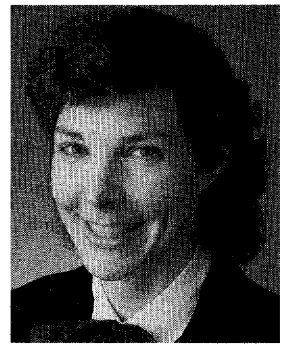


THE SCRIVENER: MODERN LEGAL WRITING



Bold Beginnings

by K.K. DuVivier



“Look with favor upon a bold beginning.”
Virgil

A joke builds to a punchline. A play builds to a climax and a denouement. A mystery builds to a solution. The purpose of each of these works is to entertain, and much of the pleasure comes from the crescendo of anticipation that rises before the conclusion unfolds.

However, legal writing should start with the conclusion. The audience of a legal writer consists of critics and skeptics, whether they are partners, opposing counsel or judges. They have neither the time nor patience to try to decipher a writer's conclusion.

Furthermore, the objective of a legal memorandum or brief is not to entertain. Its purpose is to persuade or to predict the outcome of a case. Readers must be convinced of the conclusion on the basis of the proof, most often presented in the form of facts or rules of law. Readers will agree with a writer only if the proof is convincing. When a writer states the conclusion at the outset, readers can test the analysis against that conclusion as they read.

Two conventions are used to give the reader the conclusion at the beginning, before presentation of the proof upon which that conclusion is founded. The first is a thesis paragraph. The thesis paragraph should do the following: (1) introduce the topic; (2) provide necessary background; (3) indicate the organization; and (4) state the overall thesis or legal conclusion.¹

Second, each crucial paragraph in a legal document should begin with a summarizing topic sentence. However, instead of describing what a paragraph *is about*, the legal topic sentence should tell the readers what the writer *is trying to prove*. The remainder of the paragraph exists to prove the validity of the topic sentence. At each step of the analysis, readers are shown how the data support the proposition to be proved.

Readers are most focused and least fatigued at the beginning. Placing key information in the initial topic sentence will give it more impact on readers. Furthermore, if the first sentence of each paragraph articulates the paragraph's rea-

son for being, the function of each paragraph will be clear to readers immediately.

Use the topic sentence as an organization tool when re-writing. In the first draft, you may not have realized the purpose of each paragraph. Go back and finish the job by eliminating any extraneous paragraphs and by adding at the beginning of each analysis paragraph a sentence that synthesizes the information it contains. You then can determine how each paragraph fits into the overall organization. Reorganize if necessary, and add explanation if you have overlooked any step in the analysis.

As a brief exercise, cover the first sentence in the paragraph below, and read the passage without it.

The City's plan is similarly overbroad in its definition of the minorities to be included. This Court in *Wygant* looked unfavorably upon an almost identical overly broad definition of minority. . . . Richmond City Council in adopting the plan did not give due consideration to either methods of identifying the particular minorities included in the definition or to whether in fact all of the groups had in fact been purposefully discriminated against in the past. Thus, the definition adopted impacts innocent third parties to such an extent that it is not narrowly tailored enough to achieve the objective of the plan.²

Now uncover the topic sentence and reread the passage. See how the topic sentence focuses the reader's attention and makes the entire paragraph easier to understand. The writer also has included another organizational tool, a summarizing concluding sentence at the end of the paragraph as well as at the beginning.

This edition of *The Scrivener* explained the initial thesis paragraph and the topic sentence, two of the primary tools used to organize legal writing. The July column will address conclusion sentences and other components in legal organization paradigms.

NOTES

1. Shapo, Walter & Fajans, *Writing and Analysis in the Law* 108-13 (Westbury, N.Y.: Foundation Press, 1989). This book is an excellent source for other legal writing techniques.

2. Brief on behalf of the appellee, *City of Richmond v. Croson Co.*, 488 U.S. 469 (1989), *reprinted in*, Kurland & Casper, 187 *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law* 115-16 (Bethesda, MD: University Pubs. of Amer., 1989).

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.

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