher, *supra* note 616, at 998.

600. *Id.* at 1019.

601. See Heinzelman, *supra* note 3, at 202; Peterson, *supra* note 3, at 790; see also Fisher, *supra* note 616, at 976 (characterizing the decision to have Simpson try on the glove as disastrous).

602. See Heinzelman, *supra* note 3, at 202 (comparing the glove to the handkerchief and Simpson to Othello); Peterson, *supra* note 3, at 790 (comparing the glove to the handkerchief and Simpson to Othello).

603. Compare Fisher, *supra* note 616 (contending that from a literal standpoint the glove is different from a glass slipper because it can shrink and yet recognizing how potentially the glove could tie Simpson to the scene); Aitken, *supra* note 2, at 53 (mentioning that boot was found at Mudd's house and implying that the boot showed that Booth and Mudd knew each other).

case.<sup>604</sup> The metaphoric power of the glove may be twofold in that it also serves as glass slipper.<sup>605</sup> Just as the slipper did not fit the stepsisters in Cinderella, the glove did not fit Simpson.<sup>606</sup> And as both the stepsisters were undone by the slipper and Iago was undone by the handkerchief, so the prosecution was undone by the glove.<sup>607</sup>

The takeaway for proponents of an endowed object is to consider how their opponents may spin the object against them. Because of the object's symbolic power, it can destroy a case surely as it can make one. The more certainty and information the proponents can obtain regarding the object the more safe it is to rely upon. In contrast, the takeaway for opponents of the object is that they must discover that piece of information about the object that turns its symbolism and probative power on its head.

### IX. ETHICAL CONCERNS

Lawyers have a duty to include endowed objects in trials when the object is aligned with the evidence and the theory of the case. A lawyer's job is to present his or her client's truth to the jury,<sup>608</sup> and an object is actually often a more accurate representation of the truth. Whole articles have been written regarding the ideas of individual client truths, client stories, and emotional evidence; what follows is merely a summary.<sup>609</sup> Although lawyers cannot make "a false statement of material fact or law to a third person,"<sup>610</sup> litigation is a process of competing truths and a reminder that "reality" is in the eye of

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604. See Heinzelman, *supra* note 3, at 202 (comparing the glove to the handkerchief and Simpson to Othello); Peterson, *supra* note 3, at 790 (comparing the glove to the handkerchief and Simpson to Othello); see also Fisher, *supra* note 616, at 976 (characterizing the decision to have Simpson try on the glove as disastrous).

605. See Patt Morrison, *A Five Year Perspective on a Murderous Midnight in June*, L.A. TIMES, June 11, 1999; Noble, *supra* note 3. But see Fisher, *supra* note 616, at 998 (arguing that the glove is not a glass slipper because gloves do not have to fit well).

606. Noble, *supra* note 3. But see Fisher, *supra* note 616, at 998 (arguing that the glove is not a glass slipper because gloves do not have to fit well).

607. See Heinzelman, *supra* note 3, at 202 (comparing the glove to the handkerchief and Simpson to Othello); Peterson, *supra* note 3, at 790 (comparing the glove to the handkerchief and Simpson to Othello); Noble, *supra* note 3 (discussing how the gloves invoked the analogy of the step-sisters); see also Fisher, *supra* note 616, at 976 (characterizing the decision to have Simpson try on the glove as disastrous).

608. See ANN. MOD. RULES OF PROF'L CONDUCT § 1.1 (instructing that lawyers provide competent representation to clients); ANN. MOD. RULES OF PROF'L CONDUCT PREAMBLE AND SCOPE (advocating zealous advocacy of clients); see also Steven J. Johansen, *This Is Not the Whole Truth: The Ethics of Telling Stories to Clients*, 38 ARIZ. ST. L.J. 961 (2006) (explaining that the truth is the client's truth within limits).

609. See, e.g., Johansen, *supra* note 608.

610. MODEL RULES OF PROF'L CONDUCT R. 4.1(a).



the beholder.<sup>611</sup> At trial, the fact finder determines which thematic truth and perception of reality is best borne out by the evidence.<sup>612</sup> Although some may argue that metaphors, and thus metaphoric objects, are ways of “evading reality,”<sup>613</sup> all language is symbol.<sup>614</sup> For example, the word “lawn” is not a lawn in and of itself.<sup>615</sup> Moreover, it does not necessarily capture all the properties and principles of a given lawn, and people may differ regarding their perceptions of its meaning. Rather “lawn” is a shorthand or symbol of the actual thing.<sup>616</sup> However, an object is the actual thing itself; it is a piece of the past.

Similarly, any report of the past is symbolic. The lawyer cannot conjure up the past for the jury to experience for themselves. Rather, it is through symbols such as words and physical evidence that the lawyer reconstructs a representation of the past. The fact finder then determines which version of the past best comports with the evidence.<sup>617</sup> The lawyer’s job is to present those symbols that best convey the client’s truth to the fact-finder.<sup>618</sup> Since those symbols may

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611. Johansen, *supra* note 608 (explaining that the truth is the client’s truth within limits); Cathren Koehlert-Page, *Come a Little Closer So I Can See You My Pretty: The Use and Limits of Fiction Techniques for Establishing an Empathetic Point of View in Appellate Briefs*, 80 UMKC L. REV. 399 (2011); cf. 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, 472 (2001) (discussing two parties’ competing truths). *But see* Wendy Nicole Duong, *Law is Law and Art is Art and Shall the Two Ever Meet? Law and Literature: The Comparative Creative Processes*, 15 S. CAL. INTERDISC. L.J. 1 (2005) (arguing that to see multiplicity and relativity to truths is to rethink jurisprudence).
612. Koehlert-Page, *supra* note 611; *see* MARY BETH BEAZLEY, *A PRACTICAL GUIDE TO APPELLATE ADVOCACY* 14 (2d ed., Aspen 2006); THOMAS A. MAUET, *FUNDAMENTALS OF TRIAL TECHNIQUES* 1 (3d ed., Little, Brown and Company 1992).
613. *See* Berger, *supra* note 9, at 277 (noting the argument that “literal” truth might be non-existent in law); Steven L. Winter, *Book Review, Death is the Mother of Metaphor*, 105 HARV. L. REV. 745, 760–61 (taking issue with Thomas Grey’s contention that metaphor creates a new reality).
614. Leonard R. Jaffee, *The Troubles with Law and Economics*, 20 HOFSTRA L. REV. 777, 932 n.6 (1992); Roderick A. MacDonald, *Legal Bilingualism*, 42 MCGILL L.J. 119, 140 (Feb. 1997); *see generally* Winter, *supra* note 9, at 748 (discussing metaphor, language, and notions of objective reality); KAHNEMAN, *supra* note 40, at 56–57 (explaining that people think in symbols).
615. MacDonald, *supra* note 614, at 140 (explaining how all language is symbolic); *see* Jaffee, *supra* note 614, at 932 n.6 (explaining how all language is symbolic); *see generally* Winter, *supra* note 9, at 748 (discussing metaphor, language, and notions of objective reality).
616. MacDonald, *supra* note 614, at 140 (explaining how all language is symbolic); *see* Jaffee, *supra* note 614, at 932 n.6 (explaining how all language is symbolic); *see generally* Winter, *supra* note 9, at 748 (discussing metaphor, language, and notions of objective reality).
617. *See* BEAZLEY, *supra* note 612, at 14 (2d ed., Aspen 2006); MAUET, *supra* note 612.
618. *See* Johansen, *supra*, note 608, at 978–83; *compare* ANN. MOD. RULES OF PROF’L CONDUCT R. 3.3 (creating a duty of candor towards the tribunal), *with* ANN. MOD.

often be endowed objects, then using those objects effectively is part of a lawyer's duty.

Yet both lawyers and judges have a duty of accuracy with respect to endowed objects.<sup>619</sup> While the past itself cannot be reproduced, the lawyer must ensure that the object's symbolism is consistent with the evidence and the theory of the case.<sup>620</sup>

These symbols may evoke emotion.<sup>621</sup> Although the law has traditionally viewed reasoning as excluding emotion,<sup>622</sup> emotion and narrative play a role in reasoning regardless.<sup>623</sup> Our subconscious is working in all of our assumptions about symbols.<sup>624</sup> Even that state of supposed emotionless is an emotional state. In fact, law professor Teneille Brown and law fellow Emily Murphy have argued that sometimes scientific evidence such as MRI imaging of criminal defendants' brains can be just as prejudicial because it has the deceptive appearance of objectivity.<sup>625</sup> Thus, it is impossible to exclude symbols or emotions altogether. Rather, the attorney's job is to present those symbols which evoke emotions around their client's truth.<sup>626</sup> Where these symbol's probative power is outweighed by their prejudicial effect, then they will be excluded.<sup>627</sup> However, evidence will not be ex-

RULES OF PROF'L CONDUCT s. 1.1 (instructing that lawyers provide competent representation to clients), and ANN. MOD. RULES OF PROF'L CONDUCT PREAMBLE AND SCOPE (advocating zealous advocacy of clients).

619. See ANN. MOD. RULES OF PROF'L CONDUCT R. 3.3 (creating a duty of candor towards the tribunal).

620. See Johansen, *supra* note 608, at 978–84 (urging the telling of accurate yet individual truths).

621. *Id.*

622. See Michael H. Graham, *Relevance, Fed.R.Evid. 401, and the Exclusion of Relevant Evidence, Fed.R.Evid. 403: "Many Prayers are Heard, Few are Answered"*, 45 CRIM. LAW BULL. 8 (2009) (explaining that the comments to Fed. R. Evid. 403 indicate that typically the danger of unfair prejudice is an emotional danger); Johansen, *supra* note 608, at 980; J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEG. WRITING: J. LEG. WRITING INST. 53, 60 (2008) (stating that traditional legal modalities are incomplete).

623. See Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ALWD 1 (2010) (reporting that in his study, appellate judges generally reacted more favorably to briefs including narrative); Johansen, *supra* note 608, at 978–84; Rideout, *supra* note 622, at 60 (stating that traditional legal modalities are incomplete); Martha C. Nussbaum, *Emotion in the Language of Judging*, 70 ST. JOHN'S L. REV. 23, 24–25 (1996) (explaining that emotions are rooted in thought and inform reasoning).

624. See KAHNEMAN, *supra* note 40, at 56–57 (explaining that people think in symbols).

625. Teneille Brown & Emily Murphy, *Through A Scanner Darkly: Functional Neuroimaging As Evidence of a Criminal Defendant's Past Mental States*, 62 STAN. L. REV. 1119 (2010).

626. See Johansen, *supra* note 608, at 980.

627. FED. R. EVID. 403 (allowing exclusion of relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time,

cluded simply because it evokes emotion.<sup>628</sup> For instance, when autopsy photographs illuminate the cause of death, they can come into evidence despite the emotions they may arouse.<sup>629</sup> Thus, where the object has a truth to tell, the attorney has a duty to include an object and weave a narrative around it.

## X. CONCLUSION

If a lawyer pays attention to the physical objects involved in a case, a lawyer's trial narrative can sometimes endow those objects with symbolism. Those symbols create emotional resonance and a narrative through-line. During trial preparation, an attorney should maintain an awareness of the object's role in theory of the case, character development, and structure. However, the attorney must visualize the story and vigilantly discover information about the object. Otherwise, the One Ring can be turned against its bearer as in the Simpson case where the glove offered by the prosecution was turned against the State. Rather, the object must be an actual integral part of the client's story; otherwise, it may strike the jury as heavy-handed theatrics. With those guidelines in mind, weaving an endowed object into the trial narrative can sometimes be part of an attorney's duty to the client. When the shoe fits, the story should wear it.

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or needlessly presenting cumulative evidence"); Graham, *supra* note 622 (explaining that the comments to FED. R. EVID. 403 indicate that typically the danger of unfair prejudice is an emotional danger).

628. *Id.*

629. *See, e.g.,* *Alsheik v. Guerrero*, 956 N.E.2d 1115, 1129 (Ind. App. 2011).