New Jersey Law Journal

VOL. CLXXII – NO. 11 – INDEX 1024 JUNE 16, 2003 ESTABLISHED 1878

If You Have More Than One Dispositive Point, Let the Reader Know Up Front

An overview provides power and aids comprehension

By Kenneth F. Oettle

Sometimes you have two or more points of relatively equal strength, each of which would win for you if accepted by the court. Generally, you should give the reader an overview of both points before elaborating on the first. Don't just jump in and leave the reader to find out later that you have more than one arrow in your quiver.[1]

Consider the following two paragraphs that opened a brief opposing a motion to enforce a foreign default judgment:

> The Pennsylvania default judgment that plaintiff seeks to enforce is void because plaintiff failed to properly serve defendant with the summons and complaint. Plaintiff mailed rather than delivered the summons and complaint to defendant's statutory agent. [Further discussion of service is omitted.]
>
> Even assuming service was proper, the Pennsylvania court was without jurisdiction to enter a default judgment because defendant did not enter into a contract with plaintiff in Pennsylvania. Plaintiff's claims arise only from contacts outside Pennsylvania. [Further discussion of contacts is omitted.]

The writer has two grounds on which to claim the Pennsylvania court lacked personal jurisdiction over his client: improper service and insufficient contacts. Instead of completing the discussion of the first ground before mentioning the second, the writer should tell the reader that two grounds exist on which to void the default judgment and that both grounds are jurisdictional:

> The Pennsylvania default judgment that plaintiff seeks to enforce is void because the court lacked personal jurisdiction over defendant in two respects: improper service and insufficient contacts.

In the alternative:

> The Pennsylvania default judgment that plaintiff seeks to enforce is void on two jurisdictional grounds: improper service and insufficient contacts with the State.

Then the writer can elaborate on the first point:

> Service of process was deficient because ...

Having established why service of process was deficient, the writer can begin another paragraph by reiterating the first point. The repetition achieves emphasis and provides a transition:

> Not only did the Pennsylvania court lack personal jurisdiction over the defendant because service was improper, but the court lacked personal jurisdiction for the additional reason that defendant did not have minimum contacts with the State.

The writer can then explain why Pennsylvania lacked minimum contacts, e.g., the defendant did not visit Pennsylvania; the transaction did not affect Pennsylvania, and so forth.

Having two points provides an opportunity for grouping, which aids comprehension and adds force. You "group" here in two ways: You announce that you have not one point but two, and you explain that both points fall into the same category — jurisdictional.

The technique of identifying and characterizing multiple points before launching into the first one has several virtues. It shows the reader you are in control, like a doctor who diagnoses with assurance, a repair person who explains how the igniter in your furnace works, or a person who knows computers. By providing overview, you show that you have "got your arms around"

MAKING YOUR POINT

A Guide to Persuasive Writing

The author is a partner and co-chair of the Appellate Group and writing and mentor programs at Sills Cummis Radin Tischman Epstein & Gross. He invites questions and suggestions for future columns to koettle@sillscummis.com. "Making Your Point" appears every other week.

This article is reprinted with permission from the JUNE 16, 2003 issue of the *New Jersey Law Journal*. ©2003 ALM Properties, Inc. Further duplication without permission is prohibited. All rights reserved.

the matter and are worthy of the reader's confidence.

The overview also serves as a roadmap. Like tourists about to set out for a day of sightseeing, readers like to know where they are going. The summary gives the reader a sense of how large the unit of argument will be so the reader can reserve energy for it, and it shows the reader the direction the argument will take so the reader can feel in control.

Finally, the summary is a show of strength. You claim victory not just on one ground but on two. By showing strength, you begin to create the sense that the day belongs to you.

Take the Aggressive Approach

Before revision, the second paragraph in the above example began, "Even assuming service was proper ..." It should have begun, "Not only was service improper, but ..."

In such circumstances, look to use the more aggressive approach: "Not only was service improper, but ..." Reassert your first point rather than concede it for argument's sake.

Think about it. On the one hand you are saying, "We win for two reasons." On the other, you are saying, "Even if we lose on one ground, at least we win on the other." Do you sell more brushes by saying, "They are good in the kitchen and the bathroom" or by saying, "If they aren't good in the kitchen, you can still use them in the bathroom"?

Puzzler

How would you tighten and sharpen the following sentence?

> There are a number of cases in which the participation of the landowner in the project was a lot less than in this case and the courts have held that the duty to provide a safe working place applies to that landowner.

The necessary elements of the sentence are (a) courts imposing a duty (b) on landowners (c) to provide a safe workplace (d) under circumstances where the landowner was less involved in the project than here. Unnecessary verbiage includes, "There are a number of cases in which" and "in this case."

Speak first of the courts to get more quickly to the action (courts imposing a duty) and speak assertively of courts "imposing" rather than courts "holding" or a duty "applying."

Collateral benefits of the restructuring include (a) shortening "the participation of the landowner" to "landowners whose participation"; (b) eliminating the circuitousness and the drone of the run-on sentence; (c) deleting the phrase "applies to that landowner"; and (d) ending the sentence with, and thus emphasizing, an important concept: "less." Micro-editing includes changing the colloquial phrase "a lot" to "much" and shortening "working place" to "workplace."

> The revised version:
> Courts have imposed a duty to provide a safe workplace on landowners whose participation in the project was much less. ■

FOOTNOTE

1. I use this metaphor in lieu of the mysterious "another string to your bow." *Brewer's Dictionary of Phrase and Fable* says the allusion is to the custom of British bowmen carrying a reserve string in case of accident. If so, shouldn't the metaphor be "another string for your bow"?