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In Case Write-Ups, Get Quickly to the Holding

Then decide how much of the court's reasoning to present

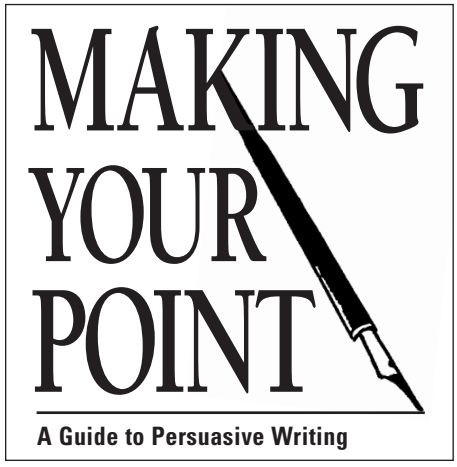
By Kenneth F. Oettle

The American legal system is based on stare decisis, the doctrine that when a court has laid down a principle of law as applicable to a certain state of facts, that court and courts inferior to it will apply that principle to all future cases where the facts are substantially the same. This makes the case write-up a litigator's meat and potatoes. Because rulings in prior cases control the matter before the court, the advocate's job is to gather and explain prior rulings, which are found in judicial opinions.

Courts' opinions generally follow a format. They state the facts and the law; sometimes they state what both sides argue; and then they apply the law to the facts. This application results in the "holding."

Several approaches are available for encapsulating judicial rulings in briefs or memos, assuming you wish to do more than just cite the case and follow it with a parenthetical: (1) go straight to the holding and then summarize the facts and the court's reasoning; (2) summarize the facts and then present the holding, followed by the court's reasoning; or (3) summarize the facts, recount the court's analysis —"The court observed this ... Then the court reasoned that ..." — and then present the holding.

The best approach is usually to go straight to the holding. Not only does the holding quickly provide what the reader needs to know, but it conveys the impression that you have enough confidence in your characterization of the holding and in the value of the holding to your case to state it up front.



Conveying confidence is a benefit of the direct approach, as when you state your point early in a preliminary statement, begin a paragraph with a topic sentence or introduce a quoted passage with a statement of its central idea. With the direct approach, you achieve not only efficiency but command.

You also force yourself to decide what the court held. If you can't state the holding, then you have more thinking to do. Once you've clarified the holding, the rest of your write-up can flow from and support it.

Beginning a case write-up with the holding is not an immutable rule; it is a rule-of-thumb. The touchstone for determining how to begin a case write-up is to ask what the reader needs to know and when. Generally, your answer will be, "The reader needs to know that I have support for the proposition that under a certain set of facts, the law is such and such." This answer usually directs you to the court's holding.

Depending on your needs, you may add that the court reiterated black letter law, or you may present some of the court's reasoning. Possibly, you will note that the court took the trouble to express any reasoning at all where other courts did not.

One trap in drafting case write-ups is the tendency to present each element of the court's analysis in the order presented by the court — "The court began ... The court continued ... The court further stated ... Then the court concluded." If you find yourself doing this, consider whether you forgot to consider what the reader needs to know and when. The reader probably needs to know what the court concluded first, not last. By dutifully reporting the court's reasoning process, you take too long getting to the point.

Another mistake in case write-ups is the repetition of principles already stated elsewhere in your memo or brief. For example, in a memo where you have previously cited the principle that an employer will be liable for the torts of employees only when the employee was acting within the scope of employment, the following sentence in a case write-up would be unnecessary:

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.

> The District Court began its analysis by noting that the doctrine of respondeat superior will hold an employer liable for the torts of its employees only when the employee was acting within the scope of his employment.

Though the District Court did begin its analysis that way, you already stated the rule and need not use this case to confirm it. Moreover, you don't have to supply the court's entire chain of logic. That approach generally reflects the mindset of a reporter rather than an advocate. Instead of taking control of the material and shaping it, the writer takes refuge — not an unfair characterization — in finding and reporting.

On the other hand, you may wish to discuss the court's reasoning process, or part of it, if you wish to give a blockbuster case center stage, keeping it in the reader's mind and highlighting its importance. Similarly, if you have only one good case, it may achieve prominence by default. In either situation, you still present the holding first. Otherwise, the reader may become impatient.

One uses a case write-up to make a point. Usually, the quickest and best way to make the point is to state the holding first, but this is not always true. Ask yourself why you are using the case and what you should do to impress the case upon the reader or defend the case from attack. If you answer the question "Why am I using this case?" you will know what to say first and where to go from there.

Puzzler

How would you tighten and sharpen the following sentence?

> Plaintiff did not come forward with a single shred of evidence which even remotely suggested that defendant had agreed to the disputed terms.

"Did not come forward with" can be shortened to "presented no." Emphasis is supplied by the reversal from the positive "presented" to the negative "no." "Single shred," though temptingly alliterative, is a cliché. If you must use an emphatic (as you sometimes must, politically, to satisfy clients and assigning attorneys), try either "failed to present any" (alternate version) or "presented absolutely no" (second alternate). The phrase "Which even remotely suggested" duplicates the first emphatic — if you use one — and is overdramatic and overlong.

> Preferred version:
> Plaintiff presented no evidence that defendant had agreed to the disputed terms.
>
> Alternate version:
> Plaintiff failed to present any evidence that defendant had agreed to the disputed terms.
>
> Second Alternate:
> Plaintiff presented absolutely no evidence that defendant had agreed to the disputed terms. ■