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Ten Steps to Build Better Briefs: Part I

Tenielle Fordyce-Ruff

Each month, I sit down to write about writing. I do this because I believe that every attorney wants to become a better writer. Many of my tips and suggestions apply to any type of legal writing. This topic is different. This time, I want to focus on how to construct a better brief.

The task I set for myself is big. At the end of the day, constructing a better brief can be done in ten (easy) steps — some focusing on sentences, some on paragraphs, and some on the entire brief. Here is the breakdown:

The sentence

1. Omit surplus words
2. Use action verbs in the active voice
3. Keep it simple

The paragraph

4. Discuss a single idea
5. Use topic sentences to introduce that idea
6. Use specific details to support that idea
7. Introduce, integrate, and analyze quotations

The brief

8. Explain your thesis
9. Use a roadmap
10. Use transitions to explain the connections between ideas

That's a lot of information — all of it good — but a lot. So, I'm going to break this topic into two. This month, I will stick to sentence-level tips and start paragraph-level tips. Next month, I will finish up with writing better paragraphs and brief-level tips.



Sentence level

I'm sure we have all read truly elegant prose — sentences crafted so beautifully they sing. While not every sentence in our written work needs to create this feeling in the reader, we can make each sentence in a brief better by omitting surplus words, using strong verbs and active voice, and using straightforward language.

1. Omit surplus words

Every sentence has two kinds of words: working words and glue words. The working words do the heavy lifting in the sentence, conveying the meaning to the reader. Working words include nouns, action verbs, adjectives, and adverbs.

The glue words hold the sentence together, making sure it is proper and grammatical. Glue words include articles, modals, and weak verbs.

If a sentence has too many glue words in comparison to the number of working words, though, the sentence is weak. In the following

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example, the working words are underlined.

A trial by jury was requested by the defendant in his answer.

This sentence has twelve words, but only five are working words. Rewriting it to change the ratio makes it a much stronger sentence.

The defendant answered and requested a jury trial.

This sentence has eight words and five are working words.

So, one of the easiest ways to improve your sentences is to make sure the ratio of glue words to working words isn't too high.

2. Use action verbs in the active voice

Sentences can also be bogged down when the real action and actors are buried.

The process of making the determination of whether to charge Smith is being undertaken by the prosecutor.

The subject of the sentence is *process* and the verb is *making*. But the real actor isn't the process and the real action isn't making. The real action is hidden in the noun *determination*. The sentence's structure doesn't quickly tell the reader who is doing what (it's the prosecutor).

Crisp sentences, on the other hand, use strong action verbs and use the actor as the subject of the sentence.

The prosecutor is deciding whether to charge Smith.

In this example, the real actor and action are unburred.

To create this kind of crispness in your writing make the actor the subject and use verbs, not nouns, to express the real action in the sentence. You will write crisper sentences, and frequently you will write shorter sentences.

3. Keep it simple

Finally, sentences can get bogged down when the words are abstract. This is particularly dangerous in legal writing because legal concepts are complex. Combining complex ideas and abstract words can leave the reader searching for your meaning.

The water was impacted by his rod, whereupon a polluting effect was achieved. The consequent toxification

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reduced the conditions necessary for the sustenance of the indigenous population of aquatic vertebrates below the level of viability. Olfactory discomfort standards were substantially exceeded, and potability declined. Social, economic, and political disorientation were experienced to an unprecedented degree.¹

While that may sound like an environmental impact report, it really describes Moses inflicting a plague on Egypt. Using more concrete words helps the reader move through the action and understand what's happening.

He lifted up the rod and smote the waters of the river. . . and all the waters that were in the river were turned to blood. And the fish that were in the river died; and the river stank, and the Egyptians could not drink the water of the river; and there was blood throughout the land of Egypt.²

Legal writers don't often get to describe a plague, but removing words like *basis, situation, consideration, facet, character, factor, degree, aspect,* and *circumstance* and replacing them with more concrete words can help the reader readily grasp the meaning.

Paragraph level

Of course, great writing isn't simply a string of strong sentences. Great writing is organized and walks the reader through the organization. It shows the reader your thought process and helps create a convincing legal argument. Here are the first two paragraph-level tips: discuss a single idea using a familiar pattern and use topic sentences.

4. Discuss a single idea using a familiar pattern

In addition to complex legal concepts, legal writing is dense. Thus, simply constructed paragraphs are even more important in briefs than in other kinds of writing. Every time you construct a brief, you are asking the reader to follow a specific thought process about very complex ideas and arguments. Let's not make this any harder than it has to be.

Once the ideas are formed into paragraphs, however, you also need to present the ideas in a familiar pattern. Most paragraphs in legal writing should be constructed in a "V" shape. In other words, start the paragraph with the most general discussion and move to more specific support for the topic.

5. Use topic sentences to introduce that idea

Finally (for this month), the first sentence of a paragraph should indicate the topic for that paragraph. Good topic sentences summarize the idea developed in the paragraph. This summary helps the reader understand the argument in the paragraph and its overall place in the analytical structure of the brief. Good topic sentences also unify ideas that might appear unrelated to the reader. They make the point of the paragraph clear by taking vaguely connected ideas and drawing an explicit connection for the reader.

Consider this paragraph: How are these cases related?

*In Red v. Black, 5-year-old Johnny Black broke a windshield while throwing rocks. The court held him to a standard of conduct of a reasonable person of like age, intelligence, and experience under like circumstances. Similarly, a 12-year-old was held to a child's standard of care for his negligence in swinging a badminton racquet and hitting a teammate. However, the same court held an 8-year-old to an adult standard of care when the infant defendant injured a spectator while driving a go cart on a golf course. That decision was affirmed two years later when an adult standard was applied to an 11-year-old girl who shot another child with an arrow during archery practice.*³

Would it be easier to see the connection if the paragraph included this topic sentence?

*Infants are held to a child's standard of care for damages occasioned by their tortious acts, except when those infants engage in adult activities involving dangerous instruments for which adult skills are required.*⁴

Now that you can really see the value of topic sentences, make sure that you take the widest part of the "V" to tell the reader what to expect.

Next month, we will finish the last five tips for better briefs. I know you're excited!

Sources

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- Richard C. Wydick, *Plain English for Lawyers*, 9-12 (4th ed. Carolina Academic Press 1998).
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- Helene S. Shapo, Marilyn R. Walter, & Elizabeth Fajans, *Writing and Analysis in the Law*, 209-210 (5th ed. Foundation Press 2008).

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Endnotes

1. Richard C. Wydick, *Plain English for Lawyers*, 59 (4th ed. Carolina Academic Press 1998).
2. *Id.* at 58 (quoting Exodus 7:20-21).
3. Helene S. Shapo, Marilyn R. Walter, & Elizabeth Fajans, *Writing and Analysis in the Law*, 210 (5th ed. Foundation Press 2008).
4. *Id.*

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