On the Papers

CONTROLLING THE READER'S PERCEPTION OF YOUR CLIENT'S STORY

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During my first week of law school, we were shown a highly effective teaching film. It pictured a car accident taking place at an intersection. The camera's perspective was from the southeast corner. It was clear to us that X was at fault, and Y was the hapless victim. After a brief disquisition on liability, we were shown the scene again, this time shot from the northwest corner. It became apparent to us that we had it all wrong: Y was at fault, and X was the hapless victim. Now we were privy to "the truth." Then we saw the scene a third time—from the northeast corner, from where it was clear that nothing was clear. From that angle, liability was impossible to assign. Where stories are concerned, perspective makes all the difference.

This is equally the case for presenting stories in prose. Context controls meaning, and perspective creates context. Clarence Darrow used to boast to his opponents, "If you let me state the facts, I will let you argue the law—and I will win." He did not mean that he would suppress facts necessary to his opponent's case, but rather that he could so control the reader's perspective on the facts that it would be clear his client was in the right. How is that possible?

In the last issue of LITIGATION, I argued that most readers of English perceive a clause as being the story of whoever or whatever is its grammatical subject. "Jack loves Jill" is the story of Jack; and "Jill is loved by Jack" is the story of Jill. If you want to tell Jill's story, the latter sentence is far superior to the former—despite its greater length and its passive voice. A multi-clause sentence is the story of whoever or whatever shows up as the grammatical subject of the sentence's main clause.

While this is an important reader expectation to understand for any given sentence, it is yet far more important when considering how to construct a continuing story. As a writer, you can control which corner of the intersection will be the home of the camera.

Here is a story you might remember.

> **Version A:** A passenger, carrying a package he had wrapped in newspaper, ran onto the platform at the train station, fearing he might miss his train. When he saw the train begin to move forward, he increased his speed to a dead run. He attempted to leap from the platform onto the moving train. He was aided both by a guard on the train who pulled him up and by a guard on the platform who pushed him forward. Jostled as he was from two opposite directions, he lost control of his package, which contained fireworks. It fell on the tracks and violently exploded. The shock of his package's explosion overturned a large scale at the other end of the platform, which hit and injured the plaintiff.

If the plaintiff had been suing the passenger, this narration might support her case well. Each sentence until the last one has the passenger (or a reference to him) as its grammatical subject. Even the last sentence is the story of "his" package. It is relatively clear from this narrative that the passenger's actions—reckless and intentional—caused her injuries.

But the plaintiff was suing the railroad. How should we change this narration if we wanted this story to be substantially the railroad's fault? We should make as much of the narrative as possible the story of the railroad—by keeping the railroad's personnel up front as the grammatical subjects.

> **Version B:** Guard A, on a train that was beginning to move out of the station, perceived a would-be passenger looking like he was going to try to jump into the moving car. Instead of warning the man not to make this effort, he offered his help to pull him aboard. At the same time, Guard B, on the platform, instead of prohibiting the passenger from making the leap, forcefully tried to support him in his risky effort. By jostling the passenger from two different directions, the guards helped dislodge from his arms

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a package he was carrying, wrapped in newspaper. Their actions caused the package, which contained fireworks, to fall several feet to the tracks, where it exploded. The resulting shock overturned a large scale at the other end of the platform, which hit and injured the plaintiff.

From this continued perspective of the railroad employees, we get a strikingly different story. The guards—as subjects of those verbs—are doing all the problematic actions. In English, we read from left to right and through time. Whatever we encounter on the left contextualizes whatever we discover to its right. This story is slanted against the railroad, in the same way Version A was slanted against the passenger.

We could slant the story in favor of the plaintiff if we were to present each of the details from her perspective—by making her the grammatical subject as continuously as possible.

> **Version C:** The plaintiff was waiting for her train to arrive, standing on the platform next to a large weighing scale. She noted a commotion developing at the other end of the platform as a train began its exit from the station. She saw a would-be passenger trying to leap aboard the moving train, with the guards on the platform and on the train attempting to help him. She noticed the passenger's package drop to the tracks—and then was overwhelmed by the sounds and sights of a huge explosion. Suddenly she felt a great weight crack against her head and shoulders as she crumpled to the ground under the overturned scale. She remained there in great pain, pinned by the heavy scale, until rescued.

You may remember Miss Grundy, your middle school English teacher, admonishing you to vary the way you begin your sentences to keep your reader interested. Perhaps that was good advice back then; it is very bad advice for you now. Back then, your reader was primarily (and maybe exclusively) Miss Grundy. As

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wonderful as she might have been, there was no way she could possibly be interested in 42 essays on "Why I Like the Spring," with their topic sentences, their conclusions, and their compulsory list of three examples:

> "I like the spring because of the pretty flowers. I like the spring because of the tulips. I like the spring because of the roses. I like the spring because of the daffodils. I like the spring because of the pretty flowers."

She didn't mean "interested"; she meant "sane." "'Daffodils are another reason I like the spring.' Vary the way you begin your sentences to keep me from going insane!"

You do not have to keep your reader interested. Your reader is being paid to read you. You need to keep your reader controlled. Keep the grammatical subjects of your sentences the same for as long as you are telling that particular story. Then, by changing whose story the next sentence is, you will (silently) convey to your reader, ". . . and now we are changing the focus of our attention to this next story."

When Judge Cardozo wrote the facts into his opinion in *Palsgraf v. Long Island Railroad*, 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928), he did not try to slant the reader's perception in an adversarial manner. Instead, he presented the actions as having a number of different agents—spreading whose story it was appropriately over everybody. That left open the question of responsibility, which he would then discuss. Here is his narration, with the grammatical subjects italicized:

> **Version D:** *Plaintiff* was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. *A train* stopped at the station, bound for another place. *Two men* ran forward to catch it. *One of the men* reached the platform of the car without mishap, though the train was already moving. *The other man*, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. *A guard* on the car, who had held the door open, reached forward to help him in, and *another guard* on the platform pushed him from behind. In this act, *the package* was dislodged, and fell upon the rails. *It* was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact *it* contained fireworks, but there was nothing in its appearance to give notice of its contents. *The fireworks* when they fell exploded. *The shock* of the explosion threw down some scales at the other end of the platform, many feet away. *The scales* struck the plaintiff, causing injuries for which she sues.
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> *Palsgraf*, 248 N.Y. at 340–41.

It is the judge's job to consider everybody's and everything's story, knit together in the logical and chronological way that makes the best sense. It is an advocate's job to tell the story as fetchingly from the client's perspective as possible. Control whose story it is at all times, and you control the perspective from which the reader perceives that story. ■

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