



# The Writer's Block

by Nancy Lawler Dickhute

## Seeing the Big Picture

**F**ace it: Good writing is tough! It takes time, concentration and an ease with words. Even if we like to write and wax effortlessly with our vocabulary, we usually have insufficient time to devote to the well-pruned letter or the terse, persuasive brief. So, as we check our calendars against the list of pressing obligations, we opt for writing quickly, editing cosmetically, and hoping our ideas fly well the first time they appear on a page. Too often we are disappointed with our efforts and, unfortunately, so are our clients and the court.

Frequently we hear the phrase, "Lawyers Can't Write!" We either bore our audience by failing to make our point clearly, or at all, or we destroy our credibility by submitting documents filled with incoherent sentences, poor grammar and numerous typos. What can we do?

We can begin by creating a laundry list of ready rules to create style in our writing. By **style**, I mean learning to arrange words effectively to garner our audience's attention and keeping them interested as they read our thoughts. Style includes the words we choose, and their arrangement within our sentences and paragraphs. Style also means structure, the large scale organization we give our documents. The goal of our style is universally the same: to have our readers understand and hopefully agree with our position the first time they read it. This goal never changes; we all know we have a small window of time to make a positive impression on our audience. If we can grab our readers' attention and keep it while they are reading, we have a better chance of convincing them to accept our point of view.

The purpose of this and future columns is to provide you with some of the time-tested tricks to make your writing stand out the first time.

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To be honest, some of the tips are very easy to implement, like looking for repetition of terms to create transition. Others take a little time; creating roadmaps is an example. But regardless of the level of difficulty or time, each tip can make your writing read better and keep the reader interested.

Today's tips deal primarily with creating the "big picture" for your reader. They include 1) stating your position up front; 2) using roadmaps effectively, and 3) tying your ideas together. Using these tips will go a long way toward providing your reader with the "4C's" of good legal writing: context, comfort, clarity and cohesion.<sup>1</sup>

Think of the last time you attended a play or the opera. Usually the playhouse introduces the play with a program that provides a list of characters, the time setting for the play and its location. So when you see "Hello Dolly!" you immediately know that the first scene is in Younkers, New York, circa 1890. This information gives you, the play-going audience member, a context, a setting by which to interpret the play and relationships of the characters.

Good legal writing does the same thing. It creates context at the beginning and throughout the document by providing enough factual information in the issue, the argument summary, the statement of the case and especially the position statement to easily distinguish your case from the hundreds of others that sit on a court's docket. Creating context inevitably contributes to comfort in your reader.

**Comfort** is exactly what the word suggests: your reader is comfortable and relaxed in reading what you are saying. Comfort is found in a well-crafted argument which is easy to read and easy to follow. It flows from making a reasonable argument, one supported by the law as applied to the facts. I can tell you that any argument that is easy to follow is generally more well-received by the reader than one which is convoluted and obtuse.

Comfort comes from crystallizing your argument in your mind and then writing to

reflect that **clarity**. Clarity leads to **cohesion**, a document which holds together because the ideas flow into each other without excess baggage: needless repetition, rambling - you know the drill; you've seen it too many times.

Now to the tips that will make the "4-C's" part of your writing product:

*“The key to sticking with the deductive format is to state your position at the beginning of your document.”*

### I. State Your Position Up Front.

A legal document is not a novel. Unless you are John Grisham or Scott Turow, the "good stuff," the climax, should not appear midway through piece. The heart of your document, your legal conclusion, belongs at the beginning. Remember a legal document is grounded in the deductive format: position, validation, explanation, application, conclusion. The key to sticking with the deductive format is to state your position at the beginning of your document. Your legal reader expects it; your client wants it. Stating your position at the beginning of a letter, a brief answer, an argument summary or argument summary will start you on the road to both context and comfort.

Now let's clarify what your position statement should say. Position statements express a point of view. They answer a question. They do more than set up elements of a cause of action or provide one word answers to a stated issue. A well-drafted position statement precisely and concisely responds to the question presented and validates or explains generally why the position is legally cognizable. Look at these two examples:

#### Example 1

The plaintiff's burden is to prove that 1) the defendant intentionally misrepresented 2) a material fact 3) on which the plaintiff reasonably relied 4) to her detriment. The plaintiff can meet her burden.

#### Example 2

Defendant Carter is liable to Ms. Grant for misrepresenting the condition of his house: 1) Mr. Carter knew about the structural defect in the foundation. 2) He failed to disclose this material fact to Ms. Grant. 3) She reasonably relied on Mr. Carter's statement as to the house's structural integrity. 4) Now, to her detriment, she owns a dangerous piece of property. The law requires a seller to disclose material defects, (cite) but, as plaintiff will show, Mr. Carter failed to do what the law requires. In analyzing the strengths and weaknesses of these two position statements, consider some of the hallmarks of a well-

drafted position statement:

- ▲ It concisely answers the question before the audience.
- ▲ It incorporates language from the question, if stated.
- ▲ It answers the question in the present tense using the active voice.
- ▲ It uses enough legally significant facts to create a context.
- ▲ It is personalized to the facts of the case.
- ▲ It is precise but leaves most explanatory details for the following paragraphs.
- ▲ It validates itself by explaining generally why the position is reasonable.
- ▲ It uses strong, persuasive language.
- ▲ It leaves the reader with the distinct impression that what will follow is a greater explanation of the position's validity.

The second position statement provides the reader with the four C's by following most of the stylistic characteristics listed. Its clarity provides context, comfort and cohesion. It personalizes the plaintiff's position on defendant's liability and then validates it by setting up the elements of misrepresentation in a factual context. The reader then expects the writer to explain the details of plaintiff's proof, which leads to the next tip to improving your style: roadmapping.

### II. Use Roadmaps Effectively.

I firmly believe in mapping out a trip before I take it. I contact AAA, order trip-tiks and consult maps. I find comfort in knowing there are a few markers between here and

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my destination where I can fuel up, eat, and stretch my legs. What would a ski trip to Steamboat Springs be without stopping at Ole's in Paxton, Nebraska? Like many travelers, knowing the way in advance makes my trip more enjoyable. So it is with good writing as well.

Readers appreciate a roadmap which tells them what the writer intends to discuss by setting up at the onset the important points to be covered and then covering them in the order presented.

Sounds easy, right? The trick is figuring out your main points and sticking with them as you write. This is just another way of saying, "Tell the reader what you intend to do, do it, and then summarize what you did."

### **Here are Some Tips for Effective Roadmapping:**

- ▲ Make sure each paragraph has a topic sentence, one which introduces the main idea of a paragraph. If topic sentences appear in every paragraph they will form a loose outline of all your major points.
- ▲ Tabulate elements of a claim, a test, a proof, etc., in the order you want to discuss them.
- ▲ Where convenient, introduce your elements with "1, 2, 3" or "a, b, c" or "first, second, third," etc.
- ▲ Draft your elements in the same grammatical form, i.e., sentences, noun phrases, participle phrases (parallel construction).
- ▲ Place your elements at or near the beginning of the discussion, argument or letter section where you intend to discuss them.
- ▲ Discuss the elements in the order presented, but condense the discussion of the ones no one is challenging or simply say, "The first two elements are not disputed."
- ▲ Discuss closely related elements together, especially if the law for one is the same law for the other. Example: Reasonable reliance and detrimental reliance in misrepresentation are closely related. If you can explain the two in the same paragraphs with the same law, do it.
- ▲ If you discuss an element, define it, if needed, and always apply it to the facts of your case.

- ▲ Keep the reader on track by referring back to the original position statement or tabulation: "The third element of misrepresentation, reasonable reliance, requires..."
- ▲ At the end, tie the elements together by summarizing how the elements work together to prove your position: "Therefore, by Mr. Carter's own admission, he chose not to disclose the structural defect knowing Ms. Grant would not discover it until after the sale closed, if at all. This is misrepresentation."
- ▲ If you set up a roadmap, make sure you follow it. Nothing is more irritating than creating a cliffhanger: setting up the reader for an explanation and then failing to deliver it.

Now look back at the position statement examples. Both create roadmaps for the reader. In each the writer sets forth the elements of misrepresentation. Next the reader expects the writer will prove these elements. The only difference is the context. The first is theoretical, straight textbook definition of misrepresentation; the second is contextualized by the facts. Both have use in legal writing: the first can be used effectively to introduce to a non-lawyer the basis of the law in a general fashion. The second is more effective for seasoned legal personnel. The first will require developing a greater factual explanation than the second, but both can serve as roadmaps for good writing as long as the writer sticks to following the map created and ties each element's discussion back to the position statement. This leads to the final tip for today: making sure all the pieces are tied together effectively.

### **3. Transition: Tying Your Ideas Together**

As children, we all played "connect-the-dots" in coloring books. We enjoyed getting "the big picture" by seeing how the individual lines between dots formed a whole. Good writing is the same way. As a writer discusses the law, the reader wants to see how the various pieces connect to announce: "Here's the answer to the question." Successfully connecting all the pieces is the function of transition.

**Transition** tells the reader how various aspects of the legal discussion or argument relate to each other. Transition can be a single word, a sentence or even a paragraph.

Transition exists on two levels: intrinsic and extrinsic. Intrinsic transition relies on the logical progression of ideas to create cohesion. This progression can be through chronology, cause and effect, or by person or event. A writer can discuss events or principles in their naturally occurring order in time, as the result or consequences of actions or from the point of view of various individuals. Good writing has certain clues to establish that intrinsic transition exists.

They include

- ▲ repeating a key word or phrase from one sentence to the next.
- ▲ using synonymous terms from one sentence to the next.
- ▲ substituting a possessive pronoun: "this, that, these or those" for a key term in subsequent sentences.<sup>2</sup>

Extrinsic transition relies upon introductory words to demonstrate how the preceding idea is connected to the one that will follow, i.e., "similarly," "therefore," "in conclusion." In good writing, these are generally less preferred because they can be distracting, especially as most people have a tendency to repeat the same extrinsic device again and again. My favorites are "however" and "moreover." A good rule of thumb is to limit extrinsic transitions to no more than one per paragraph or three per page; instead, let your ideas logically demonstrate how they are connected.

When you do use extrinsic transition, choose a word which precisely explains the relationship between connected ideas. Here are some transitional words or phrases which you can use to describe certain relationships:


- ▲ a similarity or difference between the previous point and the next one: similarly, also, in addition, furthermore, however, nevertheless, though, on the other hand;
- ▲ a simple enumeration of points: first, second, third, etc.;
- ▲ a causal relationship: consequently, therefore, thus, because;
- ▲ a temporal relationship: subsequently, previously, later, in the meantime, recently.<sup>3</sup>

Notice the use of both intrinsic and extrinsic words and devices in the second position statement example: the ideas are connected using repetition, synonymous terms, posses-

sive pronouns and enumeration of points.

Transition is simply another stylistic method of making your writing easier to read. It creates comfort and cohesion in your writing.

## Conclusion

Good writing takes time, a precious commodity for most of us. Yet, without writing effectively we are less equipped to represent our clients both competently and zealously. Just as we constantly update ourselves with new developments in the law; so too, we need to spend some time honing our writing skills. If, as Daniel Webster said, "[t]he power of clear statement is the great power of the bar," then we owe ourselves and our clients to take some time to think about our writing before it becomes a document. 

*1 Stephen V. Armstrong and Timothy P. Terrell, Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing (1992).*

*2 John C. Dernback, et al., A Practical Guide to Legal Writing and Legal Method, 144-48 (2d ed. 1994).*

*3 Id.*