Observations from the Legal Writing Institute Conference: Thinking About Writing Introductions

By Rebecca White Berch

Rebecca White Berch is the Director of the Legal Method and Writing Program at Arizona State University College of Law. This article reviews Professor Joseph M. Williams's presentation at the Legal Writing Institute Conference held in Chicago in July 1994.

In a keynote speech entitled "Problems Into Problems: Expertise and the Rhetoric of Problem Formulation," Joseph M. Williams, professor of English at the University of Chicago, presented attendees of the sixth biannual conference of the Legal Writing Institute with a variety of thought-provoking ideas about the rhetoric of problem formulation and the structure of introductions. Williams offered an alternative to formulaic introductions. The alternative blends the formalist and process approaches to produce introductions more likely to engage the attention of readers and persuade them to read further. This article reviews Williams's comments and discusses the practical application of his suggestions by the legal writer.

Problem Formulation

Williams first examined what constitutes a problem and the rhetoric of problem formulation. He grouped problems into three types: (1) applied research problems (example: what is the square root of five?); (2) pure research problems (example: what sociolinguistic differences distinguished the upper and lower classes in 16th century London?); and (3) practical problems (example: what do you do if your children are seriously ill, and you lack the money to obtain proper medical care for them?).

Williams observed that applied research problems make poor problems to write about because they have easily ascertainable answers. Applying a known formula resolves the problem. Pure research problems similarly make poor vehicles for writers because they, too, have answers; the only problem, or "destabilizing condition," is that, before the writer analyzes the problem, she does not know those answers. Although she lacks complete knowledge or has a flawed understanding, she can, through study, gain the knowledge or rectify her understanding and thus resolve the problem.

The problems worth writing about are the practical problems that readers care about, those that impose a cost on the readers. The articles worth reading are those that hold the promise of solutions or partial solutions to problems that are important to the readers. Consider the following anecdote, through which Williams demonstrated that whether a problem exists depends on context and perspective:

A young woman says to her intended: "Joe, if you're late one more time, our marriage is off." While running late for their wedding rehearsal, Joe's car gets a flat tire.

Does Joe have a problem? It seems so. But what seems to be a problem may actually be a solution if Joe really did not want to get married. On the other hand, if she's rich and he's poor and he wants to get married, he's got a problem.

As Joe pulls into the parking lot at the church, he hears his name and address on the radio: He's won a million dollars in the lottery. Does Joe have a problem? If lack of money was his problem, he has a solution. But winning the lottery is a problem if loan sharks are looking for him to recover five million dollars. Now the loan sharks will find Joe, take his million dollars, and probably break his legs.

As the anecdote shows, what seems a problem may not actually be one. Persuading readers to "commit" to a piece requires that the writer not only state a real problem (a "destabilizing condition"), but also state a cost that the readers are willing to share. Williams showed how even a brief introduction can be used to convince readers (a) that they should care about and be willing to share the cost of the problem the article discusses and (b) that the article suggests at least a partial solution to the problem.

The Structure of Introductions

Journalists and novelists spend years learning and practicing ways to "hook" the audience into reading their books and articles. Although lawyers may not devote so much attention to the problem, they nonetheless appreciate the importance of the introduction. Eighty percent of the time, jurors

1 Few problems fall neatly into one category. Space constraints limit this review to a simplified explanation of the complex interplay among types of problems. In real life, practical problems may spawn research problems. For example, a competitor has subpoenaed your client's business records, some of which contain trade secrets (a practical problem). Must your client reveal those documents (a research problem)? The research may, in turn, suggest a practical response, such as moving for an in-camera inspection or moving to limit or quash the subpoena.
decide cases for the party in whose favor they had decided to vote after they had heard only the opening statements. Such is the power of a good introduction.

The pressure to produce a compelling introduction often produces writer’s block. To ease the difficulty of getting started, some writing teachers of the formalist school provide their students with formulas for writing introductions. The formalist approach to opening paragraphs directs the writer to state the problem, tell what the article discusses and propose a solution. An introduction following the formula might read as follows:

This article analyzes the problem of .
First, I will discuss , then I will discuss . Finally, I conclude that .

All too often, this formula results in the standard introduction so common in academic journals. Such introductions do little to excite the reader’s interest. So while this formula is easy for students to grasp and makes them feel comfortable, it generates formulaic, dull introductions that stand little chance of engaging the reader.

Building upon his discussion of the rhetoric of problem formulation, Williams proposed a new way to introduce problems. He observed that an introduction must contain at least two elements: (1) a statement of the problem and (2) a response to the problem. He further decomposed each element: (1) The statement of the problem must include both the problem (the “destabilizing condition”) and the cost of not resolving the problem. (2) The response to the problem may consist of either a solution to the problem or the promise of a solution.

Williams also offered alternative formulations for the introduction. Sometimes, he noted, the writer should place the problem in context. Context may take the form of background information—either a statement of research or an interesting fact—or context may be added by an anecdote or quotation. In this alternative introductory form, the writer sets forth the context for the problem (a stable condition), destabilizes it by stating the problem and then resolves the problem.

Williams concluded his presentation by observing that a good opening should mirror the closing of the article: If the introduction ends with the solution to the problem, the conclusion should start by restating that solution. If the introduction presents the cost of leaving the problem unresolved, the conclusion should justify that cost. If the introduction refers to research, the conclusion might outline further research that is needed. Finally, the conclusion should echo any anecdote or quotation that introduces the article.

Applying Williams’s Ideas to Legal Writing

Williams’s engaging and thought-provoking analysis of introductions animated the audience. The opening is critical in any writing, and many who teach legal writing have struggled with how to teach introduction writing to law students. Legal-writing books are generally not helpful on this issue. Most devote only a paragraph or two to introductions, and then merely admonish the writer to “start with a direct and clear statement of the problem.”

The formalists attempt to fill the gap by providing the formula set forth in the preceding section. Although easy to teach, the formula often produces unsatisfactory results when law students apply it. Williams’s approach merges the formalist approach with the process approach favored by educators in the writing field. No other readily available legal-writing books offer this advice for introductions. Although some might argue that Williams simply presents a more sophisticated formula, that is not the case. Williams’s deconstruction requires a writer to analyze the problem thoroughly before trying to interest the reader in it. The element of analysis distinguishes the process-driven introduction from the traditional introduction and raises the introduction from an empty, obligatory element of an article to a helpful springboard that signals to the reader what the problem is and why it is important.

The following exemplar, based upon the formalist approach, is typical of the pattern introductions found in many law review articles. I composed the revised version that follows by applying Williams’s suggestions.

While some may consider the latter example too long and elaborate, especially in light of the obvious social cost of war, it is significantly better than the introduction that the formalist formula would generate.

EXAMPLE OF THE
"FORMALIST" APPROACH

In recent years, the United Nations and sister nations have urged the United States to intervene militarily in several conflicts that have flared up around the globe. The United States has elected to assist in some conflicts, but not in others. This article analyzes whether the United States has an obligation under international law to intervene in international disputes. First, this article will discuss the international agreements that bear on the issue, then it will review the cases that have discussed the obligation to intervene. Finally, the article concludes that, in some circumstances, the United States does have an obligation to intervene in international disputes.

REVISED "ACCORDING TO WILLIAMS"

War rages in Rwanda, forcing tens of thousands to flee their homeland to escape the ravages of war. These refugees are flooding overcrowded camps in neighboring Zaire. Their numbers strain existing sanitation systems and have long since exhausted food supplies. Water is scarce. Thousands die each day from cholera, dysentery and malnutrition. The United Nations and sister nations have urged the United States to intervene to relieve the suffering, but the United States has done nothing. Visions of the recent foreign policy debacle in Somalia haunt the president and hamstring Congress. Citizens are polarized. Does the most powerful nation in the world owe a duty to intervene? International agreements suggest it might. If these agreements apply to relief missions such as those voluntarily undertaken in Somalia and Bosnia, then the United States no longer enjoys the option of deciding whether to intervene in ravaged countries. More significantly, deciding whether the agreements apply challenges a fundamental tenet of the United States’ foreign policy: the voluntary nature of the United States’ decision to intervene in . . .

This article will examine whether the international agreements require the United States to send humanitarian aid in situations such as that in Rwanda. If so, then relief missions such as this are no longer voluntary. The notion that the United States may be compelled to intervene in world affairs challenges the nation’s fundamental image of itself as a benevolent intervener. . . .

No longer may the writer simply rely upon satisfying the elements of a formula to state an adequate introduction. While some might argue that an introduction that explains too much risks repeating thoughts that will be—and should be—more fully developed in the article, most would agree that introducing a problem so that it captures the reader’s imagination is better than writing a dull introduction and hoping that the reader is sufficiently interested in the topic to grind through the article.

Conclusion

In his usual contemplative manner, Williams reexamined introductions and problem formulation. Although not unearthing a new problem, he has given us a new way to look at one that continues to bedevil writers and teachers of writing alike. And, sometimes, restating a problem yields a new solution. Williams reformulated the process of the introduction. In raising new possibilities (merging process and formalist approaches to writing introductions), he has uncovered an analytical framework that may enable legal-writing teachers to teach their students more effectively how to encourage clients, practitioners and judges to read their discourse. Blending the formulas of the formalist approach with the analysis required by the process approach provides writers some guidance in writing introductions, yet frees them from the constraints of formulas.3

3 Upon reviewing this article, I note that it does not follow Williams’s suggestions. My failings should not reflect on the professor.

“Most would agree that introducing a problem so that it captures the reader’s imagination is better than writing a dull introduction and hoping that the reader is sufficiently interested in the topic to grind through the article.”