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Your Writing Is a Barometer of Your Thinking

Drafts reveal when you haven't grappled with or mastered an issue

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Just as industry uses gauges to determine whether things are hot or cold, full or empty, brief writers can use gauges to determine if their thinking is accurate and complete. A writer's gauges are, ironically, the obfuscations and evasions he or she uses to hide, or hide from, tough issues. The following gauges are gathered as a checklist.

1. Watch for emphatics that declare the unassailability of your position, such as "clearly," "obviously" or "simply." Odds are that you are using emphatics because you haven't made your point clear, obvious or simple.

2. If you begin a sentence with "It is important to note" or "Significantly," you may not understand how the idea you are about to "note" relates to the one before it. You deem the idea important, but you don't know why. If you knew why, you would not resort to "important" or "significant," which do little more than ask the reader to pay attention to what you are about to say.

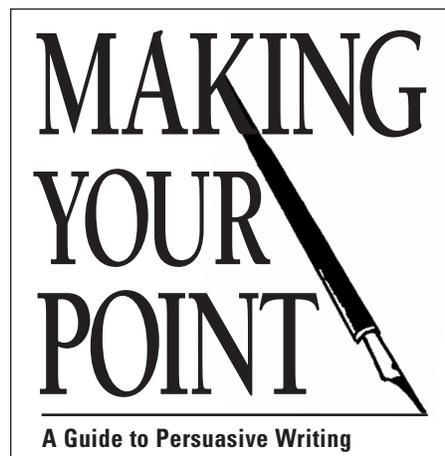
3. If you cannot create a transi-

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tion between paragraphs, you may not know how the ideas in the paragraphs relate. If you don't know, the reader won't know, either.

4. If your draft seems disorganized, you may have written in haste before reasoning the problem through, fearing that you might "get a zero," that is, have nothing in hand when the deadline arrives.

5. If you default to "In *Smith v. Jones*" to begin a paragraph, your failure to create a topic sentence may



signal that you don't know what your point is.

6. If you connect independent clauses with "and," consider whether you aren't just tacking loosely related thoughts together, possibly to create the appearance of a causative relationship. Consider subordinating one thought to the other. If you can't, then maybe they don't belong in the same sentence.

7. If you have a desire to drop a footnote, you may be avoiding an issue — trying to bury it, as it were, at the bottom of the page.

8. If you are using underlining in

the text of your brief (as opposed to using it to highlight words in a quotation), ask yourself whether the underlining isn't an attempt to cure a lack of clarity or emphasis.

9. If you have several arguments to support your position and merely list them ("This is the correct result for five reasons"), you may not know what your strongest argument is, and you may be diluting it by giving subordinate points equal time.

10. If you begin a brief noncommittally with, "This is a brief in opposition to defendant's motion for summary judgment," you may be avoiding the challenge of determining your best fact and building a theme around it. At the very least, you are forfeiting the opportunity to use the premier sentence in your brief — the opening sentence — for persuasive purposes.

11. If your prose seems wordy, quantity may be masking lack of quality. Writing instructors say that pruning should be the last step in the writing process short of proofing. This is generally good advice, but you may wish to trim your prose along the way because verbosity can conceal (from you, not from the reader) the absence of a decent argument.

12. If you quote from a judicial opinion without characterizing the content (e.g., Instead of introducing the quotation with, "The trial court relied heavily on the disparity in bargaining power:" you merely say, "As the court said:"), then you may not have read the passage carefully, and it may be off point. At the very least, you are failing to extract full value from the quotation, forfeiting the opportunity to put your own spin on

it, to gain credibility by characterizing it fairly, and to achieve emphasis through repetition.

13. If you are making an argument that seems weak, ask yourself whether you have maximized your strong arguments. If you had, you might not be grasping at straws. Perhaps you need to improve your theme or bring more facts and law to bear. Maybe (and now I speak the unspeakable) you should even concede a point.

14. If you find yourself restating your conclusion several times in the same paragraph, you may have no support for it, or if you have support, you may not have figured out what it is.

15. If you think that the other side's position is unreasonable and that yours is a matter of "common sense," ask yourself why. The debate is never over with the labeling or, if you are angry, with the name-calling. Your job may require you to identify with your client's position and feel indignant on their behalf (a paradox of our adversary system is that opposing lawyers can feel indignant for different sides on the same facts), but the indignation you feel does not confirm the validity of your argument.

16. Generic intensifiers such as "whatsoever," "in any way," "utterly," "completely" and "never" don't persuade. They merely give voice to your indignation. If you find

yourself using these words, ask whether your facts can persuade without the purported boost.

17. If you can't answer the question, "What is my point?" then you may not have one.

Puzzler

How would you tighten and sharpen the following sentence?

In its opinion, the Appellate Division disagreed with the trial court and reversed the decision below.

Where would the Appellate Division express itself other than in its opinion? Drop "In its opinion" because it is implicit, just as you would drop "In his brief" if you were referring to the opposing party's argument. If the Appellate Division reversed a decision, then necessarily (a) the court disagreed with the trial court, and (b) the reversed decision was "below." You can drop "the trial court" and "the decision below" because both are implicit.

The revised version:

The Appellate Division reversed. ■