

POV and Briefs

Examples of Fiction
Techniques in Appellate Briefs

Cathren Page

Assistant Professor

Barry University School of Law

ckoehlert@mail.barry.edu

415-596-1834

What is Point of View?

- Often people think of point of view as referring to first person, third person, omniscient, or even the rarely used second person.
- However, there are degrees of distance in these points of view and subtle nuances.
- While there are limits in appellate briefs, the attorney can reduce or increase distance for persuasive effect and put the reader in the client's shoes.

The Fiction Techniques

- Wide shots, medium shots, close-ups
- Protagonist specific chronology
- Detailed play-by-plays
- Metaphors
- Illogical sentences
- Improper grammar
- Adverb-free, action verbs in active voice
- Dialogue and monologue tags

Degrees of Distance: Example

- It was winter of the year 1853. A large man stepped out of a doorway.
- Henry J. Warburton had never much cared for snowstorms.
- Henry hated snowstorms.
- God how he hated these damn snowstorms.
- Snow. Under your collar, down inside your shoes, freezing and plugging up your miserable soul

Movie Clip

- Mystic River Movie Clip will go here.

Client's Chronology

- As petitioner Richard Brown [climbed] the last of the stairs leading to the rear entrance of his Chicago apartment in the early evening of May 13, 1968, he [glanced] at the window near the door. He saw, pointed at him through the window, a revolver held by a stranger who was inside the apartment. The man said: 'Don't move, you are under arrest.' Another man, also with a gun, came up behind Brown The two men turned out to be Detectives William Nolan and William Lenz. . . . they broke into his apartment, searched it, and then arrested Brown, all without probable cause and without any warrant. . . .

Chronological Play-By-Plays

- They began to leave the scene of the crime, and the book was well and truly burning her now. *The Shoulder Shrug* had applied itself to her rib cage. . . .
- Smoke was rising out of Liesel's collar.
- A necklace of sweat had formed around her throat.
- Beneath her shirt, a book was eating her up.

Chronological Play-By-Plays

- On April 29, 2001, Detroit police responded to a [shooting report] and found a car idling in [a filling station parking lot]; the [driver], Anthony Covington, lay on the ground next to the still-open driver's side door, bleeding profusely from a gunshot wound to his torso. In response to the police inquiry “what happened?” Covington, in obvious and severe distress, told police that his neighbor “Rick,” later identified as the Respondent, Richard Bryant, shot him through the back door of Bryant's house Covington had managed to drive away from the scene. . . and had made it as far as the gas station. . .

Metaphors: Fiction

- Upon her arrival, you could still see the bite marks of snow on her hands and the frosty blood on her fingers. Everything about her was undernourished. Wirelike shins. Coat hanger arms. She did not produce it easily, but when it came, she had a starving smile

Metaphors: Briefs

- The hurricane caused numerous boats and vessels around Charleston to be displaced and sunk. Dent testified, “Oh, it was like a pick up sticks. Everything was all jumbled up.” Hazzard's dredge was one of the items sunk in Southern Dredging's channel. The dredge was a total loss.

Action Verbs/Active Voice: Fiction

- Mom grabbed a glass from the soapy water, squirted some Dawn in it, and filled it with water. She grabbed Cori's hair and yanked her head back. She shoved the glass up to her mouth.
- "Drink it." Mom shoved the glass further. Some of the water ran down Cori's chin. The rest flooded the back of her throat. She choked.

Action Verbs/Active Voice: Briefs

- When Sheriff Grantham arrived for work, Magwood got out of his car and confronted Sheriff Grantham. Magwood shot the sheriff three times, once each in the head, face, and chest. He then fled. As Magwood sped away. . . .

The Opponent Slows Down the Action

- Petitioner was released from jail at the end of his sentence. . . .[A]s petitioner's hallucinations grew more vivid, petitioner approached Sheriff Grantham in front of the jail. After exchanging greetings and in plain view of the sheriff's deputies, petitioner shot and killed the sheriff. Petitioner then exchanged fire with a deputy, got into his car, and drove home. Upon arriving there, petitioner sat unarmed on his front porch until arresting officers arrived.

Distancing Dialogue Tags: Fiction

- “So you like him then?” She wasn’t about to give up.
- “Yes,” I said curtly.
- “I mean do you really like him,” she urged.
- “Yes,” I said again blushing.

Distancing Dialogue: Briefs

- Thomas Weeks, a Coffee County Deputy Sheriff, testified he was employed as the county jailer on March 1, 1979, under Coffee County Sheriff Neil Grantham. The witness stated he observed appellant, whom he recognized as a former jail inmate, sitting in a car parked in Sheriff Grantham's parking space at approximately 6:45 a.m. Shortly before 7:00 a.m., he observed Sheriff Grantham drive up and park his vehicle.

Intimate Dialogue: Fiction

- My mother sat again. “I thought you quit biting your fingernails.”
- “I tried, but I gave up.”
- She took a sip from the smaller glass. “Did she tell you about the football?”

Intimate Dialogue: Briefs

- On the morning of March 1, 1979, Magwood lay in wait for Sheriff Grantham in the Coffee County Jail parking lot. When Sheriff Grantham arrived for work, Magwood got out of his car and confronted Sheriff Grantham. Magwood shot the sheriff three times, once each in the head, face, and chest. He then fled. As Magwood sped away, he exchanged gunfire with Deputy Thomas Weeks, who witnessed the murder.