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December, 2015

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Citations:

Bluebook 21st ed.

Michael J. Higdon, *Communicating with the Impatient, Skeptical Legal Reader: The Thesis Sentence*, 51 TENN. B.J. 26 (2015).

ALWD 6th ed.

Higdon, M. J., *Communicating with the impatient, skeptical legal reader: The thesis sentence*, 51(12) Tenn. B.J. 26 (2015).

APA 7th ed.

Higdon, M. J. (2015). *Communicating with the impatient, skeptical legal reader: The thesis sentence*. *Tennessee Bar Journal*, 51(12), 26-29.

Chicago 17th ed.

Michael J. Higdon, "Communicating with the Impatient, Skeptical Legal Reader: The Thesis Sentence," *Tennessee Bar Journal* 51, no. 12 (December 2015): 26-29

McGill Guide 9th ed.

Michael J Higdon, "Communicating with the Impatient, Skeptical Legal Reader: The Thesis Sentence" (2015) 51:12 Tenn BJ 26.

AGLC 4th ed.

Michael J Higdon, 'Communicating with the Impatient, Skeptical Legal Reader: The Thesis Sentence' (2015) 51(12) Tennessee Bar Journal 26.

MLA 8th ed.

Higdon, Michael J. "Communicating with the Impatient, Skeptical Legal Reader: The Thesis Sentence." *Tennessee Bar Journal*, vol. 51, no. 12, December 2015, p. 26-29. HeinOnline.

OSCOLA 4th ed.

Michael J Higdon, 'Communicating with the Impatient, Skeptical Legal Reader: The Thesis Sentence' (2015) 51 Tenn BJ 26

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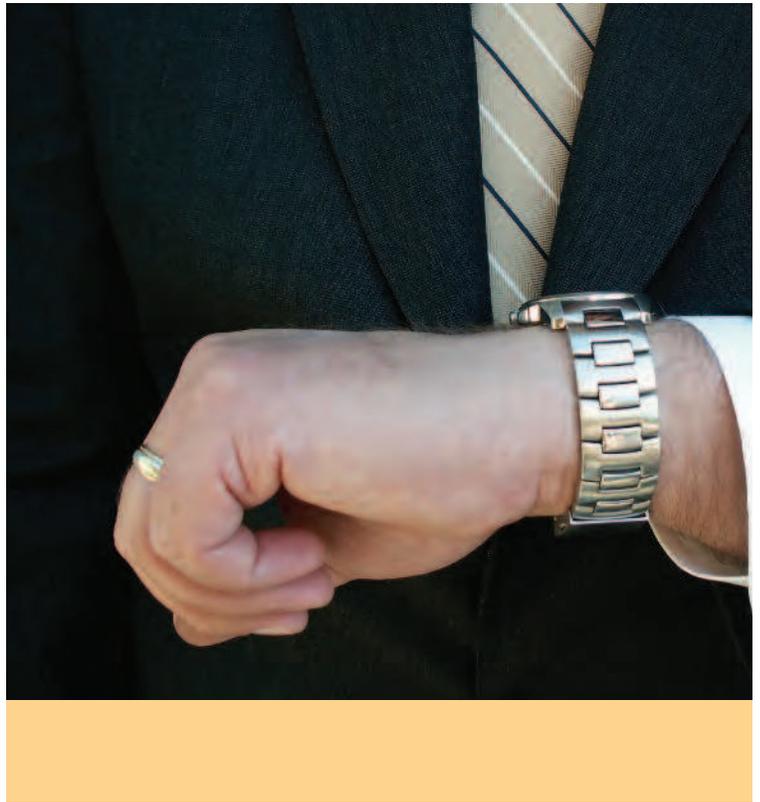
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Communicating with the Impatient, Skeptical Legal Reader

The Thesis Sentence

By Michael J. Higdon



*Get to the point:
Legal readers want to
know the bottom line at
the very beginning.*

Do you enjoy reading mystery novels? I often wonder how many attorneys enjoy that genre of writing — writing that is directed at a patient reader, willing to read an entire book before learning exactly what happened to set that story in motion. Legal readers are just the opposite — they want to know the bottom line at the very beginning. After all, 1) with multiple documents demanding their attention at any given time, they do not have time to try to identify the legal writer's

bottom line and 2) once identified, they want to be able to test that bottom line against everything else the legal writer tells them — something they cannot do, of course, until they know exactly what that conclusion is. In short, the legal readers are both impatient and skeptical, two qualities that would prove fatal to anyone attempting to read a traditional mystery novel.

To be a successful legal writer, then, one must do just the opposite of a mystery writer — namely, state the conclusion upfront and then explain how that conclusion was reached. Most

attorneys understand this basic point and, thus, phrase headings in a legal document as conclusions. What many attorneys forget, however, is that this approach to legal writing should pervade the entire legal document, applying wherever the legal writer wishes to lead the legal reader to a certain conclusion. Importantly, this need exists even at the paragraph level, where the attorney would be wise to employ one of the mightiest weapons in the legal writers' arsenal: the thesis sentence.

As someone who has been teaching legal writing for more than 10 years, I

view the thesis sentence as one of the most crucial skills every attorney must master in order to be an excellent legal writer. With that in mind, the purpose of this article is to explore the thesis sentence, focusing on what it is, why it is important and how to persuasively craft an effective thesis sentence.

What Is a Thesis Sentence?

Quite simply, a thesis sentence is one that summarizes the overall point of the paragraph in which it is contained. For each paragraph, the legal writer must ask herself what conclusion she would like the legal reader to reach by the end of that paragraph and then craft a sentence that explicitly communicates that same conclusion — the thesis sentence. Thus, a thesis sentence is unlike a topic sentence given that the latter merely introduces the point of the paragraph without going one step further, as a thesis sentence must, and providing the substance of that point. To illustrate, consider the following:

Topic Sentence: “The Tennessee Court of Appeals has addressed the issue of whether a citizen can maintain a *Bivens*-type cause of action for a violation of the Tennessee Constitution.”

Thesis Sentence: “The Tennessee Court of Appeals has already ruled that no *Bivens*-type cause of action exists for violations of the Tennessee Constitution.”

Like a topic sentence, however, the thesis sentence should be the first sentence of the paragraph.

Why Is a Thesis Sentence Important?

Using thesis sentences effectively offers a number of important benefits — not only for the legal reader, but for the legal writer as well.

The Legal Reader

As noted earlier, legal readers (which, of course, includes judges and law clerks), are skeptical of what they read. Thus,

they are unlikely to accept a proposition simply because the legal writer says it is so. Instead, as they read, legal readers are constantly testing all assertions to see if they agree. This task is made much easier if the legal reader is constantly aware of the precise legal assertion they should be testing at that point in the paper. Thus, the legal reader will approach each paragraph with two questions in her head: 1) what is the point of this paragraph and 2) do I agree with that point? Because the legal reader cannot gauge the credibility of any particular point until she first identifies that point, it is crucial that the legal writer announce that point at the earliest point in the paragraph. Failure to do so will not only require the legal reader to read further into the paragraph to discover the point but will also likely require her to then go back and reread the paragraph again to now test that point against what she had already read. No legal reader will appreciate having to search for the legal writer's point or having to reread information.

Because the legal reader is not only skeptical but also impatient, the effective use of thesis sentences has another key benefit. Namely, it allows the busy legal reader, who frequently lacks the time she needs to carefully read every document put in front of her, to effectively skim the document. After all, if the thesis sentence truly encapsulates all that is contained in the remainder of the paragraph, reading just that sentence should be sufficient for the busy reader to ascertain the main thrust of what the legal writer is saying. She can then read the rest of the paragraph if she so chooses (and has time), but she can also jump immediately to the next thesis sentence, already knowing the substance of the material she skipped.

The Legal Writer

Thesis sentences not only benefit the legal reader by making the article more user-friendly, but they benefit the legal writer as well. First, by beginning each paragraph with the overall point of the paragraph, the legal writer forces himself

to think more critically about why the paragraph is 1) even there and 2) beneficial to his argument. For example, thesis sentences are particularly helpful in paragraphs that discuss precedent cases — after all, by forcing himself to draft a thesis sentence for that paragraph, the legal writer is less likely to include discussion of an irrelevant case.

Second, by using thesis sentences, the legal writer now has a relatively easy way of testing the overall organization of the document. If each paragraph truly begins with a sentence that encapsulates the point of that paragraph, the legal writer should be able to then skim the entire document, reading only the thesis sentences, and know whether he has stayed on topic. For instance, if the legal writer devoted an entire subsection of a brief to a discussion of due process, yet discovers a thesis sentence in that section that focuses on equal protection, he would then immediately be put on notice that the paragraph may be out of place. Similarly, the effective use of thesis sentences will help prevent redundancies. After all, if a quick skim of the paper reveals two separate thesis sentences discussing the very same point, the legal writer would be alerted to the fact that perhaps he does not need both paragraphs.

Finally, for the legal writer who is seeking to persuade, the thesis sentence is particularly crucial. Psycholinguists (scientists who study the psychology of language) have discovered that readers subconsciously pay closer attention to information found at the beginning and the end of documents, subsections, and even paragraphs. Armed with this knowledge, the persuasive legal writer is wise to place the most important information in a position where the legal reader is likely to pay greater attention. The first sentence of a paragraph is one of those positions of emphasis and, thus, putting a strong statement about the law and how it advances the legal writer's argument in that position is more likely to receive greater attention by the legal reader.

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What Can the Legal Writer Do to Make Thesis Sentences More Persuasive?

Given the persuasive potential that thesis sentences hold, a legal writer should work hard to craft sentences that will best capitalize on that potential. Below are five techniques and suggestions for crafting thesis sentences that are not only effective, but are also more likely to persuade a legal reader.

PRINCIPLE 1: A Thesis Sentence Should Never ‘Tease’ the Legal Reader

The best tip for making thesis sentences more persuasive comes from the very definition of what a thesis sentence is. As you will recall, the thesis sentence not only introduces the topic of the paragraph but summarizes the point of that paragraph as it relates to that same point. Thus, any time the opening sentence merely raises questions without answering them, the legal writer has failed to craft an effective thesis sentence.

To illustrate this point, look back at the contrasting examples of a topic sentence and a thesis sentence above. Notice how the topic sentence effectively announces the subject of the paragraph but merely teases the legal reader as to what exactly the court has ruled on the subject of *Bivens*-type actions under the state constitution. For this reason, that sentence would be a poor thesis. The impatient legal reader is now forced to read the entire paragraph just to answer the question raised by the first sentence — in essence, turning the paragraph into a mini-mystery novel. In contrast, the thesis sentence example not only states the subject of the paragraph but then immediately provides the crucial information needed by the legal reader to grasp the substance of the entire paragraph.

PRINCIPLE 2: Phrase the Thesis Sentence to Fit Your Argument

Imagine that a legal writer is crafting an argument that, under the Fourth

Amendment, a guest in someone’s home need not be an overnight guest to have a reasonable expectation of privacy. In researching the issue, he finds the case of *Minnesota v. Olson*, in which the Supreme Court held that an overnight guest had a reasonable expectation of privacy in his host’s home. The legal writer decides to use this case and sets out to draft an appropriate thesis for the *Olson* paragraph. Consider the following two thesis sentence options:

Option A: The Supreme Court has already ruled that only overnight guests have a sufficient connection to the premises to demonstrate a legitimate expectation of privacy.

Option B: The Supreme Court has already ruled that guests in another’s home have a reasonable expectation of privacy whenever they demonstrate an expectation that their activities be treated as private.

Both options do a good job of encapsulating an overall point that could be said about the case and, thus, in that respect, both are good thesis sentences. From an advocacy perspective, however, the legal writer would be much better served to select Option B. Option A would be a great thesis for our legal writer’s opponent, but places too much emphasis on the overnight aspect to benefit one writing for his side. In other words, aside from encapsulating the point of the paragraph, a thesis sentence should also be a statement that, if true, is persuasive to and advances the legal writer’s ultimate argument.

PRINCIPLE 3: Avoid Using Case Names in Thesis Sentences

A case name is rarely essential to summing up the point of a paragraph and, thus, a legal writer should generally avoid using case names in a thesis sentence. Additionally, in terms of persuasion, including the case name can give the impression that the legal writer was only able to locate that one specific (perhaps rogue) case to support the point he is trying to develop. From a persuasion standpoint, a better strategy

is to phrase the thesis as a general proposition of law, thus making the point sound more widespread than a mere single case. Then, the legal writer can introduce the case name in the second sentence. The only exception would be when the case name itself carries a great deal of persuasive impact. Consider the following examples:

Thesis with Case Name: In *In re Estate of Bill Morris*, a Tennessee court ruled that a will is invalid unless the witnesses sign on the will itself.

Thesis without Case Name: Tennessee courts have ruled that a will is invalid unless the witnesses sign on the will itself. For example, in *In re Estate of Bill Morris*, ...

Thesis with Persuasive Impact Case Name: “Under *Miranda v. Arizona*, a person in custody must be told of the right to remain silent and warned that any statements can and will be used against the individual in court.”

PRINCIPLE 4: Thesis Sentences for Paragraphs Applying Case Law Should Correspond to the Thesis Sentences of the Paragraphs Explaining That Same Case Law

If one of the purposes of a thesis sentence is to permit the legal reader to efficiently skim the document, then points made in separate paragraphs but nonetheless related should be phrased similarly so as to immediately communicate that connection to the legal reader. One of the areas where this need arises in particular is with paragraphs that apply case law that the legal writer has previously discussed. The legal writer, of course, would have used an effective thesis sentence in those earlier explanation paragraphs and, likewise, will need a new one now that he has moved into a new paragraph that applies the case law. At that point, however, the legal writer should look back to the thesis sentence for the earlier paragraph and track that language in the thesis for the new paragraph. Referencing that key language will make the legal writer’s arguments both more cohesive and more easily

ascertainable. For example, consider the following:

Thesis for Paragraph Discussing a Precedent Case: “The Court has already ruled that, even if an employer acted negligently, an injured worker’s recovery is nonetheless limited to worker’s compensation.”

Poor Thesis for Paragraph Applying Precedent Case: “Here, the plaintiff’s negligence claim is without merit.”

Better Thesis for Paragraph Applying Precedent Case: “Here, because the plaintiff is an employee who was injured on the job, his recovery is limited to worker’s compensation and, thus, his negligence claim is without merit.”

With the poor thesis example, the legal reader will have to read on into the paragraph to understand exactly why the claim is without merit. With the better example, however, the legal writer incorporates the rationale into the thesis, making for a much more informative thesis sentence. Additionally, by mirroring the language of the thesis sentence used earlier to introduce the precedent case, the legal writer is helping to shape a connection between the precedent case and the application of that case in the legal reader’s mind even before the legal writer explicitly states that connection (which he would presumably do later in the paragraph applying the case). Now, when the legal writer does explicitly state the connection between the case and his ultimate conclusion, that conclusion is likely to be more persuasive to the legal reader, given that she had already started to suspect the relationship on her own. People are, after all, more persuaded by conclusions they had already reached (seemingly) on their own.

PRINCIPLE 5: Rarely Should a Thesis Sentence Exceed Two-and-a-Half Typed Lines

Legal readers, like all readers, read in full sentences, meaning most do not stop reading a sentence until they arrive

at that sentence’s end punctuation. Thus, if the legal writer packs too much information between the beginning and the end of a thesis sentence, the legal reader will then have to juggle a lot of data in her mind at one time — until she reaches the end of the sentence and can finally pause to process what she has read. Accordingly, the strength of the thesis sentence is greatly diluted. For that reason, legal writers should aim at keeping all sentences — but especially thesis sentences — to a manageable length, which is generally regarded as no more than two-and-a-half typed lines.

Furthermore, if the very purpose of a thesis sentence is to encapsulate the overall point of the accompanying paragraph, the inability to craft such a thesis that does not exceed two-and-a-half typed lines likely indicates that the legal writer has attempted to do too much with that paragraph. In such instances, he should question whether that paragraph should perhaps be split into two or more smaller paragraphs, each dedicated to one of the smaller subpoints.

Conclusion

I constantly remind students that legal writing is technical writing. More specifically, I tell them that there is little difference between the documents they are drafting and the user manual that came with their smart phone — both are documents that 1) nobody ever wants to read and 2) for those unfortunate souls who have to read them, they want to be able to read them quickly and only one

time through in order to glean all the necessary information. Creating documents that satisfy this expectation on the part of legal readers requires attention to several aspects of legal writing: organization, sentence structure, typography and even word choice, just to name a few. Thus, the ability to effectively use a thesis sentence is not, by itself, a cure-all for bad legal writing.

Thesis sentences are, however, one of the easiest fixes a legal writer can immediately employ to greatly improve both the readability and cohesion of his document. And by keeping the above techniques in mind while writing, the legal writer will be better equipped to craft thesis sentences that not only keep the legal writer focused on the topic at hand, but also put him in a position to more easily persuade the legal reader — if, for no other reason, by presenting her with a document that appeals to her impatient and skeptical legal mind. In short, legal writers would be wise to leave the mystery novels to Agatha Christie. 



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