

## Introduce Long Discussions With Substantive Summaries

A précis will assist and may persuade the reader, and it may help you clarify your thinking

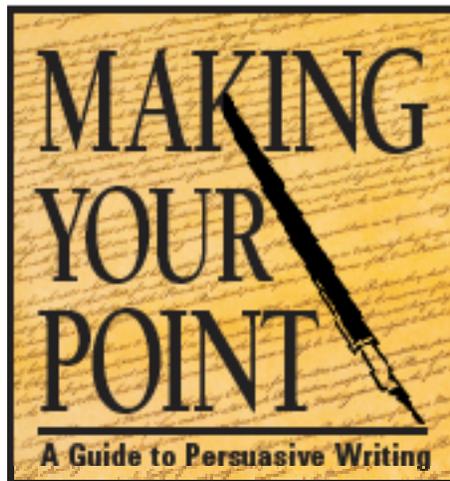
By Kenneth F. Oettle

Readers can't be persuaded until they understand what they are reading, and they can't understand what isn't clear. Clarity is so important and so lacking in the average brief that courts hunger for it. If you provide it, they will be grateful and will reward you.

Granted, they don't have much with which to reward you other than the benefit of the doubt (the best brief doesn't automatically win), but the benefit of the doubt is nothing to sneeze at. At a minimum, courts will have greater confidence in what you write.

One way to enhance clarity is to preview long discussions. A crisp, on-point summary of an up-coming discussion guides the reader; it may persuade the reader if the summary contains cogent, accessible reasons; and creating the summary forces the writer to confront whether the items being summarized form a coherent set and make a point.

Suppose you are litigating a mat-



ter that involves statistical sampling. The other side produces a report by a statistician, Smith, whose methods you question. His sample was not representative of the total population; he failed to say what his rate of error was (the expected error associated with a sampling technique); and he failed to describe his sampling technique; consequently, the technique could not be replicated.

You move to suppress Smith's report and bar his testimony. The argument section of your brief in support of the motion begins as follows:

The data provided by Mr. Smith lacks any validity in

statistical sampling. First, his sample is not random.

You then discuss randomness in a paragraph of about a dozen lines. In the next paragraph, of similar length, you discuss rate of error. Finally, in a third paragraph, you discuss sampling technique.

This is a reasonable approach, beginning with a thesis and following with supporting reasons in sequence, each discussed at length, but I would summarize the three reasons at the outset to guide and maybe even persuade the reader and to show that you control the material. An initial sentence might read as follows:

The data provided by Mr. Smith lacked validity in statistical sampling *because* (a) the samples were not random; (b) he supplied no rate of error; and (c) he did not adequately describe his sampling technique.

You would not italicize "because," but I did so because it is an important word. It shows that the writer is willing to step up and provide reasons. This tends to assure the reader that the writer will not take refuge in conclusory statements.

The above summary is short and to the point, but it may be too short for a lay reader. Someone familiar with statistics would understand randomness, "rate of error," and sampling technique, but a less knowledgeable reader might not. As stated at the outset of this column, a reader who does not understand cannot be persuaded.

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A beefed-up summary might read as follows:

The data provided by Mr. Smith lacked validity in statistical sampling because (a) Smith used a judgment sample (one where he made choices), not a random sample, thus building in an inherent bias; (b) he supplied no rate of error (the expected error associated with a sampling technique, based on sample size and response rate); consequently, one cannot properly determine the inferences to be drawn from the sampling; and (c) Smith did not describe his sampling technique, which means it cannot be replicated. Replication is a prerequisite for accepting statistical findings as reliable.

Both the short and the long summaries add value because:

- Previewing a discussion alerts the reader to reserve enough mental energy to get through it.
- The summary suggests that the writer has enough confidence in the point to present its elements up front.
- If the summary is competent, it shows that the writer has a sophisticated skill
- The summary may begin per-

suaing the reader even before the reader tackles the long discussion.

- Having to formulate a summary forces the writer to confirm the validity of each sub-point.

One of the recurring tasks of a brief writer, whether for summaries, point headings, preliminary statements or conclusions, is to distill the essence of an argument. The well-summarized argument assists and may persuade the reader, and the process of distilling it assists the writer. It requires clarity of thought, which must precede clarity of presentation.

## *Puzzler*

How would you tighten and sharpen the following sentence?

Plaintiff, in complete disregard of an outstanding defendant's document demand requesting the production of any and all contract drafts, destroyed all such contract drafts.

First, get rid of the stop-start "Plaintiff-comma" structure. Why interrupt the story one word after you begin?

Then take a look at your intensifier – "complete." If the concept of "partial disregard" doesn't make sense (it shouldn't), then drop "complete." If you must intensify (I don't favor it), use "blatant." Its intensity is not diluted by connotations of scope.

Now pare what is implicit: "outstanding," "defendant's" (who else's), and "requesting the production of." All document demands "request the production of."

That plaintiff disregarded the document demand implies that the demand was outstanding when the drafts were destroyed, that is, that it preceded the destruction. So you don't need "outstanding." Also, you avoid the awkward internal sequence "outstanding demand," as opposed to, say, a "mediocre demand." (If you left in "defendant's," then you would have the even more awkward sequence, "outstanding defendant.")

Eliminate the unnecessary "such" and, as appropriate, the implicit "contract."

Now deflect the potential argument that the document demand wasn't clear by placing quotation marks around the demand: "any and all contract drafts." Because the quotation is so obviously from a legal document (lay persons wouldn't write "any and all"), "demand" can serve as shorthand for "document demand."

### **The revised version:**

Disregarding a demand for "any and all contract drafts," plaintiff destroyed all drafts.

**Alternate version:** In blatant disregard of a demand for "any and all contract drafts," plaintiff destroyed all drafts.

### **Alternate version:**

Plaintiff destroyed all contract drafts in the face of an explicit demand for "any and all contract drafts." ■