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### The Legal Reader, the Legal Writer and the All-Important Thesis Sentence

Michael J. Higdon

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# The Legal Reader, the Legal Writer and the All-Important Thesis Sentence

Michael J Higdon



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# The Legal Reader, the Legal Writer and the All-Important Thesis Sentence

BY MICHAEL J. HIGDON, ESQ.

Prior to becoming an attorney myself, I once asked a lawyer what it was he did, exactly. His reply: "I read and write." Although I was hoping for a slightly more detailed answer, I had no idea at the time just how well-suited his response was. In fact, once I became a lawyer I soon learned that much of every attorney's day is spent either writing documents or reviewing documents written by other attorneys. Given, then, the amount of time that we spend on both sides of "communication by document," it is not only efficient but also thoughtful to employ legal writing techniques that make the job of both the legal reader and the legal writer easier.

Probably one of the most effective techniques that an attorney can use in this regard is forming a thesis sentence. This article will explore just what a thesis sentence is, how using thesis sentences benefit both the legal reader and the legal writer, and, finally, tips and techniques that the legal writer can employ to make his thesis sentences more effective.

## What Is a Thesis Sentence?

Quite simply, a thesis sentence is a sentence that encapsulates the central point of a paragraph. For each paragraph, the legal reader must ask herself how she would summarize the main point of that paragraph in one sentence. The resulting sentence would then be the thesis sentence of that paragraph. However, it is important to note that a thesis sentence is not the same as a topic sentence. A topic sentence merely announces the subject matter that the paragraph is going to address. In contrast, a good thesis sentence goes one step further and not only introduces the subject of the paragraph but also states the writer's argument as to that issue.

**Poor Example:** "The Nevada Supreme Court has already considered whether an injured employee, in addition to recovering worker's compensation, can also bring a claim for negligence against his employer."

In the above example, the writer has provided a good topic sentence. The legal reader knows from reading just that one sentence that the paragraph will likely discuss a case that deals with the issue mentioned in the sentence. However, what the sentence does not tell the legal reader is what exactly the Nevada Supreme Court said about this issue. Did the court say that an employee could also bring a negligence claim? If so, under what circumstances? Or did the Supreme Court say worker's compensation was the exclusive remedy? Furthermore, could it be that the court did not even rule on that point but merely considered the issue in dicta? None of these questions, which are probably the most important questions in the legal reader's mind, are answered in the sentence. Thus, the legal reader will have to search elsewhere in the paragraph to find the answers. A good thesis sentence would have not only introduced the topic but would have also furthered the legal writer's argument on that topic.

**Better Example:** "The Nevada Supreme Court has already ruled that, even if an employer acted negligently, an injured worker's recovery is nonetheless limited to worker's compensation."

## Where Should I Place the Thesis Sentence?

All thesis sentences should go at the beginning of their respective paragraphs. As discussed below, putting the thesis sentence first has important benefits for both the legal reader and the legal writer.

## Why Is a Thesis Sentence Important to the Legal Reader?

First and foremost, the legal reader (which, of course, includes judges and law clerks) is a skeptical reader. Rarely will a legal reader immediately accept what she is told. Instead, the legal reader will test each and every one of the legal writer's conclusions to see if she agrees. Consequently, the thesis sentence is an indispensable aid to the skeptical legal reader. By starting a paragraph with a thesis sentence, the legal reader is immediately aware of the writer's argument and can, thus, begin her own analysis much sooner. In other words, after she reads the thesis sentence, the legal reader can then sit back and read the remaining sentences of that paragraph and test them against the thesis. Conversely, when a paragraph does not begin with a thesis sentence, the legal reader is left in suspense as to how that paragraph advances the argument. As a result, the legal reader will have to keep reading the paragraph to discover the legal writer's point, at which time, she will likely have to go back and reread the preceding sentences before she can even begin her own analysis. No legal reader will appreciate having to search for the legal writer's point or having to reread information.

The legal reader's reluctance to reread information stems from the fact that the legal reader, in addition to being a skeptical reader, is also an extremely busy reader with limited time to spend reading any one document. Thus, beginning a paragraph with a thesis sentence greatly reduces the likelihood that a legal reader will have to reread the paragraph to understand the legal writer's point. Also, for the legal reader who may not have time to read the entire document or who may have read it some time ago and

now needs to review the document, starting each paragraph with a thesis sentence allows the reader to skim the document and yet still take away the main points. If the legal writer's thesis sentence is truly an encapsulation of the entire paragraph, then the legal reader should be able to read just that first sentence and get the main thrust of all the points that the legal writer is making.

### Why Is a Thesis Sentence Important to the Legal Writer?

Aside from making the document more reader-friendly, starting each paragraph with a thesis sentence offers a number of benefits to the legal writer as well. First, by beginning each paragraph with the point of that paragraph, the legal writer forces himself to think more critically about why he is including that paragraph and how specifically that paragraph advances his argument. As a result, thesis sentences are particularly helpful in paragraphs that describe case law relating to a particular issue. By forcing himself to draft a thesis sentence for the paragraph, the legal writer is less likely to devote a paragraph to an irrelevant case.

Second, by using thesis sentences, the legal writer now has an easy method of testing the overall organization of his paper. If each paragraph truly does begin with a sentence that encapsulates the point of that paragraph, the legal writer should be able to skim his paper, looking only at the first sentence of each paragraph, and immediately know if he has remained on topic. For example, if the legal writer finds a thesis sentence about negligence in a section of the paper dealing with an intentional tort, the legal writer would immediately know that the paragraph may be out of place. Furthermore, if the legal writer were to find two thesis sentences that essentially say the same thing in different sections of the paper, then perhaps there is an organizational problem that is causing the legal writer to be redundant.

Finally, thesis sentences are particularly beneficial for the legal writer who is seeking to persuade. Psycholinguists (scientists who study the psychology of language) have discovered that readers subconsciously pay closer attention to things that come at the beginning and end of a document or a discreet unit of a document such as a subsection or even a paragraph within the overall document. Armed with this knowledge, the persuasive legal writer is well-served to place the most persuasive information in a position where the legal reader is likely to pay greater attention. The first sentence of a paragraph is such a position; 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 the notice of the legal reader.

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

Because thesis sentences are likely to receive greater attention based on their position in the

document, the legal writer must make thesis sentences as persuasive as possible. Below are some techniques and suggestions for making thesis sentences more persuasive.

#### 1. A Thesis Sentence Should Not Leave the Legal Reader with Substantive Questions.

The best tip for making thesis sentences more persuasive relates back to the very definition of what a thesis sentence is. Remember, the thesis sentence should not only introduce the topic of the paragraph but should state how that idea advances the legal writer's argument. Any time the opening sentence creates more questions than it answers, the sentence is probably not an effective thesis sentence. The two earlier examples about negligence and worker's compensation illustrate this point.

#### 2. A Thesis Sentence Should Be a Statement That, If True, Is Persuasive to and Advances the Legal Writer's Argument.

A thesis sentence should be argumentative, meaning it is a statement that can be proven true or false. Thus, a thesis sentence should never be neutral. Furthermore, the thesis should be a statement that, if true, helps advance the legal writer's argument. For example, as stated earlier, a better thesis sentence for the negligence/worker's compensation claim would be:

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## LEGAL READER, LEGAL WRITER

CONTINUED FROM PAGE 21

"The Nevada Supreme Court has already ruled that, even if an employer acted negligently, an injured worker's recovery is nonetheless limited to worker's compensation."

However, such a construction would not be advisable if the legal writer were representing an injured employee who was trying to maintain a claim against the employer. In that case, the legal writer would be best served to find a way to distinguish the precedent case, and craft the thesis sentence accordingly. For example, such a sentence may look something like the following:

"Only when an employer specifically lacks the intent to injure an employee has the Nevada Supreme Court ruled that an injured employee's recovery is limited to worker's compensation."

### 3. In Paragraphs in Which the Legal Writer Is Explaining Case Law, Rarely Is it Advisable to Include the Name of the Case.

Remember, the thesis should be an encapsulation of the most important point of the paragraph. Rarely will the name of the case contribute to that main point and, thus, should generally be omitted from the first sentence. Instead, the legal writer can generally save the case name for the second sentence. Also, in terms of persuasion, including the case name gives the impression that the central point of the paragraph is merely derived from one (perhaps rogue) case that the legal writer was able to find. Conversely, phrasing the thesis sentence as a general proposition of law will make the legal principle sound more widespread and, thus, more persuasive. For similar reasons, the legal writer may also choose to not identify the deciding court until later in the paragraph.

**Poor Example:** "In *Kennecott v. Reyes*, the Nevada Supreme Court held that, even if an employer acted negligently, an injured worker's recovery is nonetheless limited to worker's compensation."

**Better Example:** "Even when an employer acts negligently, an injured worker's recovery is nonetheless limited to worker's compensation. For example, in *Kennecott v. Reyes*, the Nevada Supreme Court . . ."

### 4. In Paragraphs in Which the Legal Writer Is Applying Case Law, the Thesis Sentence Should Make Clear the Relationship Between the Facts of the Legal Writer's Case and the Thesis of the Precedent Case.

When the time comes for the legal writer to apply case law to the facts of his case, the legal writer should first look back to the thesis sentence for the paragraph that explained that particular case law. Referencing the key language of that previous thesis sentence in the thesis sentence that applies the law will make the legal writer's arguments clearer and more easily ascertainable. For example, assuming that the better example above were the thesis sentence for the paragraph that explained *Kennecott*, consider the following two candidates for the paragraph that applies *Kennecott*.

**Poor Example:** "Here, plaintiff's negligence claim is without merit."

**Better Example:** "Here, because he was injured on the job, plaintiff's recovery is limited to worker's compensation."

In the first example, the legal reader will have to read on to understand exactly why the claim is without merit. In the second example, however, the legal writer incorporates the rationale into the thesis sentence, which makes for a more informative thesis sentence. Furthermore, in the second example, by mirroring the language of the thesis sentence that explained *Kennecott*,

the legal reader is more likely to see the relevance of *Kennecott* even before the legal writer makes an explicit connection to the precedent case. Thus, when the legal writer does make the explicit connection (presumably later on in the paragraph), he will have an easier time persuading the skeptical legal reader as the argument he is making has likely already occurred in the legal reader's mind.

**5. Rarely Should a Thesis Sentence Exceed Two-and-a-Half Typed Lines.**

Legal readers, like all readers, read in sentences, meaning most do not stop reading until they have reached the end of a sentence. If the legal writer packs too much substance into a thesis sentence, the legal reader will have to juggle too much information at one time, which tends to dilute the legal writer's message. Thus, the legal writer 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.

With these tips in mind, the legal writer will be better equipped to craft thesis sentences that not only keep the legal writer focused on his discreet topic but also better enable him to persuade the legal reader. Keep in mind, however, that the legal writer's ability to persuade the legal reader goes up dramatically simply by writing a more easily readable document, which is one of the most immediate results of consistently using thesis sentences to begin paragraphs. Of course, even looking beyond the persuasive benefit, making a document more easily readable is simply the collegial thing to do. Indeed, the legal writer who will undoubtedly soon be playing the role of the legal reader would do well to remember the adage: "Do unto others . . ." **NL**

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