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## The Writing Process Begins With Getting the Assignment Straight

Smart writers stop and ask for directions

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Two roads diverged in a wood, and I —  
I took the one less traveled by,  
And that has made all the difference.  
— Robert Frost, from *The Road Not Taken*

The road less traveled may have been good to Robert Frost, but it may not be so good to you if your assignment was to explore the beaten path. A written product serves little purpose if it is off point. To begin on point, you must get the assignment straight.

Here are some hints to help you accomplish that.

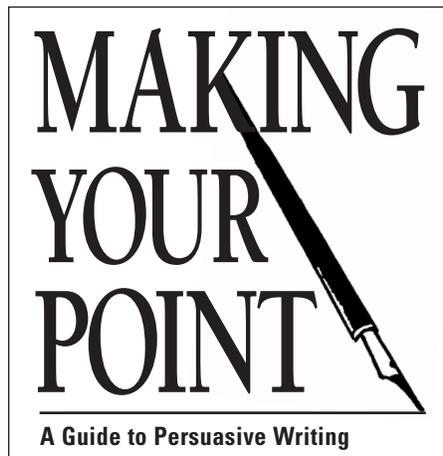
- Bring pen and paper to the meeting where you receive the assignment. This seems obvious, but people forget. If the assigning attorney grabs you in the hall, borrow materials.

- As you receive the assignment, restate the facts as you understand them. The assigning attorney may think you are slow on the uptake, but the importance of getting the facts overrides appearances. If you are unfamiliar with the area, such as securities regulation, franchise agreements or environmental enforcement, acknowledge this and request a replay of any portions of the

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story you missed.

You are understandably reluctant to appear naive, and you are afraid, not without reason, that the attorney assumes you came fully programmed with the appropriate database. But candor will protect you. By being honest



and assertive, you can recover as many points as you lose for being unfamiliar with the subject matter.

- Before you leave the initial meeting, ask permission to restate the issues as you understand them. Few assigning attorneys are in such a hurry as to deny you this.

- Also before you leave the initial meeting, ask the assigning attorney how they want the research presented — photocopies of cases, oral report, memo, brief, or combinations thereof. You need to know, and if they haven't decided, your question will help them focus.

- Immediately after the meeting, write a memo or an e-mail confirming the assignment. If your firm doesn't require assignment-confirming memos, ask the attorney if they would mind your writing one.

### Possible Roadblocks

After beginning the assignment, you may find things aren't going smoothly. Typical problems, with suggestions for overcoming them, are as follows:

- The assigning attorney said your issue is "legal only" and gave you only skeletal facts. An issue may be legal only (e.g., "What does the statute say?"), but more often it is factual though the assigning attorney says it is not. You may not understand this until you begin research and realize you cannot determine if the cases are useful without knowing more facts.

*Suggested Solution:* Ask for the kind of facts you think you are missing. This is easier said than done, of course. The assigning attorney is busy and doesn't want to be disturbed. But do it anyway. The price of admission is your being able to summarize — orally or in writing — at least one case that led you to ask for more facts. It shows you are diligent, assertive and sincere.

- The assigning attorney says you will find law favorable to your client, but the law appears unfavorable. You don't know what to do. You are afraid the assigning attorney will "kill the messenger."

*Suggested Solution:* The assigning attorney will not "kill the messenger" just because you find bad law though they will suspect, at least briefly, that you are a double agent. After all, you are suggesting their instinct was wrong. Assigning attorneys don't like to be wrong, and they think, sometimes correctly, that they know more than you.

If you believe a case hurts your position, re-read it to confirm your belief and then report that you have found harmful precedent that does not seem distinguishable. Be prepared, as many are not, to summarize the case and explain your concern.

Ask the assigning attorney if additional facts can be brought to bear that might enable you to distinguish the case. Generally, if you find harmful law, you should forewarn the assigning attorney so your memo or draft brief does not become a bombshell.

- The assigning attorney may have mischaracterized the issues. Formulating issues takes time, and attorneys often give assignments off the cuff.

*Suggested Solution:* The first checkpoint is the assignment-confirming memo, which gives the assigning attorney an opportunity to change course. If you feel an issue has been improperly drawn, propose a reformulation and be prepared to defend your proposal. Again, preparation is the price of admission. Preparation is so impressive to assigning attorneys that it may even get you a lunch.

- Notwithstanding all your efforts, the assignment remains unclear. In your considered judgment, if you go back to the assigning attorney, you will look stupid.

*Suggested Solution:* “Get smart” on the subject by reading a treatise or a law review article or by consulting another attorney who is working on the same case and is familiar with the facts and the law. You may wish to look for a “translator,” a person who regularly works with the assigning attorney and understands the attorney’s methods.

As a last resort, consult any attorney with whom you are comfortable who may know something about the area. Don’t proceed alone, and don’t proceed with uncertainty. Roads diverge, and the longer you stay on the wrong one, the farther

you drift from the correct path.

In sum, stay in touch with the assigning attorney or, in an emergency, with someone else. Begin with the assignment-confirming memo and continue with periodic reports on your progress. Even a busy attorney will make course corrections if you provide new information, a new perspective and an incentive to adjust.

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### *Puzzler*

How would you tighten and sharpen the following sentence?

Anyone that has looked at or traveled on this site would tell you that for the past 85 years it is part and parcel of the barrier island of Brigantine.

Say “anyone who” rather than “anyone that” because you are speaking of people. Place the traveling concept first and the viewing concept second using “even” to emphasize how little it takes (i.e., just looking) to come to this conclusion. Drop the “on” after “traveled” because it is implicit. Change “for” to “in” (few have viewed the site for 85 years) and move “in the past 85 years” ahead of “would tell you” because nobody can tell from one look what the site’s status has been for the past 85 years. “Parcel” is unnecessary, as is the second “that.”

The revised version:

Anyone who has traveled this site or even viewed it in the past 85 years would tell you it is part of the barrier island of Brigantine. ■