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Ten Steps to Build Better Briefs: Part II

Tenielle Fordyce-Ruff

Last month we started the 10 steps to building better briefs. We covered the first five, finishing the sentence level tips and beginning the paragraph level tips. This month, we will continue that discussion, by finishing up the tips for better paragraphs and finally getting to the tips for the entire brief.

Paragraph level

Great paragraphs are organized, unified, and cohesive. The reader knows what's coming because the paragraphs begin with a topic sentence (tip 5) and recognizes that the paragraph will build support for that topic by becoming more specific (tip 4). Great paragraphs also use specific details and use quotations effectively.

6. Use specific details to support the idea

Briefs are not designed for casual reading. No one expects to lie on a beach, sip a cool beverage, and crack open the latest and greatest brief filed before the Supreme Court. Instead, briefs are designed to persuade the reader that the position and analysis advocated by the writer are sound.



Using specific details to prove the point you made in your topic sentence, and linking them to your point, can help your paragraphs do their job. Repeating the key terms you want to emphasize also helps build a better paragraph.

Police may approach a person in public without triggering Fourth Amendment protections; however, some otherwise consensual encounters may transform into a seizure. A seizure under the



Fourth Amendment arises when, in view of the totality of circumstances surrounding an incident, a reasonable person would not feel that he is free to leave. The totality of the circumstances test requires courts to weigh multiple factors including show of authority, display of weapons, touching by police, use of language, and use of tone in voice. However, not all factors need receive the same relevance or weight by the court. Thus, the significance of one factor, based on the circumstances, can point the court persuasively to conclude that a seizure occurred.

Repeating certain words and moving from the more general statement of police authority to the more specific way in which courts can balance the factors both help support the topic sentence that certain police actions transform from consensual encounters to seizures.

7. Introduce, integrate, and analyze quotations

And the final paragraph level tip: If you use a quotation, make it work

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with the rest of your paragraph. Remember, you are expecting your reader to understand and digest hours and hours of research within a single paragraph. You may have found a quotation that perfectly supports your point, but it's likely you didn't realize what a gem that quote was until after you had spent a lot of time slogging through cases in your research process. Don't expect your

reader to have the same level of understanding you do.

Take, for example this quote about the notice required to satisfy due process requirements.

*Notice without opportunity to be heard would be a vain thing. The office of notice is to afford an opportunity for a hearing, and the two must necessarily go together. There can be no due process of law without fair and reasonable opportunity for a hearing on the matter in dispute.*¹

The quote is not very persuasive on its own. However, explaining the significance of the quote makes its use much more effective.

The notice element of the due process analysis is not notice of a procedure that someone else may invoke to protect their property rights. Rather, the notice required is notice of a procedure that the holder of the property right could have taken to protect his own property right in the license. As one court noted: “Notice without opportunity to be heard would be a vain thing. The office of notice is to afford an opportunity for a hearing, and the two must necessarily go together. There can be no due process of law without fair and reasonable opportunity for a hearing on the matter in dispute.”

Notice how placing the quote in context made it more powerful and made the author’s point more understandable.

Brief level

8. The thesis should explain rather than describe

Every sentence counts in persuasive writing. Instead of using the thesis paragraph to announce the issues the brief will cover, explain why your client should prevail. This seems fairly basic, but many writers compose the thesis paragraphs late in the writing process. They are tired and feel like they have already

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explained their point. (The writer probably has, but the reader won’t read the brief in the order the author composed it.) Thus, a good brief begins with a thesis paragraph that provides coherence and explanation for the entire brief.

Compare these two openings:

This motion asks the court to decide a statute of frauds issue and an election of remedies issue. The Defendants should prevail on both issues.

This thesis does nothing more than alert the reader to the two general issues before the court.

While there are many disputed facts regarding whether the Defendants and the Plaintiffs had a meeting of the minds sufficient to enter into a contract, those facts are not before the Court today. Rather, this motion presents the Court with two legal issues, and the facts underlying those legal issues are not in dispute. This motion asks the Court first to determine whether the legal description that appears in the parties’ alleged contract for the purchase and sale of real property satisfies Idaho’s strict and exacting statute of frauds. Should this description satisfy the statute of frauds, this motion next asks the Court to determine whether, by filing their complaint prior to the time for Defendants’ time for performance under the alleged contract, the Plaintiffs elected the remedy of damages for breach of contract under the doctrine of election of remedies.

This thesis paragraph better sets the stage for the entire brief.

9. Introduce the arguments with a roadmap

Additionally, writers should orient the reader as to the big picture of the entire brief or the entire section. A good roadmap paragraph can help the reader understand the structure of the argument and signals to the reader which elements or factors are critical.

Compare these two roadmap paragraphs discussing the same issues:

Defendants are entitled to summary judgment as to the statute of frauds claim because the offers lack a legal description. In the alternative, they are entitled to summary judgment as to the claim for specific performance because of the timing of the suit.

That paragraph lays out the issues, but doesn’t tell the reader why the Defendant is entitled to summary judgment. Likewise, it doesn’t explain what facts are particularly important for the analysis that will follow.

Defendants are entitled to summary judgment as a matter of law against the Plaintiffs because the September offer and subsequent counteroffers lack a legal description of the real property and, therefore, are not enforceable under the statute of frauds. In the alternative, should the Court determine that the September offer and subsequent coun-

teroffers are enforceable in spite of the missing legal description, Defendants are entitled to summary judgment as to the claim for specific performance because the Plaintiffs elected the remedy of seeking damages for breach of contract when they filed their complaint prior to the time for closing the sale of the real property.

The second thesis paragraph explains the argument, the legal justification, and the facts that are particularly important to the argument. After reading this, the reader is better prepared understand the argument in the brief.

10. Build connections among your ideas

Finally, great briefs also have flow — the ideas blend seamlessly and the reader always knows what to expect. Achieve this flow by connecting every paragraph to the paragraphs before and after it.

One great technique for creating this connection is building bridges between the paragraphs: begin a paragraph with an idea from the previous paragraph.

Boundary by agreement requires two elements: (1) an uncertain or disputed boundary; and (2) a subsequent agreement fixing the boundary. Ignorance of the boundary suffices to show uncertainty. Conduct of the landowners and the related circumstances may imply an agreement. Id. The existence of a long-standing fence may imply an agreement, and guides the Court in two presumptions.

First, the law presumes an agreement fixing the fence line as the boundary when coterminous landowners treated it as the boundary for a long enough time that neither could deny the accuracy of its location. Second, the fence was originally established as the boundary by agreement where no evidence indicating the purpose of the original location exists. Thus, the existence and recognition of a fence as a boundary suggests

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the fence was located as a boundary by agreement, absent contrary evidence.

Notice how the second paragraph continues the idea of two presumptions from the last sentence of the first paragraph.

Another technique to create connection is using signposts. Signposts are simple words that help link ideas and help move the reader between elements or factors within a single issue. They work best when the number of ideas is introduced in the thesis or mini-thesis paragraph.

For instance, you could begin a section of a brief by stating:

There are four exceptions to the statute of frauds, and three do not apply.

This sets the reader up for a discussion of four separate ideas. Then, you would move between the exceptions by writing:

The first exception that does not apply is . . .

The second exception that does not apply is . . .

The third exception that does not apply is . . .

The fourth exception applies . . .

But remember that signposts are most effective when they are used consistently. *First, second, third; or first, next, last.* Readers can become confused when the phrasing of signposts changes.

Conclusion

Put the ten tips from my last essay and this essay into practice by editing for each tip. I'm sure you will see improvement in your persuasive writing.

Sources

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Endnotes

- 1 *Simpson v. Stanton*, 193 S.E. 64, 67 (W. Va. 1937).

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