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The Art and Architecture of Paragraphs: Focus, Flow, and Emphasis

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In a law firm or department that takes pride in its writing, junior lawyers may get away with sloppy sentences now and then, but they can't get away for long with mediocre paragraphs. Over the years, however, we have found that novice legal writers often have trouble seeing the difference between a second-rate, or worse, paragraph and a first-rate one, much less transforming the former into the latter.

Our goal is to offer a checklist to help students who already write decent paragraphs to edit them more effectively, so they become first-rate. The checklist focuses on the structure of strong paragraphs, but writing them, we recognize, is an art that doesn't lend itself to formulas. Our ambition is to provide advice that is sophisticated and detailed enough to do justice to both the art and the architecture. As a consequence, we will devote three articles to the topic.

A caveat before we get to the advice: our goal may seem foolhardy, given that we will try to unpack, as if it were a symphony score, an element of writing that some consider more like jazz improvisation, with the occasional creative twist, turn, or startling disharmony. This skepticism is not irrational, but it arises from a confusion between writing a draft and editing the results.

When we draft initially, the psychological goal is to open the spigot as wide as possible, not to try to control the water as it comes out. At times, especially when we are feeling our way through a subject that's new to us, it may help to jot down a series of tentative topic ideas, sometimes in sentences, sometimes not, before we embark on a series of paragraphs. Some writers find this paragraph-level outlining useful; others prefer to draft by the "splat" method, after which they will move ideas and sentences around to give each paragraph a single focus. If you see writing in which too many paragraphs are shapeless, or in which the paragraphs don't form a logical sequence, it's worth suggesting that the writer try a topic sentence or point outline before beginning to draft. Otherwise, we suggest teaching students to edit paragraphs, not to "write" them.

Our three articles will tackle each of the three essential qualities of a strong, confident paragraph: focus, flow, and emphasis.

- **Focus.** The paragraph should focus the reader intently and intelligently on a single point, topic, or question. That doesn't mean the paragraph need be a stolid, immobile block of prose; it can develop the topic in unexpected ways, and even end someplace that could not have been predicted at the beginning. But the center of gravity should hold.
- **Flow.** The sentences should fit together smoothly, so there's never any doubt about how the beginning of one links to the preceding ones—unless the writer intentionally suppresses a transition for the sake of emphasis or surprise.
- **Emphasis.** By the rhythm of the sentences and the placement of information, the paragraph should put the emphasis on its most important content.

In this article, our topic is focus.

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Focus

Paragraphs are a significant challenge because they occupy the midpoint between the macro level of a document's overall message and the micro level of sentences. That position forces writers simultaneously to think small, focusing on the paragraph as a carefully shaped unit, and to think large, focusing on how the paragraph fits into the overall analysis and pushes it forward. At a paragraph's beginning, the macro and micro perspectives should seamlessly combine. As a result, questions 1 and 2 below go hand-in-hand.

1. Does the paragraph have a clear *internal* point?

The first test is whether the writer, if pressed, can look you in the eye and state the paragraph's point in a crisp sentence. When you press novice legal writers, their first response is often to explain why they wrote the paragraph: "I'm explaining the holding in ...," or "I'm showing the flaws in their argument." That's the task, but it's not the point. The point is the nugget of value that the reader takes away. In effect, it's the answer to the question, "Why should I bother to read this?"

The next test is whether the editor can identify a single sentence (or, at most, two) that captures the point. In grammar school, we were taught that this "topic sentence" should be the first one. That is the default move but not the only legitimate one, as we will see in questions 3 and 4. For the examples below, however, we will assume it is the best move.

Novice legal writers most often flunk this test in two situations:

First, when they write about cases or other authorities, because they assume the paragraph's point is what the authority says. It's almost never just that; it's usually how the authority is relevant to the analysis.

For example, what do you think the point of the following paragraph might be?

The statute clearly requires enforcement of a note as completed in the absence of proof that completion was unauthorized. It therefore creates a presumption of authority in the transferee to complete an incomplete

note. Proof of the absence of an agreement to complete the note in a specific manner is not sufficient to defeat this presumption. Where a general authorization to complete a note can be implied and the note is completed within the limits of the general authorization, unauthorized completion is not proven. ...

Here is a revision that begins with a point:

To overcome the presumption that a transferee has authority to complete an incomplete note, the statute requires more than a showing that there was no agreement to complete the note in a specific manner. Instead, it requires that ...

Or this example:

In *Stickle v. Heublin*, 716 F.2d at 1564, however, the court recognized that, in an action that combines both patent and nonpatent claims, the nonpatent issues may in some instances be so intertwined with the patent issues that the evidence would, in large part, be essential to both types of issues. In *Stickle*, the court found that the breach of warranty counterclaim asserted by the defendant was a wholly separate and separable claim from the patent issues since the warranty claim was not, by its nature, a "mixed" claim (i.e., one asserted as a shield as well as a sword). However, in dicta, the court said ...

Here is the revision:

A more recent case suggests, in dicta, that attorney fees on nonpatent issues could sometimes be awarded to the prevailing party in a case that also involves patent issues. In *Stickle v. Heublin*, 716 F.2d at 1564, the court recognized that, in an action that combines both patent and nonpatent claims, the nonpatent issues may in some instances be so intertwined with the patent issues that the evidence would, in large part, be essential to both types of issues. In *Stickle*, however, the court found that the breach of warranty counterclaim asserted by the defendant was a wholly separate and separable claim from the patent issues since the warranty claim was not, by its nature a "mixed" claim (i.e.,

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one asserted as a shield as well as a sword). But the court’s analysis opens the door to ...

Second, novices often flunk the point-first test when they are still thinking as they write, with the result that the point emerges only at the end. For example:

Mr. Jones argues that his actions are protected by the doctrine of governmental immunity. Under that doctrine the sovereign, be it country, state, county, or municipality, may not be sued without its consent. *Osborn v. Bank of the United States*, 22 U.S. 738 (1824). The purpose of the immunity of public officials is not directly to protect the sovereign, but to protect the public official while he performs his governmental function, and it is thus a more limited immunity than governmental immunity. Courts have generally extended less than absolute immunity for that reason. The distinction between discretionary acts and ministerial acts is the most commonly recognized limitation. The official is immune only when what he does while performing his lawful duties requires “personal deliberation, decision, and judgment.” See Prosser, *Law of Torts* 132 (4th ed. 1971).

A revision:

Although Mr. Jones argues that he has “governmental” immunity for his actions, courts generally grant immunity to public officials only for discretionary acts: that is, acts that require “personal deliberation, decision, and judgment” while performing lawful duties. This immunity is narrower than the “governmental” immunity extended to sovereigns ...

Incidentally, the original suffers from a second problem: The transitions between sentences are far from smooth. We will tackle that problem, and return to this example, in our next article.

2. Does the paragraph have a clear external point: that is, does it create a quick and clear link to the preceding paragraph and, therefore, to the analysis as a whole? This familiar point about transitions unfolds into three more specific teaching points.

First, the link should be *linguistic*, not only intellectual. The editor should be able to point to the specific words that repeat or clearly refer to key words in the previous paragraph. This is the all-important bridge from one paragraph to the next. Second, the link should not be limited to mere words: simple repetition produces only stasis. Just as a bridge moves you from one place to another, so the link—in combination with the internal point—should be *dynamic*, moving the analysis forward. Third, the link should, of course, come at or very near the paragraph’s *beginning*.

Once again, novices most often get into trouble when they are writing paragraphs about cases or other authorities. In the example below, the second paragraph begins with a reference to an authority rather than to the substance of the previous paragraph. As a result, it lacks any identifiable transition, much less a topic sentence. You would have to keep reading well into the paragraph to discover both the topic and the link.

To effect a valid pledge of an intangible chose in action such as a bank deposit, in most cases the pledgor must transfer possession of an “indispensable instrument” to the pledgee. *Id.* at 562; see *Peoples Nat’l Bank of Washington v. United States*, 777 F.2d 459, 461 (9th Cir. 1985). “Indispensable instrument” is defined in *Restatement of the Law, Security* § 1 comment (e), as “formal written evidence of an interest in intangibles, so representing the intangible that the enjoyment, transfer, or enforcement of the intangible depends upon possession of the instrument.” See *Annot. Pledge by Transfer of Instrument*, 53 A.L.R.2d § 2 (1957). Indispensable instruments have been held to include, for example, a passbook that is necessary to the control of the account. *Peoples Nat’l Bank*, 777 F.2d at 461; *Walton v. Piqua State Bank*, 204 Kan. 741, 466 P.2d 316, 329 (1970).

In *Duncan Box & Lumber Co. v. Applied Energies, Inc.*, 270 S.E.2d 140 (W. Va. 1980), however, the bank agreed to finance the purchase of land by a subdivider, Applied Energies, Inc. ...

The revision below, in contrast, announces the link rapidly and clearly and, in the same breath, announces the topic of the new paragraph.

... Indispensable instruments have been held to include, for example, a passbook that is necessary to the control of the account. *Peoples Nat'l Bank*, 777 F.2d at 461; *Walton v. Piqua State Bank*, 204 Kan. 741, 466 P.2d 316, 329 (1970).

The transfer of an indispensable instrument may not be necessary to effect a valid pledge, however, when an account has been set up by agreement between creditor and debtor to secure the debtor's obligations. In *Duncan Box & Lumber Co. v. Applied Energies, Inc.*, 270 S.E.2d 140 (W. Va. 1980), the bank agreed to finance the purchase of land by a subdivider, Applied Energies, Inc. ...

The next two questions are as closely linked as were the first two:

3. What is the paragraph's intellectual form? OK, this sounds pretentious. But it's an important question. A paragraph is a small-scale intellectual act unfolding down the page, and these acts can take different forms. For example, they can:

- State a conclusion and then back it up with information or argument.
- Pose a question, and invite the reader to undertake the journey towards the answer.
- Identify a topic, with the implicit promise that the paragraph will unpack the topic and show why it is worth attention.
- Set up a debate or a choice.

4. Does the first sentence—or the first two, at most—make clear what the paragraph's intellectual form will be? Whether the opening sentence should be a conclusion or question or take some other form depends on the answer to the previous question. For example, here are three potential openings for the same paragraph:

Contrary to the prosecution's claim, MegaCorp did not violate the procedural requirements of Section 201(d). ...

The prosecution's vague assertions do not answer the only relevant question: Did any specific act of MegaCorp violate any one of the five clearly defined procedural requirements of Section 201(d)? ...

Section 201(d), on which the prosecution's claim rests, specifies five procedural requirements, each of which is clearly defined. ...

In many situations, especially in advocacy writing, the choices boil down to this one: should I state a conclusion and then back it up, or pose a question and then lead readers toward the conclusion, in the hope they will embrace it more enthusiastically if it is not forced on them too soon? In a brief's section or subsections, the first choice is almost always the best. In paragraphs, it can be a closer call, as the next example—drawn from a Canadian factum—demonstrates.¹

Here is this paragraph's original form:

The Report of 17 February 2007 contained an obvious error. Upon discovery of the error, the Minister withdrew the Report under Rule 5(2) of the ID Rules. The withdrawal occurred before any hearing took place or any evidence was received. The Federal Court of Appeal in *M.C.I v. Sheremetov*, 2004 FCA 373 acknowledged that where no substantive evidence has been accepted in the proceeding the request for the withdrawal is not subject to a consideration by the Immigration Division of the merits of the withdrawal request. In summary, it was completely within the Minister's discretion to withdraw the Report of 17 February 2007.

This organization is irksome because the first sentence appears to state a conclusion—but it's a fake. It states only a fact that will become part of the analysis. So you think the paragraph will have one kind of "intellectual form," but you are wrong. Why does the paragraph begin there? Probably because the fact was in the front of the writer's mind, it felt relevant, and it seemed an easy and risk-free starting place.

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¹ With thanks for this example to Professor Lisa Surridge of the University of Victoria.

Below are two possible revisions, each reflecting a different decision about the paragraph's intellectual form:

Conclusion first

The Minister clearly had the discretion to withdraw the Report of 17 February 2007. As the Federal Court of Appeal has ruled, a Report may be withdrawn from a proceeding as long as no substantive evidence has been accepted; see *M.C.I v. Sheremetov*, 2004 FCA 373. In the present case the Minister discovered an obvious error in the Report and withdrew it under Rule 5(2) of the ID Rules before any hearing took place or any evidence was received.

Question first

Did the Minister have the discretion to withdraw the Report of 17 February 2007? The Federal Court of Appeal has ruled that a Report may be withdrawn from a proceeding as long

as no substantive evidence has been accepted; see *M.C.I v. Sheremetov*, 2004 FCA 373. In the present case the Minister discovered an obvious error in the Report and withdrew it under Rule 5(2) of the ID Rules before any hearing took place or any evidence was received. The Minister clearly had authority, therefore, to withdraw the Report.

Our next two articles will take us further into a paragraph's interior. Novice writers tend to think that, inside a paragraph, all that matters is that the sentences follow each other in a logical sequence. But logic is only the foundation. When writers edit their paragraphs, they should also focus on how smoothly readers can move from one sentence to the next (that's "flow"), and on how they can use the paragraph's rhythm for the sake of emphasis.

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