

New Jersey Law Journal

VOL. CLXXXIX – NO. 10– INDEX 892

SEPTEMBER 3, 2007

ESTABLISHED 1878

Let the Needs of the Reader Guide Your Groupings

Be wary of easy organizational choices, such as chronology or the alphabet

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Notwithstanding the importance of delivering a message clearly, the most important requirement for a research memo is that it deliver the message correctly. A valid bottom line is a *sine qua non*. Clarity, brevity, good grammar and proper punctuation — the classic elements of good writing — are, I hate to say it, secondary.

Actually, they are tertiary. Before you focus on clarity, brevity and the trimmings, you should ask yourself if you are responding to the reader's needs, wishes and concerns. Think like a counselor before thinking like a communicator.

The sequence of self-interrogation in the memo-writing process goes something like this:

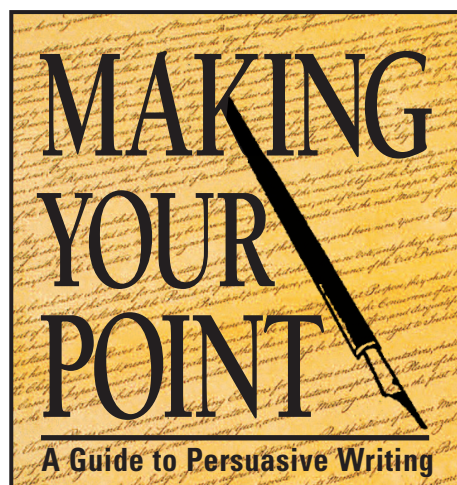
Have I found the correct answer and good support?

How shall I structure the memo to respond to the reader's needs, wishes and concerns?

Is the memo clear, sharp and clean?

Suppose you have to research the law of 15 states in which your client owns retail stores to determine whether consumer privacy laws prohibit the client's salespersons from asking customers for an address and telephone number when they check out. This personal information would be used for marketing goods to those customers.

The 15 states range from Alabama to Wisconsin. Your first thought is to discuss the states in alphabetical order, which has an elemental logic. After all, Alabama comes before Connecticut, which comes before Georgia, and so forth. The associate who was given this assignment chose



that method and said that it “seemed to make sense.”

A premise of the alphabetical approach — at least as applied here — is that material should be organized according to its intrinsic qualities. Because states can obviously be organized alphabetically, arguably they should be presented in alphabetical order.

The flaw in this strategy is the

premise that a memo's organization should flow from the material without reference to the reader's needs, wishes and concerns. To the contrary, it should flow from a synergy between the material and the answer to a reader-centric question, such as, “What does the reader need or want to know?” “What will please the reader?” or “What will show the reader that I am working hard for his cause?”

The client wants to know whether salespersons can ask their customers for personal information. He wants to enable the salespersons, not disenable them. Like many clients, he wants permission and will not happily take “No” for an answer. Knowing that, I would look hard for a way to deliver an enabling message, even if it has to be qualified.

As it turns out, six of the 15 states have no laws protecting consumer privacy, so you can tell the client right off that six states have no laws that would interfere with the client's desire to collect personal information from customers for marketing purposes. Name the states, and you have the first paragraph of your discussion.

The associate who received this assignment was not thinking in terms of what to say to please the client. He was thinking of the material, apparently unaware that he could earn points by optimizing the reader's pleasure or minimizing the reader's pain and — not to be ignored — by showing that he has the skill and will to do so. A memo delivers many messages.

Shaping a memo to please rather than displease the client may seem a little obvious, even bordering on pandering, but

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clients don't mind as long as the writer isn't withholding information. You won't be viewed as "sucking up" if you deliver a message that maximizes the client's satisfaction.

In the salesperson scenario, not only do six states have no consumer privacy laws, but the laws in five of the remaining nine states merely prohibit salespersons from recording credit card information on checks. The laws do not prohibit asking for addresses and telephone numbers. With these five states and the original six that have no consumer privacy laws, a total of 11 of the 15 states don't even purport to prohibit the practice that your client wishes to pursue — asking customers for addresses and phone numbers.

This is more good news. You would group these five states and discuss them second.

The remaining four states of the 15 can also be grouped. In those states, retailers are barred from asking customers for personal information, such as addresses and phone numbers, only in credit transactions. Transactions by cash or check are unaffected. This mixed-news grouping goes last, not first.

Less experienced writers sometimes think they should put the bad news first so they can't be accused of hiding it and so the good news coming last will give their story a happy ending. These ideas are reasonable, but they are outweighed by the need to start strong.

The associate asked whether alphabet-

ical order would work if an introduction to the memo included an overview such as this:

As explained below, 11 of the 15 states impose no impediment to requesting addresses and phone numbers from customers.

This good summary should be included as part of a Short Answer no matter what the structure of the memo, but it is not a substitute for the favorable groupings, which save the reader work and maximize the reader's satisfaction.

I have heard the process of deciding how to begin a memo or brief described as a "leap of faith." The leap may be the imaginary jump one takes into the mind of the reader to ascertain the reader's needs, wishes and concerns. Strange as it may seem to experienced attorneys (how quickly they forget!), some novices don't instinctively do this.

To find your direction and gain the confidence necessary to make the leap of faith, ask yourself reader-centric questions, such as, "What should I say to capture the reader's attention?" "What will please the reader?" or "What does the reader need to know?" The answers to these questions will show you how to take control of the material. If you don't make the inquiry, the material will organize itself, like iron filings responding to a magnet.

Students tend to emerge from law school material-centric, not reader-centric.

It's a natural consequence of spending three years determining what the law is. Once you become reader-centric, you won't want to go back. Try it. Begin asking reader-centric questions and see what happens.

Puzzler

Which is correct — Version A or Version B?

Version A: Enclosed are a notice of motion and a supporting brief and affidavit.

Version B: Enclosed is a notice of motion and supporting brief and affidavit.

The subject and verb have to "agree," meaning that a plural (compound) subject takes the plural form of the verb. If you reverse the order of subject and verb (instead of beginning with "Enclosed are ...," begin with "A notice of motion"), the answer becomes clear: "A notice of motion and a supporting affidavit and brief *are* enclosed." Version A is correct.

If you change the first "and" in Version B to "with," then the brief and affidavit would no longer be part of the subject, and revised Version B would also be correct.

Revised Version B: Enclosed is a notice of motion with supporting brief and affidavit. ■