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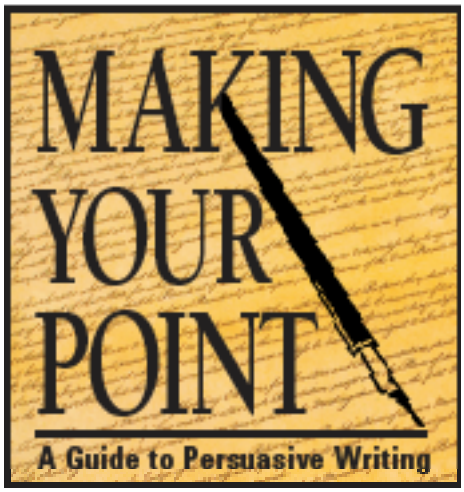
In Case Summaries, Make Your Point Sooner Rather Than Later

By Kenneth F. Oettle

Case summaries in memos and briefs tend to be too linear and as a consequence too long. They are too linear when in tedious order they begin with a procedural or factual recitation, then identify the issues, and then track the court's reasoning, all before revealing the holding. This puts the cart, and sometimes several carts, before the horse.

We invoke the holdings in cases to persuade readers, whether judges, other attorneys, or clients, that a court is required by stare decisis ("to stand by that which is decided") to rule for our side. Under that doctrine, once a court declares a principle of law applicable to a state of facts, that court and lower courts in the same jurisdiction must adhere to that principle in cases where the facts are substantially the same. Stare decisis controls who wins the legal game just as scoring the most points, runs or goals dictates who wins in sports. Consequently, the holding is the most important element of a case.

Because it is the most important element, you should generally present it first in a case summary just as you would present good facts at the beginning of a preliminary statement to a brief. This will assure the reader that you have a point and aren't beating around the bush; it will move the reader toward your view sooner,



which means the reader will be favorably disposed to the rest of what you have to say sooner; and it will show that you have confidence in your point, given that you are willing to lead from strength. If you show confidence, the reader will tend to have confidence in you and your point.

Suppose you represent a losing bidder for the right to lease property from a regional water commission. In your challenge to the bidding process, you need to persuade the court that the water commission has the power under the Local Lands and Buildings Law (LLBL) to reject all bids to lease commission property. The commission wants to reject all bids and change the terms of the request for bids. Unfortunately, the LLBL says nothing about a public entity having the power to reject all bids, and no reported case addresses the issue; however, an unreported lower court opinion seems on point.

In that unreported opinion, the court held that a county sewer authority had the power to reject all bids to lease authority property under the LLBL. The court read the LLBL "in pari materia" (together) with a similar statute, the Local Public Contracts Law (LPCL), which explicitly gives towns and counties the power to reject all bids to supply goods or services where the public entity intends to change the terms of the procurement. Statutes dealing with the same or similar subject matter and seeking to achieve the same legislative purposes can be read *in pari materia* even if the statutes were adopted at different times and do not refer to each other. Although an unreported trial court opinion does not control your case, you can invoke the court's reasoning. The associate working on the brief in support of your Order to Show Cause begins a summary of the unreported case as follows:

> In *Smith v. Happy Valley Sewer Authority*, where the issue was whether the Authority's rejection of the highest bid for a ten-year lease in favor of the existing tenant's month-to-month lease under the Local Lands and Buildings Law (LLBL) was consistent with the best interests of the community and the public, the court interpreted the LLBL "in pari materia" with the Local Public Contracts Law (LPCL).

So far, the case summary fails to tell the reader how the court ruled. It also fails to say on what basis the court read the statutes *in* pari materia. Obviously, the writer knew how the court ruled. Therefore, either (a) he figured the reader would wait patiently for that important piece of information, or (b) he was oblivi-

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ous to the reader's not being as familiar with the material as he was.

The continuation of the associate's case summary filled in some of the story:

> The LPCL requires the government to award contracts for public improvement to the lowest responsible bidder. Because the leasing of property can be analogized to bidding for public improvements, and both statutes serve the same purpose, namely "the elimination of corruption, favoritism and extravagance" in the public bidding process, the court interpreted the LLBL in pari materia with the LPCL.

The summary still does not say what the court held.

After you give the associate feedback, he writes a new opening to the case summary:

> Guidance can be drawn from an analogous, albeit unreported, case. In *Smith v. Happy Valley Sewer Authority*, the existence of a rejection of all bids provision in the Local Public Contracts Law (LPCL) allowed the court to read the Local Lands and Buildings Law (LLBL) in pari materia with the LPCL and to conclude that under the LLBL, the Commission had the authority to reject all bids for the lease of public property.

This is better because it adds a topic sentence ("Guidance can be drawn …"), and it includes the holding (that the Commission had the authority to reject all bids). But the point is incorrect. The existence of a rejection of all bids provision in the LPCL wasn't what allowed the court to read the LLBL in pari materia with the LPCL. It was the congruent purposes of the two statutes.

Finally, red-lining produces this version:

> Guidance can be drawn from an analogous, albeit unreported, case. In *Smith v. Happy Valley Sewer Authority*, the court held that the Authority could reject all bids for a lease of authority property, notwithstanding the silence of the Local Lands and Buildings Law (LLBL) on that subject, because a statute of similar purpose, the Local Public Contracts Law (LPCL), permits rejection of all bids. Both statutes seek to eliminate corruption, favoritism, and extravagance in the public bidding process.

Now the information emerges in the order of importance: (i) The court held that the Authority had the power to reject all bids, (ii) The court acknowledged that the power existed notwithstanding the silence of the LLBL on that subject; and (iii) The court provided a rationale for reading the rejection of all bids provision in the LPCL into the LLBL (the rationale is that the statutes have similar purpose — to eliminate corruption, etc. in the public bidding process).

I haven't forgotten what it feels like to wallow around in a case summary without getting to the point. I think most writers go through that phase. Beginning a case summary with the holding must not be intuitive. But it can be learned, and once learned, it is usually not forgotten.

Puzzler

How would you tighten and sharpen the following two sentences?

> The plaintiff contends that several factors support a 20 percent rent increase. Such factors are either inaccurate, or they support a lower rent.

Try not to reiterate the other side's position without qualification, as in the first sentence, unless the position is so incredible that merely stating it refutes it. Otherwise, you give the adversary "free air time," that is, an unchallenged restatement of the adversary's position. To challenge the other side's position even as you state it, include a refutation in your statement of the position.

The above example also lacks parallel construction because "inaccurate" (after "either") is an adjective, whereas "they support a lower rent" is a clause. Make the construction parallel by using the adjectival form of the word support ("supportive").

> The revised version: The factors cited by plaintiff in support of a 20 percent rent increase are either inaccurate or supportive of a lower rent. ■