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On names, pronouns, and paragraphing

Lawsuits involve people. And rather than turn them into a disembodied "Plaintiff" and "Defendant," opinions might better use their names. The opinions will be more direct and more human. (Of course, this won't work if a person and an entity are aligned on one side.)

Opinions would also benefit from greater use of pronouns. Constantly repeating "Plaintiff," for instance, gives the writing a stiff, unnatural feel. You would not do it in conversation or in a story, and there is no good reason why opinions should not aim for a more conversational style than they usually do. I realize that personal pronouns can't always be assumed these days, but opinion-writers can take their cue from the briefs or transcript or oral argument.

As for paragraphing, have you ever read the scroll version of Kerouac's *On the Road*? No paragraphs. I couldn't get through it. Give your reader a break: as a guideline (only), keep most paragraphs under six sentences. Or try for an average of 100–125 words. Naturally, though, you will vary the length.

The original paragraph below contains 303 words in seven sentences, most of them long. The plaintiff is referred to in some places (but not enough places) as "her." I have changed the names, making the plaintiff "Turner." I have also struck through some excess words in the original. In the revised version, I have highlighted the plaintiff's name and the new pronouns in bold. For context, the photograph at issue was the "money ball" photo on Instagram.

ORIGINAL

It further cannot be disputed that the Facebook photograph could have been discovered before trial through ~~the exercise of~~ reasonable diligence. This photograph was posted on both Instagram and Facebook by Plaintiff herself in 2013. In light of Plaintiff's assertion in ~~another portion of~~ her brief in support of this motion that "all other references [except the "money ball" photograph on Instagram] to Plaintiff's presence on social media throughout ~~the entire course of~~ these proceedings pertained to her Facebook page" (Doc. 450, at 13), it is apparent that Plaintiff's counsel were not unaware of Plaintiff's Facebook page or unable to access its contents, whether by themselves or through Plaintiff. Nonetheless, even affording Plaintiff every benefit and taking as true that counsel was unaware that the Instagram photograph would be used on cross-examination, and therefore assuming that Plaintiff's counsel had no reason to search for this photograph on Facebook or other social media site, Plaintiff's counsel had ample time to discover the Facebook photograph during ~~the course of~~ the trial and to discuss the Instagram photograph and Facebook photograph with their client. Attorney Franklin's cross-examination of Turner wherein he first referred to the "money ball" photograph, occurred on Wednesday, February 1, 2017, during Plaintiff's case-in-chief. At the conclusion of Defendants' cases, on Monday, February 6, 2017, the Court asked Plaintiff's counsel whether they "have any rebuttal evidence", to which Plaintiff's counsel responded "[w]e do not, Your Honor." (*See* Trial Tr., February 6, 2017, at 62.) By that time, Plaintiff's counsel had sufficient time to "research the photo's origins and/or discuss it with their client" and could have called Turner on rebuttal to attempt to further explain the photograph at issue and introduce the photograph on Facebook that Plaintiff now asserts proves the Instagram "money ball" photograph was only about golf, and not the lawsuit.

REVISED

It further cannot be disputed that the Facebook photograph could have been discovered before trial through reasonable diligence. **Turner** herself posted **it** on both Instagram and Facebook in 2013. And she asserted in **her** brief that "all other references [except the "money ball" photograph on Instagram] to Plaintiff's presence on social media throughout . . . these proceedings pertained to her Facebook page" (Doc. 450, at 13), it's apparent that **her** counsel knew about **her** Facebook page and could access it, either through **her** or by themselves.

Nonetheless, suppose that we afford **Turner** every benefit of the doubt. Suppose we take as true that counsel didn't know that the Instagram photograph would be used on cross-examination and therefore assume that **her** counsel had no reason to search for this photograph on Facebook or any other social-media site. Even then, **her** counsel had ample time to discover the Facebook photograph during the trial and to discuss both photographs with **her**.

Defense attorney Franklin's cross-examination of Turner, in which he first referred to the "money ball" photograph, occurred on Wednesday, February 1, 2017, during **her** case-in-chief. At the end of Defendants' cases, on Monday, February 6, the Court asked **her** counsel whether they "have any rebuttal evidence," to which **they** responded, "We do not, Your Honor." (Trial Tr., February 6, 2017, at 62.) By then, **they** had had enough time to "research the photo's origins . . . or discuss it with their client." And **they** could have called Turner on rebuttal to further explain the photograph at issue and introduce the Facebook photograph that **Turner** now asserts proves that the Instagram "money ball" photograph was only about golf, not the lawsuit.

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