



## ARTICLE

# What's in a Name: The Power of Names in Literature and Legal Writing

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## Introduction

"What's in a name?" Juliet famously asks in Act 2, Scene 2 of Shakespeare's *Romeo and Juliet*. In writing, the answer is often "quite a bit." Just as parents often assign first names to their children "with semantic intent," writers choose names for their characters to create an immediate impression on the reader.<sup>1</sup> As David Lodge points out in *The Art of Fiction*, names in literature "are never neutral. They always signify, if it is only ordinariness."<sup>2</sup> For example, in his novel *Vanity Fair*, William Thackeray names his scheming anti-heroine Becky Sharp.<sup>3</sup> While Becky initially presents herself as a submissive and modest young woman, the reader is tipped off by her name that this public persona is a ruse. Becky is indeed "sharp"; she is both clever and dangerous. Notably, Thackeray uses the clipped diminutive for his character, rather than Rebecca, the full version of her name, with its Biblical association with matriarchy and charity. A more recent example of the importance of "naming" in a novel is David Lodge's main character in *How Far Can You Go?*. As Lodge explains in *The Art of Fiction*, "I named the man Vic Wilcox to suggest,

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<sup>1</sup> DAVID LODGE, *THE ART OF FICTION* 36 (Viking Books 1993).

<sup>2</sup> *Id.* at 37 (noting that the names of characters in novels "work subliminally on the reader's consciousness").

<sup>3</sup> WILLIAM THACKERAY, *VANITY FAIR* 41 (Penguin Books 1979).

beneath the ordinariness and Englishness of the name, a rather aggressive, even coarse masculinity (by association with victor, will and cock)."<sup>4</sup>

Name choices in legal writing can be as significant as nomenclature in literature. Although lawyers don't have the option of inventing names for their clients, they can make judicious choices about nomenclature that can underscore a key argument or help generate empathy for a client. Using a party's name in briefs helps humanize a client, while referring to an adversary by judicial status can have the opposite effect.<sup>5</sup> Similarly, using actual names in transactional documents, instead of referencing parties to agreements by their legal roles, can strengthen the connection parties "feel . . . to the documents that embody their current obligations and future responsibilities."<sup>6</sup> So students should be encouraged to think about the persuasive power of naming when deciding how to refer to parties in briefs. This article explores some of the considerations that could play into students' naming choices in persuasive writing.

## I. Nicknames

The associative power of names is arguably even stronger when it comes to nicknames, as the latter are usually generated by an individual's personality, physical traits, or occupation.<sup>7</sup> Nicknames are a key signifier in Alice Walker's *The Color Purple*.<sup>8</sup> Celie, the novel's protagonist, is married off at a young age to a man she refers to as "Mister." For much of their marriage, Mister is both physically and verbally abusive of Celie; she consequently views him largely as an all-powerful source of pain. When Mister's longtime lover, Shug Avery, comes to stay with them, Celie is surprised to hear her call Mister by his actual name, Albert.<sup>9</sup> Hearing Shug say his name and seeing his love for Shug humanizes Mister for Celie. By the end of the book, she develops a friendship with Mister; the turn in their relationship is underscored by her decision to at last call him "Albert."<sup>10</sup>

Probably the most famous, or infamous, real life illustration of the persuasive power of nicknames in the legal context is their use by gangs and gangsters.<sup>11</sup> By way of example, John Gotti, the onetime head of the Gambino crime family, was

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<sup>4</sup> LODGE, *supra* note 1, at 38.

<sup>5</sup> See, e.g., KAMALA BRIDGES & WAYNE SCHIESS, WRITING FOR LITIGATION 38 (2011); RUTH ANNE ROBINS, STEVE JOHANSEN, & KEN CHESTEK, YOUR CLIENT'S STORY 245-46 (2013).

<sup>6</sup> Susan M. Chesler & Karen J. Sneddon, *Telling Tales: The Transactional Lawyer as Storyteller*, 15 LEGAL COMMUNICATION AND RHETORIC: JALWD 119, 128-29 (2018).

<sup>7</sup> David Amoruso, *The American Mafia And Its Use of Colorful Nicknames*, GANGSTERS INC. BLOG (Aug. 6, 2016), <http://gangstersinc.ning.com/profiles/blogs/the-american-mafia-and-its-use-of-colorful-nicknames> ("A nickname . . . can derive from someone's past history or from a particular incident. It may relate to a physical characteristic or it may convey status.").

<sup>8</sup> ALICE WALKER, *THE COLOR PURPLE* (Harcourt Brace Jovanovich 1982).

<sup>9</sup> *Id.* at 47, 63.

<sup>10</sup> *Id.* at 285-88.

<sup>11</sup> Amoruso, *supra* note 7.

known variously as “Johnny Boy,” the “Teflon Don” (because he prevailed in several criminal cases in which he was a defendant), and the “Dapper Don” (because he liked to wear expensive suits).<sup>12</sup>

While the mafia may have initially used nicknames “to conceal the real identity of their members,” this custom has often had the effect of highlighting the individual’s criminal connections. The power of those associations is reflected in legal cases where the use of a criminal defendant’s nickname raised issues about jury prejudice.<sup>13</sup> For example, in *United States v. Farmer*, the Second Circuit determined that repeated references to the defendant’s nickname, “Murder,” were sufficiently prejudicial to vacate a conviction for attempted murder.<sup>14</sup> The court reasoned that the defendant’s nickname “was ‘strongly suggestive of a criminal disposition’ and a propensity to commit particularly heinous crimes.”<sup>15</sup>

Monikers can be an especially important tactical decision when a client’s claim directly ties into the use of a nickname. In *McFarland v. Miller*, the widow of the actor who played the character of “Spanky” in the *Our Gang* movies sued a restaurant called “Spanky McFarland’s”. The plaintiff claimed that—among other things—the restaurant violated McFarland’s right of publicity in his name.<sup>16</sup> Plaintiff argued that, even though McFarland was born George McFarland, the name “Spanky” was so inextricably identified with him that his own identity was invoked by its use.<sup>17</sup> Notably, throughout their brief, plaintiff’s lawyers referred to McFarland simply as “Spanky.”<sup>18</sup>

## 2. First names

As children are often referenced by first name, judicious use of a party’s first name can make him/her/them appear more vulnerable. A literary example of the deliberate use of a first name to emphasize vulnerability is William Faulkner’s *The Sound and the Fury*, where the thirty-three-year old, developmentally disabled Benjy is referred to by his first name to emphasize his childlike nature.<sup>19</sup>

In the same way, legal writers might choose to use a party’s first name to highlight a party’s need for special protection. For example, an advocate representing a college student in a Title IX sexual harassment claim might opt to refer to the client by first name to emphasize the plaintiff’s youth and vulnerability. Or an attorney advocating for a developmentally disabled defendant in a criminal case might opt to use the client’s first name to generate the protectiveness society

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *United States v. Mitchell*, 328 F.3d 77 (2d Cir. 2003); *United States v. Aloï*, 511 F.2d 585 (2d Cir. 1975).

<sup>14</sup> *U.S. v. Farmer*, 583 F.3d 131, 148 (2d Cir. 2009).

<sup>15</sup> *Id.* at 146.

<sup>16</sup> 14 F.3d 912, 921 (3d Cir. 1994).

<sup>17</sup> *Id.*

<sup>18</sup> Brief of Appellant, *McFarland v. Miller*, 1992 WL 12136841 (3d Cir. May 26, 1992).

<sup>19</sup> WILLIAM FAULKNER, *THE SOUND AND THE FURY* (The Modern Library 1956).

generally affords children, and to underscore the unfairness of imposing adult criminal sentences on their client. Referring to a special-needs party by a first name also ties in with judicial recognition that special-needs offenders should be treated differently from other offenders.<sup>20</sup>

### 3. Titles, prefixes and pronouns

In both life and literature, titles are used to convey power, status and/or expertise. It is no accident that Dracula, the arch villain of Bram Stoker's novel, is a Count. Similarly, his arch enemy's bona fides as an expert in, among other things, "obscure diseases" is signaled by the multiple degrees van Helsing uses to identify himself in his correspondence, including "MD, DPh, D.Lit, etc, etc."<sup>21</sup>

Given the association of titles with power, counsel might opt to emphasize an adversary's status to underscore a client's vulnerability. For example, in a police brutality case, counsel for the victim might choose to use a defendant's title to underscore the power afforded law enforcement officers in stop and search and/or arrest scenarios.<sup>22</sup> Conversely, counsel can use a client's honorifics to paint a positive picture of a hard worker and/or achiever.

An example of the semantic power of prefixes is reflected in the use of "Mrs." and "Ms."<sup>23</sup> While not always the case, by the early twentieth century, "Mrs." had morphed into a title that conveyed marital status.<sup>24</sup> Notably, there was no equivalent prefix distinction between married men and bachelors. This absence, coupled with the social opprobrium attached to "spinsterhood," was a linguistic reflection of gender inequalities.<sup>25</sup> With the rise of the feminist movement, the search was on for a prefix that didn't divide women into "marrieds" and "singles". By the

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<sup>20</sup> See, e.g., *Atkins v. Virginia*, 536 U.S. 304 (2002) (ruling that executing offenders who have mental retardation violated the Eighth Amendment's prohibition on cruel and unusual punishment); *Clark v. California*, 123 F.3d 1267 (9th Cir. 1997) (recognizing that special needs offenders are vulnerable to exploitation and, thus, require protective accommodations while incarcerated).

<sup>21</sup> BRAM STOKER, *DRACULA* 162 (Planet eBook), available at <https://www.planetebook.com/free-ebooks/dracula.pdf>.

<sup>22</sup> See Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305, 327 (2010) (noting how descriptive details can be used to evoke emotional responses, such as surprise or anger, in a reader).

<sup>23</sup> See, e.g., Alexandra Buxton, *When "Mistress" Meant "Mrs." And "Miss" Meant Prostitute*, THE NEW REPUBLIC, (Sept. 12, 2014), <https://newrepublic.com/article/119432/history-female-titles-mistress-miss-mrs-or-ms>; Dennis Baron, *What's in a Name? For "Ms.," a Long History*, MS. MAGAZINE (Aug. 27, 2010), <https://msmagazine.com/2010/08/27/whats-in-a-name-for-ms-a-long-history/>; Chi Luu, *From the Mixed-Up History of Mrs., Miss, and Ms.*, JSTOR Daily (Nov. 8, 2017), <https://daily.jstor.org/from-the-mixed-up-history-of-mrs-miss-and-ms/>.

<sup>24</sup> Alexandra Buxton, *When "Mistress" Meant "Mrs." And "Miss" Meant Prostitute*, THE NEW REPUBLIC, (Sept. 12, 2014), <https://newrepublic.com/article/119432/history-female-titles-mistress-miss-mrs-or-ms>.

<sup>25</sup> Chi Luu, *supra* note 23.

1960s and 70s, “Ms.” began to be used as a uniform style of address for all women.<sup>26</sup>

Identifying a woman as “Mrs.” followed by her husband’s name is now generally considered “old-fashioned”<sup>27</sup>; however, the connotations of this construction might be something an advocate can use to a client’s advantage. For example, an advocate might opt to refer to a client in a divorce case as “Mrs. John Smith” to emphasize economic dependence and underscore equity arguments for alimony. A literary example of the use of “Mrs.” to emphasize dependence is Virginia Woolf’s novel, *Mrs. Dalloway*, in which the main character is introduced to the reader as “Mrs. Dalloway”; her maiden name, Clarissa Parry, is almost never used.<sup>28</sup> This authorial choice highlights how completely the character has subsumed her younger, more open self into the role of a society hostess promoting her husband’s political career.

The persuasive use of pronouns is illustrated by discrimination suits involving transgender clients. For example, in *Whitaker v. Kenosha Unified School District*, plaintiff, a transgender boy, sued the school district for violating Title IX and the Fourteenth Amendment’s Equal Protection clause.<sup>29</sup> Notably, one of the allegations of the complaint was that school officials persisted in referring to plaintiff by female pronouns, even though he had asked them to use male pronouns.<sup>30</sup> Counsel for plaintiff referred to him by male pronouns throughout the brief, as did the Seventh Circuit in its opinion affirming the lower court’s grant of a preliminary injunction in plaintiff’s favor.<sup>31</sup>

## Conclusion

Just as fiction writers deliberate over name choice to create an impression about characters, advocates should also carefully consider how they identify clients in legal documents. While attorneys do not have the option of making up evocative names, they can decide whether to refer to parties by first name, last name, title, nickname, or legal status. In so doing, they should bear in mind the effect these choices may have in terms of generating empathy for their client and/or antipathy toward an adversary.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> VIRGINIA WOOLF, *MRS. DALLOWAY* 3 (Harcourt, Brace, Jovanovich 1981).

<sup>29</sup> 858 F.3d 1034 (7th Cir. 2017).

<sup>30</sup> *Id.* at 1040, 1042.

<sup>31</sup> *Id.*