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SO WHAT? WHY SHOULD I CARE? AND OTHER QUESTIONS WRITERS MUST ANSWER

BY GREGORY G. COLOMB AND JOSEPH M. WILLIAMS

Gregory G. Colomb is a Professor of English at the University of Virginia in Charlottesville. Joseph M. Williams is a Professor of English at the University of Chicago. Both are visiting professors at the National Judicial College. They are regular contributors to the Writing Tips column in Perspectives.

In our last column, we showed why readers prefer documents that begin well. We explained that readers are more likely to find a paragraph, section, or document easy to read and understand when they can quickly identify an opening segment that meets three criteria:

- It names the main characters in what follows.
- It names the key concepts in what follows.
- At its end, it states in a sentence or two the point of the unit, its central claim; or, if the main point is at the end of the unit, the opening segment ends in a point that anticipates what follows.

Readers depend on these features most in the largest units—in whole documents and in long, multipage sections. They need them less in short paragraphs, so long as they understand how those paragraphs fit into a larger chunk.

But even if readers find all the help they need to understand a document and its parts, they need more than formal coherence to motivate them to read in a careful and engaged way: They need good reason to read *at all*. If readers read without interest, or worse, not at all, we waste our efforts to make our documents coherent. So our first task as writers is to motivate readers to engage with our documents enough to read as long and as carefully as we need them to.

We would not have to work as hard to motivate our readers if they didn't have so much to read. As a consequence, we engage in a kind of reading triage—*What can I put aside? What must I read next?* and *Whatever it is, can I skim it?* Some

lawyers think that the law motivates their readers to read with interest: The attorney who asks for a research memo must want to read it; judges and other decision makers must be dedicated to reading briefs, motions, memoranda, and other documents sent to them; their clients must be eager to read every letter of legal advice they receive.

But it's a shortsighted writer who assumes that readers owe her their time and interest. Few readers recognize the importance of our documents as clearly and quickly as we do. Our readers will read more willingly if we give them a reason to read that goes beyond their duty to. So you have to think about a document not only in terms of how it helps you do *your* job, solve *your* problems, and achieve *your* goals, but in terms of how it does those things for your readers.

You can anticipate that readers begin most business and professional documents with three questions:

- *Why should I read this?* Most of us have more reading than time; so we want to know sooner than later why we need to read a document closely or at all.
- *What do you want from me, and why should I do it?* Few of us read legal documents for fun, so we want to learn sooner than later what the writer wants us to know or do—and why it's in our interest to do so.
- *How do I find what I need to know?* We don't want to waste time reading, but we can't afford to miss something important, so we want to know where to find the information we need quickly.

You answer those questions by telling readers as quickly as possible why your document merits their attention. So to the three criteria of coherence we listed above, add this principle of reader-friendly organization: Start readers with a clear and specific understanding of how they will benefit by reading what you write and why it is in their self-interest to do so.

Let's look at two examples where the need to motivate readers is obvious. Suppose your firm has been asked to write to manufacturers of chemical products encouraging them to take an action. Your readers are busy people, and they do not expect to receive your report.

Read the following two introductions. Which is more likely to motivate readers to read it carefully? Imagine those readers asking, *Why should I read this? How will reading this help me? What do I have at stake in understanding what this says?*

1. For years, the pharmaceutical industry has cooperated with the Drug Enforcement Agency to prevent the diversion of chemical products to illegal drug production under the Chemical Diversion and Trafficking Act. Our joint efforts have succeeded domestically, but the global market is more difficult to control because law enforcement cannot monitor international sales. The problem has only been compounded by new strategies for disguising transactions. As a consequence, governments cannot track patterns of sales and transport, and legitimate producers and suppliers like yourself will unknowingly become a part of illicit drug traffic.

Congress is now set to begin hearings on amendments to the Act to help control the diversion of substances on a global basis by allowing cooperative arrangements among law enforcement agencies. If these amendments are not passed and the situation deteriorates, we may face far more intrusive alternatives that will cost the industry millions. We therefore ask you to join us in our support of these amendments by subscribing to the attached letter that will be forwarded to relevant congressional committees.

2. In the last decade, lawsuits by those injured by asbestos, silicone, and other chemical substances have increased, leading to the current discussion in Washington of reforms in the way injuries are compensated. We believe that compensation for personal injury from chemical exposure should be based on sound research, and we know you support research on health and environmental effects of your products. We believe that a separate program for adjudicating competing claims is unnecessary. Mechanisms should be supported that have been established to process compensa-

tion claims for serious injury or illness, such as the state tort law system, worker's compensation, Social Security, and programs such as the Black Lung Benefits Act. We actively promote studies to define the possible relationships between hazardous substances and diseases and develop reasonable national policies but only to encourage the use of sound science in litigation and to prohibit scientifically unqualified witnesses from testifying about unproven effects of various chemical substances.

Almost all readers think that the first introduction is more likely to motivate chemical manufacturers to read and consider what the document proposes. This introduction ends by clearly and specifically answering the question, *What do you want from me?* It asks readers to support a proposal by subscribing to a letter. Thus we end the introduction with a strong framework for reading the rest of the document: We know that it will develop and support several main points: It will certainly develop the problem in more detail and then explain why the new legislation will solve it. We can also identify the characters and concepts we expect to see as the focus of the document's story and the basis of its conceptual coherence.

Before this introduction tells readers what it wants of its readers, however, it tells them why they should care. It answers the question *Why should I read this?* by placing its recommendation in the context of a problem that the recommended action would help solve—two problems, in fact. The first problem is that the current law is not entirely successful because it does not allow law enforcement to monitor international sales. Since a problem is not really a problem for the reader unless there are costs *they* will pay, a writer must explain why that situation creates costs that readers do not want to pay. This writer explains, "legitimate producers and suppliers like yourself will unknowingly become a part of illicit drug traffic."

The second problem is that Congress may not pass the proposed amendments. And once again the writer is explicit about the cost to her readers if they do not pass: "we may face far more intrusive

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alternatives that will cost the industry millions.” By explicitly stating costs, these two problem statements motivate readers to read on.

The problem statements also help build the framework that readers bring to the rest of the text. When the writer states the costs that make each problem important to readers, she also defines the role that she wants readers to play in relation to these problems: the role of good citizen wanting to support the law and stop illicit drug trafficking. Doing so, she indicates what knowledge and attitudes she wants readers to adopt in understanding the rest of her text.

But even before the writer states the problem and its costs, she does one more thing to help readers know what to expect. You’ll remember that readers always understand new information best when they encounter it in the context of information that they already know.¹ Since the writer assumes that her readers do not already know about her problem, she begins with something that readers already know, or at least that won’t surprise them: “For years, the pharmaceutical industry has cooperated with the Drug Enforcement Agency to prevent the diversion of chemical products to illegal drug production under the Chemical Diversion and Trafficking Act. Our joint efforts have succeeded domestically. ...”

This familiar ground does two things. First, it prepares readers for the problem and solution to follow: If the industry has successfully cooperated in the past, it should be ready to cooperate with new amendments. Second, it also locates readers in a context of stability and success: The industry is cooperating with law enforcement to limit domestic production of illegal drugs and is succeeding. What could be better? But then the writer upsets that stability by announcing a problem: Those apparently successful laws in fact are insufficient. That small surprise—what we thought was complete is not—adds one more motivation for readers to read on.

So we can see how each step in this introduction prepares readers for the next one and

contributes to the conceptual framework they need to understand the text as a whole. But when we imagine readers moving through these steps, we can also see how each step motivates them to read *at all*.

- The introduction begins by making readers comfortable, putting them on familiar ground of information, experiences, and attitudes they share with the writer, a ground of unproblematic stability. We’ll call this step **Common Ground**.
- Next, the introduction disrupts that stability by raising something new and troubling: a problem that readers did not know they had. The writer is careful to state what costs those problems impose on readers, because we are all motivated to deal with problems only when we see in them costs that we find intolerable (or at least greater than the cost of the solution). We’ll call this step the **Problem Statement**. That problem consists of two parts, the **Situation** and its associated **Costs**.
- Finally, the introduction promises us a return to a stability by recommending an action that will help to solve the problem. We call this step the **Resolution**.

Together, these steps form a familiar pattern: (Stable) Common Ground + (Destabilizing) Problem + (Restabilizing) Resolution

Here is the first introduction again, with its parts indicated:

1. For years, the pharmaceutical industry has cooperated. ... Our joint efforts have succeeded domestically, [**common ground**] but the global market is more difficult to control ... compounded by new strategies for disguising transactions. [**problem 1 situation**] As a consequence, governments cannot track patterns ... become a part of illicit drug traffic. [**problem 1 cost**]

Congress ... we may face far more intrusive alternatives that will cost the industry millions. [**problem 2 cost**] We therefore ask you to join us in our support of these amendments by subscribing to the attached letter that will be forwarded to relevant congressional committees.

[**solution to problem 1**]

¹ Gregory G. Colomb & Joseph M. Williams *The Writer’s Golden Rule*, 7 Perspectives: Teaching Legal Res. & Writing 78 (1999).

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This is, of course, the pattern of every fairy tale and most drama:

Once upon a time, Little Red Riding Hood was skipping happily through the woods on her way to Grandma's house [**common ground**] when suddenly the Wolf jumped out from behind a tree [**problem**]... They lived happily every after. [**resolution**]

It is a pattern we find in documents of all sorts. You'll find it at the beginning of many newspaper stories and in most magazine articles, book chapters, and academic papers, including law review articles.

When you want readers to invest their time and energy reading your document, you can offer no better compensation than the solution to a problem they want to see solved. You may be motivated to write because of a problem of your own, but if you can solve it only with the help of your readers, you have to make your problem theirs. Then you have to make them believe that they will find their solution in your document. Only when readers see what they have at stake in reading on will they commit themselves to reading your document carefully.

Just as important, if you make clear what's at stake in reading, you don't waste the time of those who don't have the problem you've solved. Readers judge you not by how much time they spend on your documents, but by how little. Readers will judge you as writer by how quickly you make clear that they don't have to read what you've written at all.

With this analysis in mind, look again at introduction #2. How much of what we have seen in #1 can you find in #2? Does it have Common Ground, a Problem Statement, or a Resolution? If there, they are not obvious.

And that explains why we find #2 less motivating than #1. It begins with something that seems to be familiar common ground:

In the last decade, lawsuits by those injured by asbestos, silicone, and other chemical substances have increased, leading to the current discussion in Washington of reforms in the way injuries are compensated. ...

But it does not disrupt that seeming Common Ground with a clear problem statement. We can eventually infer from what does follow that the

reforms under discussion may be a problem, but it is a mystery what the specific problem is and why we should care about it. At the end, we get a claim about the value of scientific research, but we cannot tell what we are supposed to do about it: Do research ourselves? Admire those who do it? Give money to those who do the research? We can't see how this is a document that will repay our attention. By the end of this introduction, readers are sure to be asking the question most challenging to a writer's success: *So what?*

Let's look at another context in which writers typically state each element of the default structure explicitly and in detail: the law review article. Writers and editors know that an article has at most a page or two to capture the right readers—those who will be repaid for their time and effort because the article helps them solve a problem. Readers may be drawn in by a good title, but they are unlikely to read past an introduction that does not tell them why they should read on. This introduction needs only three paragraphs to tell readers exactly who should be interested, and why:

I. Introduction

It is now nearly three years since Congress passed the Telecommunications Act of 1996 (TCA). ... The TCA limits the authority of local zoning boards to deny siting to wireless facilities, and provides for review in federal court of any decision adverse to a facility applicant. Wireless facilities, in addition to telephone transmissions, may accommodate data, paging, global positioning systems, and other transmissions.

As cases brought under § 704 wended their way through the judicial system, certain consistent principles for interpreting the TCA began to emerge. By the end of 1997, it seemed that a consensus was emerging on the meaning of some of the provisions of section 704: . . . [**common ground**]

But by the end of 1998, these seemingly settled principles were being revisited and, in fact, turned out to be not so settled. In several decisions, including the first decision by a U.S. court of appeals, courts declined

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to follow the emerging consensus, and instead opened up the airwaves to new rules and standards. [problem situation] As a result, 1999 brings a more fluid and uncertain landscape for both municipalities and wireless providers, because there exists support on either side of every issue, and courts are now forced to deal with questions that did not confront them before. In other words, while the towers themselves are sturdy, their legal underpinnings have been slightly shaken this past year.²

[problem cost]

This example is shorter than the introductions to most scholarly articles in legal journals or law reviews, but when successful writers produce longer introductions, they simply expand on each step.

Compare how much we learn about why someone would read the TCA article with how little we learn in this introduction:

Litigation abuse has received considerable public attention in the last several years. The shareholder suit is at the forefront of this debate. Corporate America, claiming that strike suits are crippling business profitability, has pressed for litigation reform. Regulators at a variety of levels have responded to complaints of excessive litigation. At the same time, defenders of shareholder litigation stress its importance and warn that efforts to curtail litigation will reduce management accountability.

The debate, which is a lively one, offers a variety of teaching issues. Through the material on shareholder litigation, one can explore the basic themes of corporate law and corporate governance, including questions about the appropriate degree of separation of ownership and control in the public corporation, the relative merits of different governance mechanisms that seek to reduce agency costs and increase management accountability, and the appropriate role of litigation in business

² Robert B. Foster & Mitchell A. Carrel, *Towers of Bable: The Continuing Struggle over Wireless Siting Issues Under the Telecommunications Act of 1996*, 31 Urb. Law 849–850 (1999) [footnotes omitted].

law. This Essay attempts to illustrate the relevance of shareholder litigation to some of the major themes I cover in the basic Corporations course.³

Like the introductions to many unsuccessful student essays, this one tells readers what is in the article, but not why it matters. What’s the problem? Why would anyone read this article? Is it because the author’s course is so extraordinary that other teachers will suffer if they don’t know about it? Because law professors lack ways to teach “the basic themes of corporate law and corporate governance?” Because shareholder litigation is the best way to teach it? Because students lack some *particular* critical understanding about these issues? There may be some good reason to read this article, but this introduction doesn’t reveal it.

To help you understand the default structure of a motivating introduction, we have used examples that are not typical of much legal writing. Most lawyers write more letters, memos, and pleadings than law review articles or industry reports. And you usually do not have to work so hard to tell your readers why they should care about the documents you send them. But even in the most routine documents that warrant only a few lines of introduction, you help readers by stating a problem. Your clients may not need a problem statement to know why, in general, your legal documents are worth their time, but they do need one to understand how they should deal with each one.

Consider, for example, a routine piece of correspondence in which you memorialize a phone conversation. Suppose your aim is only to create a record for some unknown future use, from simply remembering what was said to protecting you or your client in some later dispute. In that case, you need your reader only to file your letter against some future need. Most lawyers would introduce such a letter simply by stating what *it* does. This is perhaps the most typical version:

Pursuant to our conference call with representatives of Clearlines.com from 2:12 to 2:51 p.m. on June 2, 2000, this letter summarizes the discussion of the exclusivity and first-refusal proposals.

³ Jill E. Fisch, *Teaching Corporate Governance Through Shareholder Litigation*, 34 Ga. L. Rev. 745 (2000).

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This introduction may tell a reader what he will find in the letter, but because it focuses on what is *in* the document rather than on a problem that it solves, this introduction gives the reader no guidance on the key question, *What do you want me to do?* It forces the reader either to guess or to read the whole letter to see what it's good for—just what you don't want for a letter intended only for your client's files.

Here is a version that is more helpful because it states all three elements of a complete introduction.

As you recall, in our conference call from 2:12 to 2:51 p.m. on June 2, 2000, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. **[common ground]** Since we may have to rely on the details of that conversation in our future dealings on this contract, **[problem]** please keep this summary of that conversation in your files. **[resolution/recommended action]**

This introduction is a bit longer, but it saves a reader time and energy, because it frames the document in terms of the reader's problem and is clear about what you want the reader to do.

We can see how important a clear problem statement can be, even in so routine a document, when we consider how many other goals you might have for this letter, goals that involve different problems and require readers to take different actions. For example, if you and your reader must agree on what was said, your reader has a specific problem:

As you recall, in a conference call from 2:12 to 2:51 p.m. on June 2, 2000, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. **[common ground]** I will be negotiating the final wording of the contract next week, and I may have to rely on certain representations you made in that conversation. In order to ensure that my notes correctly reflect what you said, **[problem]** please review the following summary of that conversation. Let me know by Monday the Xth if I have misunderstood any of your positions. **[resolution/recommended action]**

You could, of course, just tell your reader what you want him to do:

As you recall, in a conference call from 2:12 to 2:51 p.m. on June 2, 2000, we discussed the exclusivity and first-refusal proposals with representatives of Clearlines.com. **[common ground]** Please review the following summary of that conversation. Let me know by Monday the Xth if I have misunderstood any of your positions. **[resolution/recommended action]**

But without the problem statement that recommendation seems peremptory, if not rude; and most readers would do a better job of reviewing the text if they knew what they were trying to accomplish, that is, what problem their review would solve.

In this column we have described the default structure of introductions that both motivate readers to read on and give them a framework to guide that reading. This is a structure that legal writers often use for client communications, letters between lawyers, articles, speeches, and so on. But there are also specialized forms of legal writing that require you to use this structure in special ways. In subsequent columns, we will discuss the specific considerations that apply to two large categories of legal writing: cooperative legal writing, in which the writer's goal is to serve the needs of a client or colleague, and competitive legal writing, in which the writer's goal is to persuade a decision maker to decide as you propose rather than as others do.

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