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STRONG, CONFIDENT PARAGRAPHS

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Presentation By

Timothy P. Terrell
Professor of Law
Emory University School of Law
Atlanta, GA

PARAGRAPHS: CONTEXTS, TRANSITIONS, AND EMPHASIS

In the realm of paragraphs, the principles at the beginning of these materials translate into the following advice:

1. **FOCUS:** Make the paragraph's point and structure explicit.

2. **FLOW:** Create smooth transitions: put old information before new.

3. **FORCEFULNESS:** Use the paragraph's natural points of emphasis.

MAKE THE POINT AND STRUCTURE EXPLICIT

Before:

In the circumstances of this case, several factors are relevant to the issue of Zallea's liability. In this case, there simply were no general standards of steam quality—that is, of the permissible levels of chemicals or corrodents—upon which Zallea reasonably could have relied. The evidence does not support the conclusion that Zallea did have or should have had knowledge of the likelihood of the joint failures sufficient to justify imposing liability upon Zallea. The evidence instead supports a finding that WEPCO was in a position to have superior knowledge of the actual quality and contents of its steam, and to have expertise and access to knowledge concerning the steam in its pipes. Since there were no general industry standards for levels of chemicals or corrodents in light of which Zallea could have designed the expansion joints or issued warnings, and since WEPCO was in a better position to evaluate its own steam quality and chemical or corrodent levels, the loss of the still unexplained failures must fall upon WEPCO rather than Zallea.

After:

In the circumstances of this case, Zallea should not be found liable for two reasons. First, there simply were no general standards . . . . Second, the evidence supports the conclusion that WEPCO, not Zallea, was in a better position . . . .

PUT OLD INFORMATION BEFORE NEW INFORMATION

One way of putting focus before details is to put "old" information before "new" information. To apply this principle, you should recognize that old information comes in a variety of forms. Some of it is information you are certain your audience possesses before it begins to read. This can range from the very basic, like the meaning of "case law," to the more particular, like the methods by which courts interpret statutes, to the very specific, like the law of fraudulent conveyance. The other large block of old material is the information you give them as they read, so that they approach each new paragraph (and sentence) with a constantly increasing stock of old information.

OLD INFORMATION BEFORE NEW: EXAMPLE #1

Before:

The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. The Supreme Court applies a reasonableness test to determine whether a citizen's rights have been violated in unreasonable search cases. The test balances the citizen's privacy interests against the government's interests that are furthered by the search.

After:

The Fourth Amendment protects citizens of the United States against unreasonable searches by the government. To determine whether a citizen's rights have been violated in a search, the Supreme Court applies a reasonableness test. This test balances the citizen's privacy interests against the government's interests that are furthered by the search.

OLD INFORMATION BEFORE NEW: EXAMPLE #*2*

Before:

This case is not so much a contest between the United States Department of Justice and the two defendant companies as a skirmish in a broader battle over the direction American economic life will take in the coming years. The concept of the conglomerate corporation—not a particularly new idea, but one that lately has gained great momentum—is at the center of this struggle. The attempt of companies to expand through acquisition of other firms, while avoiding the antitrust problems of vertical or horizontal mergers, is one reason for the recent popularity of this concept. The resulting corporations have had none of the earmarks of the traditional trust situation, but they have presented new problems of their own. Although the market shares of the several component firms within their individual markets remain unchanged in conglomerate mergers, their capital resources become pooled—that is, concentrated into ever fewer hands. Economic concentration is economic power, and the government is concerned that this trend, if left unchecked, will pose new hazards to the already much-battered competitive system in the United States.

After:

This case is not so much a contest between the United States Department of Justice and the two defendant companies as a skirmish in a broader battle over the direction American economic life will take in the coming years. At the center of this struggle is the concept of the conglomerate corporation—not a particularly new idea, but one that lately has gained great momentum. One reason for its recent popularity is the attempt of companies to expand through acquisition of other firms, while avoiding the antitrust problems of vertical or horizontal mergers. The resulting corporations have had none of the earmarks of the traditional trust situation, but they have presented new problems of their own. In these conglomerate mergers, although the market shares of the several component firms within their individual markets remain unchanged, their capital resources become pooled—that is, concentrated into ever fewer hands. Economic concentration is economic power, and the government is concerned that this trend, if left unchecked, will pose new hazards to the already much-battered competitive system in the United States.

CREATING TRANSITIONS: PUT OLD INFORMATION BEFORE NEW: EXAMPLE #3

Before:

.... To effect a valid pledge of an intangible chose in action such as a bank deposit, the pledgor must transfer possession of an "indispensable instrument" to the pledgee. Id. at 562; see Peoples Nat'l Bank of Washington v. United States, 777 F.2d 459, 461 (9th Cir. 1985).

Restatement of the Law, Security § 1 comment (e) defines an indispensable instrument as "formal written evidence of an interest in intangibles, so representing the intangible that the enjoyment, transfer or enforcement of the intangible depends upon possession of the instrument." See Annot. Pledge by Transfer of Instrument, 53 A.L.R.2d § 2 (1957). A passbook that is necessary to the control of the account has been held to be an indispensable instrument. Peoples Nat'l Bank, 777 F.2d at 461; Walton v. Piqua State Bank, 204 Kan. 741, 466 P.2d 316, 329 (1970). In Miller v. Wells Fargo, the corporation did not have a passbook account, but rather gained access to its account by telex key code. The bank argued that ....

In Duncan Box & Lumber Co. v. Applied Energies, Inc., 270 S.E.2d 140 (W. Va. 1980), the bank agreed to finance the purchase of land by a subdivider, Applied Energies, Inc. ....

After:

.... To effect a valid pledge of an intangible chose in action such as a bank deposit, the pledgor must transfer possession of an "indispensable instrument" to the pledgee. Id. at 562; see Peoples Nat'l Bank of Washington v. United States, 777 F.2d 459, 461 (9th Cir. 1985).

"Indispensable instrument" is defined in Restatement of the Law, Security § 1 comment (e), as "formal written evidence of an interest in intangibles, so representing the intangible that the enjoyment, transfer or enforcement of the intangible depends upon possession of the instrument." See Annot. Pledge by Transfer of Instrument, 53 A.L.R.2d § 2 (1957). Indispensable instruments have been held to include, for example, a passbook that is necessary to the control of the account. Peoples Nat'l Bank, 777 F.2d at 461; Walton v. Piqua State Bank, 204 Kan. 741, 466 P.2d 316, 329 (1970). On the other hand, they have been held not to include a telex key code. In Miller v. Wells Fargo, the corporation did not have a passbook account, but rather gained access to its account by telex key code. The bank argued that ....

The transfer of an indispensable instrument may not be necessary to effect a valid pledge, however, when an account has been set up by agreement between creditor and debtor to secure the debtor's obligations. In Duncan Box & Lumber Co. v. Applied Energies, Inc., 270 S.E.2d 140 (W. Va. 1980), the bank agreed to finance the purchase of land by a subdivider, Applied Energies, Inc. ....

CREATING TRANSITIONS: PUT OLD INFORMATION BEFORE NEW: EXAMPLE #4

Before:

Governmental immunity is the doctrine under which the sovereign, be it country, state, county or municipality, may not be sued without its consent. Osborn v. Bank of the United States, 22 U.S. 738 (1824). The purpose of the immunity of public officials is not directly to protect the sovereign, but to protect the public official while he performs his governmental function, and it is thus a more limited immunity than governmental immunity. Courts have generally extended less than absolute immunity for that reason. The distinction between discretionary acts and ministerial acts is the most commonly recognized limitation. The official is immune only when what he does while performing his lawful duties requires "personal deliberation, decision, and judgment." See Prosser, Law of Torts 132 (4th ed. 1971).

After:

Governmental immunity is the doctrine under which the sovereign, be it country, state, county or municipality, may not be sued without its consent. Osborn v. Bank of the United States, 22 U.S. 738 (1824). The immunity of public officials, in contrast, does not protect the sovereign directly, but only the public official while he performs his governmental function. For this reason, courts have generally extended less than absolute immunity. The most commonly recognized limitation arises from the distinction between discretionary and ministerial acts. Under this distinction, the official is immune only when what he does while performing his lawful duties requires "personal deliberation, decision, and judgment." See Prosser, Law of Torts 132 (4th ed. 1971).

CREATING TRANSITIONS: PUT OLD INFORMATION BEFORE NEW: EXAMPLE #5

Before:

In January 1976, Plaintiff went to Dr. Jones for treatment involving the construction and placement of a three-tooth bridge, which Dr. Jones cemented in Plaintiff's mouth on May 12.

An associate of Dr. Jones also performed a root canal on a tooth at the same time. Dr. Jones then referred Plaintiff to Dr. Skillful, who performed an apicoectomy.

Plaintiff returned to Dr. Jones on at least two occasions complaining of discomfort and pain. On these visits Dr. Jones found the bridge to be secure.

In August 1976, Plaintiff also consulted Dr. Drill, who did root canal work on two teeth and placed a five-tooth bridge in Plaintiff's mouth after attempting to re-cement the three-tooth bridge, which he had found to be loose.

After:

In January 1976, Plaintiff went to Dr. Jones for treatment involving the construction and placement of a three-tooth bridge, which Dr. Jones cemented in Plaintiff's mouth on May 12.

During the completion of the bridge, Plaintiff had a root canal on a tooth by an associate of Dr. Jones. In addition, after the placement of the bridge, Plaintiff was referred by Dr. Jones to Dr. Skillful, who performed an apicoectomy.

After these procedures, Plaintiff returned to Dr. Jones on at least two occasions complaining of discomfort and pain. On these visits Dr. Jones found the bridge to be secure.

In August 1976, after the second of these visits, Plaintiff consulted Dr. Drill. He did root canal work on two teeth and placed a five-tooth bridge in Plaintiff's mouth after attempting to re-cement the three-tooth bridge, which he had found to be loose.

USE NATURAL POINTS OF EMPHASIS

Example #1 [positioning]:

Our logic is surrounded by a wall of paradox. Inside this boundary, logic resolves informational conflicts to our satisfaction; outside, it does not, leaving contradictions and absurdities. The difference seems to be between sense and nonsense, between logic and illogic. But perhaps this dichotomy is a bit too stark. Perhaps there exists another category between, on the one hand, those phenomena we happily accept because they can be explained by our logic and, on the other, those we comfortably reject because they are in direct conflict with logic. We would arrive at this remarkable middle category, then, by opening our minds to phenomena logic cannot explain. I will call this nonlogical mental process "faith."

72 Cal. L. Rev. 288, 318 (1984)

Example #2 [syntactical contrast]:

We must take September 15 as the culminating date. On this day the Luftwaffe, after two heavy attacks on the 14th, made its greatest concentrated effort in a resumed attack on London. It was one of the decisive battles of the war, and, like the Battle of Waterloo, it was on a Sunday. I was at Chequers. I had already on several occasions visited the headquarters of Number 11 Fighter Group in order to witness the conduct of an air battle, when not much happened. However, the weather on this day seemed suitable to the enemy and accordingly I drove over to Uxbridge and arrived at the Group Headquarters.

Winston Churchill,
History of the Second World War

EDITING EXERCISE #1: PARAGRAPH STRUCTURE

Assume that this paragraph comes from the middle of a memo sent to clients to discuss developments in takeover defenses. As an editor, your task is not, however, to rewrite it, but to give the author feedback that will enable him or her to return with a much better draft.

In the recent Unocal/Mesa takeover contest, Unocal foreclosed hostile bidders from calling special meetings by allowing only its own directors to call special meetings, prohibited action by shareholders by written consent and classified its board of directors. The board of directors then adopted an amendment to Unocal's by-laws which required notice at least 30 days prior to annual meetings of any shareholder nominations to the board and of any business shareholders proposed to bring before annual meetings. In a letter to shareholders 22 days before the meeting scheduled for April 29, 1985, Unocal announced its interpretation of the by-laws to the effect that if an annual meeting is adjourned it would determine whether a shareholder had satisfied the 30-day notice requirement by reference to the originally scheduled meeting date. The Delaware Court of Chancery rejected Mesa's challenge to the by-law amendments, but did conclude that "Unocal's failure to announce its interpretation of the by-laws until after the 30-day notice period had run was inequitable" and restrained Unocal from proceeding with that interpretation.

EDITING EXERCISE #1—REVISION

Version A: In the recent Unocal/Mesa takeover contest, while the Delaware Court of Chancery reaffirmed a board of directors' authority to restrict access to the agenda of annual meetings, it held that a board may not do so unreasonably or inequitably.

Version B: In the recent Unocal/Mesa takeover contest, the Delaware Court of Chancery reaffirmed a board of directors' authority to restrict access to the agenda of annual meetings. [For the first time,] however, it held that a board may not do so unreasonably or inequitably.

Version C: In the recent Unocal/Mesa takeover contest, the Delaware Court of Chancery further defined the limits of a board's authority to restrict access to the agenda of annual meetings. Although it supported the board's right to require advance notice of an addition to the agenda, it rejected as inequitable the board's attempt to impose retroactively an interpretation of that requirement that blocked any additions to the agenda of an adjourned meeting.

During the contest, Unocal's board of directors adopted a series of four defensive measures, [only the last of which Mesa challenged in court]. In the first three, unchallenged steps, the board foreclosed hostile bidders from calling special meetings by allowing only Unocal's own directors to call them, prohibited action by shareholders by written consent, and classified the board. The board then took another [, more aggressive] step: it amended Unocal's by-laws to limit access to the agenda of an annual meeting by requiring that a shareholder give notice at least 30 days before the meeting of any proposal to nominate a candidate for the board or to raise any other business. This requirement became even more onerous later during the takeover contest, when Unocal's board announced a stringent interpretation of the amendment: If an annual meeting were adjourned, Unocal would determine whether a shareholder had satisfied the 30-day notice requirement by reference to the original meeting date, not the new date. This interpretation was announced in a letter mailed to shareholders 22 days before a scheduled meeting, thus preventing any change to the agenda no matter when the meeting was held.

Although the Court of Chancery upheld each of the defensive measures, including the notice requirement, it rejected Unocal's attempted use of it to control the agenda of the adjourned meeting: "Unocal's failure to announce its interpretation of the by-laws until after the 30-day notice period had run was inequitable."

Exercise # 2:

The conclusion urged upon this Court by the bankruptcy trustee in this action would result-in a perverted distortion of the Congressional intent to protect spendthrift trusts to the extent that nonbankruptcy law provides immunity from the claims of creditors. Congress specifically set forth this exemption for spendthrift trusts in § 541(c)(2). Section 541 is extremely broad in its definition of what constitutes property of the estate. Congress specifically carved out the exception for spendthrift trusts in § 541(c)(2). The preferred status given the United States as a judgment creditor in connection with a debtor's property interest in a spendthrift trust pursuant to 26 U.S.C. § 6321 was law at the time Congress adopted the 1978 Bankruptcy Code. It must be presumed that Congress was aware of the existing statutes at the time §541 was enacted. 2A Singer, Sutherland Statutory Construction § 45.12 at 55 (4th ed.). For purposes of statutory construction it must also be assumed that Congress did not intend to grant a benefit in § 541 of the Bankruptcy Code and then take that benefit away in § 544 of the Code. "A statute is a solemn enactment of the state acting through its legislature and it must be assumed that this process achieves an effective and operative result." 2A Singer, Sutherland Statutory Construction § 45.12 at 54. Finally, "each part or section [of a statute] should be construed in connection with every other part or section so as to produce a harmonious whole. Thus it is not proper to confine interpretation to the one section to be construed." Id. at § 46.05 at 90.

Paragraph Editing Exercise #2 Revision: Bankruptcy Brief

Contrary to the bankruptcy trustee's conclusion, Congress intended to protect spendthrift trusts to the extent that nonbankruptcy law provides immunity from the claims of creditors. **That intent is evident in three ways.** *First*, and most specifically, Congress set forth this exemption for spendthrift trusts in § 541(c)(2) even though Section 541 is otherwise extremely broad in its definition of what constitutes property of the estate. *Furthermore*, as a matter of statutory construction, we must assume that Congress did not intend to grant a benefit in § 541 of the Bankruptcy Code and then take that benefit away in § 544. The preferred status given the United States as a judgment creditor of a debtor's property interest in a spendthrift trust pursuant to 26 U.S.C. § 6321 was law at the time Congress adopted the 1978 Bankruptcy Code. Therefore, Congress was presumably aware of the existing statutes at the time § 541 was enacted. 2A Singer, Sutherland Statutory Construction § 45.12 at 55 (4th ed.). *Finally*, and most generally, for purposes of statutory construction, "each part or section [of a statute] should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is proper to confine interpretation to the one section to be construed." Id. at § 46.05 at 90.

Therefore, . . .

An example of AI edits, and a possible alternative version:

ORIGINAL FROM A CANADIAN JUDGE

When residential development occurs in the vicinity of highways that may affect the safe and efficient movement of people and goods, the Agency's objectives are to ensure the safety of the travelling public, to protect the corridor for future expansion and to minimize relocation and reconstruction costs, and it seeks to address these concerns by applying its permitting authority to review the impact of the development on the highway, determining whether to issue or reject a permit and whether to place any conditions on such permits.

CHAT GPT-4 REWRITE

The Agency's objectives, when residential developments arise near highways, are to maintain safety for travelers, protect future expansion corridors, and minimize relocation and reconstruction costs. To meet these goals, the Agency uses its permitting authority to assess the potential impacts of these developments on the highways. This process includes deciding whether to grant or deny permits and whether to impose any conditions on granted permits.

BING REWRITE

When residential development occurs near highways that may affect the safe and efficient movement of people and goods, the Agency aims to ensure the safety of the travelling public, protect the corridor for future expansion, minimize relocation and reconstruction costs, and address these concerns by reviewing the impact of development on the highway. The Agency determines whether to issue or reject a permit and whether to place any conditions on such permits.

A POSSIBLE ALTERNATIVE (Terrell)

When residential development occurs in the vicinity of highways that may affect the safe and efficient movement of people and goods, the Agency has several objectives: to ensure the safety of the travelling public, to protect the corridor for future expansion, and to minimize relocation and reconstruction costs. To address these concerns, the Agency's permitting authority gives it several tools: reviewing the impact of the development on the highway, determining whether to issue or reject a permit, and imposing conditions on such permits.