



POV

We've all seen it: the brief written by the harried attorney who simply adopts the statement of facts written by the other side. And we've reviewed the draft defense motion, maybe authored by a brand-new law clerk, that virtually duplicates the facts stated in the police report (complete with phrasing like "this officer proceeded from his police vehicle to the suspect vehicle and proceeded to request that the suspect, a white female, provide some form of identification...").

None of us would do such a thing, right? But often we can do more to present the narrative from our client's point of view.

Fiction writers know that point of view can transform how the audience perceives a story. Deciding through which character's eyes to present the story—or part of the story—might consume months or years and many rounds of revision.¹ This is good news for the legal writer, though: Generally, you know that you should present your client's story from your client's point of view.²

How do you do that? Put yourself inside your client's head and behind your client's eyes. What did your client perceive and when? What motivated your client's actions or inactions? Is there any backstory that explains why your client acted or reacted the way she did?

What might this look like? Here are sample opening paragraphs of the statements of facts for two opposing briefs in the same case³:


- On the evening of May 17, 1997, William Strong was standing on the corner of Lincoln and Chicago in Tacoma talking to a friend when a police officer approached him and began questioning him. Standing only a foot or two from Strong, the officer asked Strong to identify himself and to explain what he was doing in the area. Mr. Strong willingly answered the officer's questions, telling him that his name was William Strong.
 - At approximately 11:00 p.m. on May 17, 1997, Officer Hanson noticed the appellant, an individual he did not recognize, in the McChord Gate area, an area noted for its high incidence of drug trafficking. Because he makes a point to meet the people in his patrol area, Officer Hanson initiated a social contact.

Notice various techniques the writers use to tell the story from a particular perspective:

- In each instance, the client (or an actor from the client's side of the case) is the protagonist and therefore the most fully fleshed-out character. In the first example, the defendant is identified by his full name. The police officer is simply "the police officer" or "the officer." This makes sense; at the time, Mr. Strong probably would not have known the officer's name. From his perspective, some police officer just came up and started questioning him. By contrast, in the second

example, the officer is "Officer Hanson," and the defendant is just an individual Officer Hanson does not recognize.

- You learn different facts in each example. Neither writer omits material facts. Neither writer bludgeons the reader with adjectives. Each writer remains invisible while nonetheless advancing a distinct narrative. In Strong's story, we learn that the officer is a mere foot or two from Strong's face during the encounter. The writer does not tell you that this conduct is intimidating; the writer shows you and lets you arrive at that conclusion on your own. In Officer Hanson's story, on the other hand, we learn that the area is known for drug trafficking, that Officer Hanson is an agent of community policing, and that Officer Hanson tends to know the people on his beat but doesn't recognize Mr. Strong. Again, the narrative doesn't use words like "suspicious" or "out of place"; it lets the reader understand the developing story from the officer's perspective.
- Each statement sets up a different narrative from the very beginning. In the first statement, this is an unprovoked interrogation. In the second, this is a "social contact."
- You learn the protagonist's motivations in each example. Officer Hanson questions Mr. Strong because Strong is loitering in an area known for drug trafficking and Hanson does not recognize him. On the other hand, Strong is there because he's chatting with a friend.

Thoughtful legal writers use point of view to frame the narrative persuasively. If you do this skillfully—and without editorializing—your audience will see things from your side before you even begin your argument. 

endnotes

1. Lin-Manuel Miranda plays with point of view throughout *Hamilton: An American Musical*, for example. You knew I'd get that in there.
2. As always, there may be exceptions to this general rule. See Foley & Robbins, *infra* note 3.
3. Adapted from 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, 479-80 (2001).

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