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Ambitious Introductions

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This article is not meant to insult your students' intelligence. We know that they already know that they have to "introduce" their reader to their document. What we have in mind is a challenge well beyond the ordinary: How can they craft an introduction that brings even the most reluctant reader willingly into even the most dense and complex document?

Much of the battle to capture and impress a reader is won or lost in the first two or three paragraphs, and sometimes in the first. That's a familiar truth, but novice legal writers seldom take it seriously enough and, as a result, they usually need to be pushed to write introductions that do more communicative work. To be effective, an introduction should not only shed a clarifying light on everything that follows (even though that alone is a challenge). It should also demonstrate the writer's mastery over the document's content and structure, and it should begin to establish the writer's credibility in the reader's eyes. In other words, it should demonstrate the writer's *competence* and *confidence* as well as create some initial clarity.

To accomplish those goals, excellent introductions to almost all documents—briefs, memos, or letters—take three steps that focus not on the

document's substance, but on the reader's psychology.¹ The best introductions:

- make readers "smart" enough to absorb the document's content easily,
- persuade them it will be worth paying attention, and
- make them comfortable enough with the document's approach and language so that they are willing to spend some time in the writer's company.

Each of these topics deserves separate attention, even though the introduction will always be a blend.

I. The Psychological Elements of an Ambitious Introduction

A. Making Readers Smart

We do not mean to imply that an introduction can raise your readers' IQ. But it can kick their brains into gear so they can apply their intelligence more energetically as they read. As a writer, you seek readers who are not passive sponges absorbing information mindlessly, but who think about, assess, and use the information as they read. To create that level of engagement, your introduction must provide the following:

- (1) A label. It must first "tame" your readers: You do not want them thinking about everything that might come into their heads as they begin to read, but only about your specific topic. Simply

¹ In a previous volume of this publication, we discussed a closely related topic: the concept of "front-loading" information in a document, and doing so at every level of the document. Stephen V. Armstrong & Timothy P. Terrell, *Why Is It So Hard to Front-Load?*, 18 *Perspectives: Teaching Legal Res. & Writing* 30 (2009). Here, however, we focus entirely on just the very beginning of the document, where your relationship with your readers is being established.

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announcing your subject—“This appeal involves an unusual and unresolved hearsay issue” or “This contract dispute arises from the tumultuous aftermath of Hurricane Katrina”—narrows the reader’s mental range. It says, in effect, “Close 99 percent of the doors inside your head. Open the 1 percent behind which lies knowledge relevant to this topic.” It gets the reader, quite simply, to focus.

To be effective—that is, to give the reader a precise and intensive focus—the label must pass two tests.

First, it must not distract the reader with extraneous material. For example, “This appeal from the 14th District Trial Court in Smithville, decided on January 30, involves an issue of hearsay testimony that, as the Trial Court held, does not fall within the ‘business records’ exception to that doctrine.” Several of the sentence’s details—14th District, Smithville, January 30—are nothing but a distraction. On the other hand, the specific hearsay exception provides just the focus the reader needs—but it is obscured by the static that surrounds it.

Second, the label must be precise enough to focus the reader on exactly what matters. In the example below, imagine that the introduction is followed by two pages of facts about commodity trading practices.

The original:

At this point in the case, the only remaining issue is whether petitioner, a commodities dealer, is subject to self-employment tax on earnings from trading U.S. Treasury bond futures contracts.

A revision:

At this point in the case, the only remaining issue is whether petitioner, a commodities dealer, remains subject to self-employment tax on earnings from trading, when the trading is conducted through a floor broker rather than directly by the dealer himself. The answer turns on whether, when the dealer trades through a floor broker, he has significantly altered his ordinary course of trading.

(2) A map. The need for a map is too well-known for us to belabor it here. A quick summary: Once readers recognize the document’s topic, their next question becomes “Down what roads will you be taking me? Where’s my map?” A “road map” can be as simple as “Plaintiff’s claim for an easement fails because he lacks three key elements for such a right.” Or it can be longer and more complex, if the document requires it and the reader will put up with it. In either case, the preview of the structure allows readers to organize and categorize the information as they read, absorbing it a stage at a time rather than in one great gulp.

(3) The point. As obvious as this idea might be, reconsider it as a psychological imperative: Even after you provide a “label” or topic, your reader still has a question: “OK, now that I have some sense of your topic and approach, what do you want my brain to *do* with this information? What is my intellectual challenge as I read?” To kick your readers into their highest mental gear, you must make them able to assess your information critically, by testing it against your point or “bottom line.” The “point” will ordinarily come in the form of either a question or a conclusion, and usually the latter. But simply announcing “The other side has no case” is insufficient—which brings us to the second step in our list.

B. Making Readers Attentive

Here is the problem so often overlooked: No matter how hard you try to make your readers “smart,” you can’t get your information into their heads unless you get their *attention*. Certainly your point will begin to get your readers’ analytic juices flowing, but what you really want is for them to be willing to consume and digest the whole document. You want them more seriously connected and committed to what may well be a demanding mental exercise.

To achieve this goal, it is not enough to state your legal point. As we have addressed previously in

this publication,² the “point” will usually come in two forms. One is the “legal” point—“What is the legal issue and conclusion here?” The other is the more important “practical” point for the reader—“How does this legal stuff matter *to me*?” It is the latter that is the key to getting your reader to pay the kind of attention you want.

At this column’s end, we will provide an example of the difference.

C. Making Readers Comfortable

As if the qualities above weren’t difficult enough to achieve, now everything gets worse. To make your readers intelligent and attentive, you also need to get them to *relax*. All readers are busy and distracted, and therefore generally hostile to the demands of yet another document. As a consequence, they need to be reassured that your document—even though it is an imposition—will not annoy them. An introduction can begin to provide that reassurance by quickly answering the question “What’s your point?” But it must also answer two more irksome questions:

Are you going to waste my time? Not only must you have a practical point; you also have to present it quickly, and avoid asking your readers to waste precious time on marginally relevant information. When they read professional documents rather than literature, all readers want to get to what matters most at the earliest possible moment. They do not want to wait for it or hunt for it. In other words, they are looking for efficiency as well as clarity. Again, we will provide an example at the column’s end.

What language will you speak? When business executives or other nonlawyers receive a communication from their lawyer, they always

wonder whether the lawyer will address them in a language they can understand, and with which they can therefore connect, or instead, as is too often the case, in the foreign jargon that lawyers speak to each other. This issue is about more, however, than just using “plain English.” It is also about thoroughly understanding your reader’s perspective and expectations, and then trying to approach your topic from that perspective, as the example in section III demonstrates.³

II. Editing: Going Through the List Backward

Even when legal writers pay attention to all the elements of an ambitious introduction, they typically think about them in the order in which we listed them, starting with matters of “substance” such as focus and structure. Although this sequence is perfectly appropriate for drafting, it is not for editing. The bad news is this: All readers—including you—go through the list we presented *backward*. They initially, and very quickly, react to the document’s language: Is it actually speaking to them or instead to some unidentified “other”? If the language or approach seems foreign, they are already getting grumpy. Next, and just as quickly, readers can become frustrated and distracted if they have to dig for key practical advice buried within the document. With these missteps, all the hard work the writer might do at the top of our list—providing “point” and “structure”—is likely to be wasted.

The final message is therefore about editing rather than writing: To produce a first-class, ambitious introduction, you must give yourself enough time in the editing process to return to your opening and to assess it backward—*up* the list we have descended. This, however, takes an act of will,

² Stephen V. Armstrong & Timothy P. Terrell, *To Get to the “Point,” You Must First Understand It*, 13 Perspectives: Teaching Legal Res. & Writing 158 (2005).

³ In another article, we discussed the effect of “tone” and “character” on a reader’s reaction to a document. Stephen V. Armstrong & Timothy P. Terrell, *Understanding “Style” in Legal Writing*, 17 Perspectives: Teaching Legal Res. & Writing 43 (2008).

“An introduction can begin to provide that reassurance by quickly answering the question ‘What’s your point?’”

“Examples are, of course, critical to bringing our advice to life, but given the constraints of this short article, we will discuss only one.”

for it is neither natural nor easy for a writer to perceive a document so thoroughly from the reader’s perspective. Yet the best work requires it.

III. An Example

Examples are, of course, critical to bringing our advice to life, but given the constraints of this short article, we will discuss only one. It is from a letter to a client, here a banker. In the associate’s first draft, the only effort at an “introduction” is a statement of the question that prompted the communication—that is, a nod toward a “label”—and an equally casual nod toward a conclusion. After that, off to the races we go:

Dear Mr. Jones:

You have asked us whether, under West Dakota law, BigBank’s proposed mortgage on MegaMall will take priority over a mechanic’s lien for certain engineering services performed before the recording of the mortgage. We believe it is more likely than not that a court would give it priority.

Under West Dakota law, mechanics’ liens are preferred to all other titles, liens, or encumbrances that may attach to or upon construction, excavation, machinery, or improvements, or to or upon the land upon which they are situated, which shall either be given or recorded subsequent to the commencement of the construction, excavation or improvement. . . .

The statute has been interpreted to mean that any mechanic’s lien, whether filed before or after a mortgage is recorded, has priority over that mortgage if construction began before the mortgage was recorded. There is no . . .

The second paragraph makes two distressing announcements. First, its regulatory jargon says to the reader immediately: “I’m not going to take one step toward you. If you want any information, come into my world.” Second, the launch into dense background authority after the barest of “points” says, in effect: “I am now going to waste lots of your time while you search

for anything helpful.” And the third paragraph then reinforces both these unfortunate messages.

This opening is, quite simply, infuriating.

Below are two revisions. The first still begins with a conventional lawyer’s approach (“you have asked us a legal question”), but it then offers quick and thorough practical advice rather than plunging into dense and jargon-ridden legal detail.

Dear Mr. Jones:

You have asked us whether, under West Dakota law, BigBank’s proposed mortgage on MegaMall would take priority over a mechanic’s lien for certain engineering services performed before the recording of the mortgage.

For BigBank to ensure that the mortgage takes priority, we recommend that it is revised so that it becomes a construction mortgage. Section III of this letter provides more details about the necessary changes. If you decide to take this approach, we would be glad to provide a draft of the revised mortgage.

Without these changes, BigBank risks that the mortgage could be held to have lost priority. Under the relevant West Dakota statute, the mortgage would lose its priority only if the engineering services were held to be the start of construction. West Dakota courts have held that a start must involve visible construction work on the site, a criterion that would not be met by engineering services. However, no West Dakota court has directly addressed this issue for 10 years, and more recent cases in other jurisdictions have employed broader definitions of the start of construction. We believe, therefore, that there is a substantial risk that a West Dakota court today would follow the trend that has developed in other states. Our analysis of this risk follows.

I. Priority of Mechanic’s Liens

Under West Dakota law, mechanic’s liens are preferred to other liens or . . .

The next revision is more radical. It begins from the reader’s perspective (the deal the banker is

contemplating) rather than a legal perspective, gets to the practical advice even more quickly and thoroughly, and adopts a less formal style. The choice between these two versions is a judgment call that will depend on the situation (for example, is the letter going to the banker through in-house counsel, or directly?). Our moral is only that law students should understand the options, rather than settling automatically on the most lawyerly approach.

Dear Mr. Jones:

After analyzing your proposed mortgage on MegaMall, we recommend that it be revised into a construction mortgage. This revision will avoid the risk that, if MegaMall becomes insolvent, your claims would take second place to claims by HighRise Engineering for services it will have performed before your mortgage is recorded.

As is explained in Section II, a construction mortgage differs from your proposed mortgage in two ways: . . . Neither change involves any disadvantage or additional risk, compared to the terms of your proposed mortgage.

The risk attached to your proposed mortgage arises because there is some chance, although not a strong one, that a court would find HighRise's engineering services to be the

start of construction on the site. In that case, under West Dakota law, HighRise's claim—a mechanic's lien—would take priority over the proposed mortgage. While West Dakota courts to date have held that the start of construction must involve visible construction work on the site, no West Dakota court has addressed this issue for 10 years, and more recent cases in other jurisdictions have employed broader definitions of the start of construction. As Section I below discusses, this trend might be followed by a West Dakota court facing the issue today.

I. Priority of Mechanic's Liens

Under West Dakota law, mechanic's liens are preferred to other liens or . . .

A reader whose psychological "needs" have been met at the beginning of a document—even a letter like this that may be complex and substantively challenging—will be far more willing to stay with you as you demonstrate the value of what you have to offer (and, by the way, the magnificence of your intellect).

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