

Beloved Are the Storytellers

N. O. Stockmeyer, Jr.

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Alfred Thompson Denning—England's Lord Denning to the legal world—died recently at the age of 100. Before retiring in 1982, he had served on the bench for 38 years, the last 20 as Master of the Rolls, the head of England's Court of Appeal. At a memorial service held in Westminster Abbey, the Lord Chief Justice of England hailed Denning as “the best-known and the best-loved judge in the whole of our history.”

Denning the Master Storyteller

Lord Denning was most renowned for his clarity of expression. His judicial opinions (the English call them “judgments”) were regarded as models of lucidity. He wrote in short, crisp sentences intended to make the law accessible to lay people. A biographer referred to his writing style as “pungent English.”

Many law students encounter their first Denning opinion in Contracts in a case involving Anglia Television's suit against the American actor Robert Reed for backing out of an agreement to star in a made-for-television movie. Lord Denning sets the stage in the opening sentences of his opinion:

Anglia Television Ltd. were minded in 1968 to make a film of a play for television entitled “The Man in the Wood.” It portrayed an American married to an English woman. The American has an adventure in an English wood. The film was to last for 90 minutes. Anglia Television made many arrangements in advance. They arranged for a place where the play was to be filmed. They employed a director, a designer and a stage manager, and so forth.

Due to Denning's storytelling style of writing, the reader immediately understands

the setting for the lawsuit. Law students, even in their first weeks, can see the issue coming: May Reed be held liable for expenses Anglia incurred before he agreed to be the leading man?

A Canadian law professor, Cameron Harvey, read every one of Denning's opinions in preparing an article on his distinctive writing style. Here are the opening lines of some of Professor Harvey's favorites. See how quickly one is drawn into the story:

To some this may appear to be a small matter, but to Mr. Harry Hook, it is very important. He is a street trader in the Barnsley market. He has been trading there for some six years without any complaint being made against him; but, nevertheless, he has now been banned from trading in the market for life. All because of a trifling incident.

Broadchalke is one of the most pleasing villages in England. Old Herbert Bundy, the defendant, was a farmer there. His home was a Yew Tree Farm. It went back for 300 years. His family had been there for generations. It was his only asset. But he did a very foolish thing. He mortgaged it to the bank. Up to the very hilt.

Mr. Deeble has a milk round. He sells milk to people at the doors of their houses. He runs his business from a dairy building where he keeps his equipment, refrigerator, spare milk

bottles, and so forth, and a stable where he keeps his horse and float. His round is seven streets adjoining the premises. He does not actually have a shop as ordinarily understood. His lease of these premises is coming to an end, and he wants to stay on there. This depends on whether the premises come within the definition of a shop in the Leasehold Property Act.

In his autobiography, Lord Denning described his approach to judgment writing as follows:

I start my judgment, as it were, with a prologue—as the chorus does in one of Shakespeare's plays—to introduce the story. . . . I draw the characters as they truly are—using their real names. . . . I avoid long sentences like the plague, because they lead to obscurity. It is no good if the [reader] cannot follow them. . . . I refer sometimes to previous authorities—I have to do so—because I know that people are prone not to accept my views unless they have support in the books. But never at much length. Only a sentence or two. I avoid all reference to pleadings and orders—They are mere lawyer's stuff. They are unintelligible to everyone else. I finish with a conclusion—an epilogue—again as the chorus does in Shakespeare. In it I gather the threads together and give the result.

Cardozo's Opinion Style Similar

Are there American judges with a similar flair for storytelling? Surely one is Justice Benjamin Cardozo of the New York Court of Appeals (1914–1932) and United States Supreme Court (1932–1938). It has been said that American law-school casebooks contain more opinions by Cardozo than by any other judge. This is not only because they moved the law forward but also because of Cardozo's ability to write with clarity and style.

Two of Cardozo's most famous opinions are *MacPherson v Buick* and *Wood v Lady Duff-Gordon*. *MacPherson* is regarded as Cardozo's most influential opinion and is the

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only case reprinted in every American casebook on Tort law. *Wood* is one of Cardozo's best-known Contracts opinions. Here is the curtain-opener in *MacPherson*:

The defendant is a manufacturer of automobiles. It sold an automobile to a retail dealer. The retail dealer resold to the plaintiff. When the plaintiff was in the car it suddenly collapsed. He was thrown out and injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments.

And this is how Cardozo introduced the defendant in *Wood*:

The defendant styles herself a creator of fashions. Her favor helps a sale. Manufacturers of dresses, millinery, and like articles are glad to pay for a certificate of her approval. The things which she designs, fabrics, parasols, and what not, have a new value in the public mind when issued in her name. She employed the plaintiff to help her to turn this vogue into money.

Several admirers have lauded Cardozo's opinion style as "poetic" prose; the opening sentences in *Wood* have the cadence and quality of blank verse. Chief Judge Richard Posner, in his book *Cardozo, A Study in Reputation*, praises Cardozo's opinions for the drama and clarity of their statements of fact. They have, he writes, a charm that is "at times theatrical and even musical." (However, a cynic has postulated that Cardozo's opinions are easier to set to music than practice law by. Torts students who struggle with Cardozo's well-known opinion in *Palsgraf v Long Island Railroad* will probably agree.)

The ability to write in a clear, direct, storytelling style helps explain why, like Lord Denning in his country, Cardozo has been called "America's best-loved judge."

The Appeal of Storytelling

Joseph M. Williams is a professor of English at the University of Chicago and author of *Style: Toward Clarity and Grace*. In it he explains the appeal and effectiveness of telling stories as a form of communication:

Stories are among the first kinds of continuous discourse we learn. From the time we are children, we all tell stories to achieve a multitude of ends—to amuse, to warn, to excite, to inform, to explain, to persuade. Storytelling is fundamental to human behavior. No other

form of prose can communicate large amounts of information so quickly and persuasively.

Unfortunately, many judicial opinions begin in a way that seems deliberately designed to obfuscate. Take the opening paragraph of an opinion many law students encounter in their first week, *Hawkins v McGee* (the "Hairy Hand" case made famous by *The Paper Chase*):

Assumpsit against a surgeon for breach of an alleged warranty of the success of an operation. Trial by jury. Verdict for the plaintiff. The writ also contained a count in negligence upon which a nonsuit was ordered, without exception.

What is THAT all about?

Or take the opening sentence of another Contracts case most law students encounter in their first weeks, *Morrison v Thaelke*:

Appellants, defendants and counter-plaintiffs in the lower court, appeal a summary final decree for appellees, plaintiffs and counter-defendants below.

Who cares?

The Moral of the Story

Is it any wonder that beginning law students come to class anxious and confused? The case method of instruction requires them to prepare for class by reading—unaided except for an ever-present law dictionary—judicial opinions selected from what has been called "the largest body of poorly written literature ever created by the human race" (John Lindsey, writing in the *New York Law Journal*).

To succeed, law students must understand, and then be able to recall, the cases that they are assigned. Writing in the newsletter *Perspectives*, Professor Williams explains that the storytelling form of expression is an aid to both understanding and recall:

The clearer any story seems to any reader, the more easily that reader will understand it. The more easily that reader understands your story, the longer and more clearly he or she will remember it.

Similarly, Professors Deborah Schwedemann and Christina Kunz at the William Mitchell College of Law, in their book *Synthesis: Legal Reading, Reasoning, and Writing*, encourage law students to approach cases as if they were fables. "Fables consist of two components: the story and its moral, which suggests an outcome for similar stories occurring in the future," they write. "Cases, too, contain a story and a moral . . ." That's a good strategy not only for novice law students, but for the drafters of opinions as well.

The case method has been firmly entrenched in American law schools for over 100 years. Despite perennial student complaints, it will continue to be a mainstay of the first-year curriculum for generations to come. If more appellate judges would adopt the Denning/Cardozo style of telling memorable stories, perhaps law students would actually enjoy doing their homework.

I hope so. ♦

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