

# BOOK REVIEW

*Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing*, by Stephen V. Armstrong and Timothy P. Terrell (Practising Law Institute, 2nd ed., 2003), 420 pages.

I have now had the opportunity to hear both of the authors of *Thinking Like a Writer* speak on legal writing. Their presentations were as inspiring as their book. The preface begins, "This is a different kind of book about legal writing." And so it is. *Thinking Like a Writer* is written, not for writers who need remedial help, but for experienced legal writers who want to import an entirely new level of effectiveness into their written communications.

The book is premised on the notion that legal writers face a difficult challenge: they must explain complex concepts in prose that is simple, clear and direct.<sup>1</sup> Lawyers are taught in law school to "think like lawyers;" i.e. to be precise, exhaustive and logical. However, in pursuing these worthy goals, lawyers can sometimes produce prose that is ponderous and impenetrable.<sup>2</sup> Armstrong and Terrell suggest a coherent strategy for avoiding this pitfall.

The authors begin by describing the ideal legal reader: smart, attentive and, above all, eager to absorb new information. However, "[n]ot once in your professional life will you find this reader. Never. In fact, the truth is crueler: no one wants to read what you write."<sup>3</sup> The book takes sober stock of this reality, and proposes a practical strategy for engaging the reader. "At a document's start ... you face a tough rhetorical challenge: making busy, impatient readers pay attention throughout the document — not grudgingly, not just out of a sense of duty, but because you have shown that they will be deeply rewarded."<sup>4</sup> To accomplish this tall order, the authors propose an entirely new approach to legal writing.

The basic principle upon which this new approach is based is denominated "Super-Clarity."<sup>5</sup> The concept of Super-Clarity presupposes that the goal of legal writing is to organize complex material in a way that guides the reader through it, helping the reader to assimilate information on both the micro-scale of sentence and paragraph, as well as the macro-scale of themes, ideas and over-arching concepts.<sup>6</sup> Super-Clarity is achieved only by understanding how, on a cognitive level, the reader absorbs information. Because readers have trouble grasping dissociated details, a strong sense of theme or pattern is necessary to help readers see how small details fit into a larger picture.<sup>7</sup> Whenever possible, a writer must structure and sequence information to match the legal analysis, so that form synchronizes with its underlying substance.<sup>8</sup>

The authors present these general concepts under the rubric of four specific principles. These four principles of Super-Clarity apply at all levels of a document, from its overall organization to its sentences. Although the same principle takes a somewhat different

shape when it is applied to a document's overall organization than it does when applied to a sentence, the four principles of Super-Clarity are essentially the same in either case.<sup>9</sup>

**Principle One: Readers absorb information best if they understand its significance as soon as they see it.**<sup>10</sup>

At every turn, a writer must be careful to provide context that helps a reader grasp the relevance of new information.<sup>11</sup> By way of metaphor, the information to be communicated is a liquid which, inside the mind of the writer, is held in place by the container, which is the writer's understanding of the significance of the information.<sup>12</sup> To communicate the information, most writers merely dump the information onto the page as quickly as possible.<sup>13</sup> "For readers, this habit is disconcerting at best, profoundly annoying at worst. Because they have not yet been given the container that allows them to hold on to the information intellectually, they end up drenched rather than enlightened."<sup>14</sup> To provide an appropriate container and so offer adequate context, the writer must (1) provide a focus; (2) make the information's structure explicit; and (3) begin with familiar information before moving to new, unfamiliar information.

**Provide a focus.**

The legal writer provides a focus for the reader's thinking by giving the reader a topic, a conclusion or a question. At the level of the paragraph, writers seldom have trouble writing a topic sentence.<sup>15</sup> In longer introductions, however, the

focus is often too vague to give readers all the help they need. For a focus to succeed, it must meet a much tougher test than most writers realize: once readers step off the introduction's firm ground into the morass ahead, will they ever be at a loss — even for a moment — to understand why a detail matters?<sup>16</sup>

The reader should never merely wander through a sentence, a paragraph, a subsection or a section of a document. Rather, the writer must bring each point into sharp focus at each level of writing so that as the reader travels through the sentence, the paragraph, the subsection and the section, the reader understands both what he is being told and how it fits into the larger themes of the document.<sup>17</sup> In this way, a clear framework makes the reader smarter and, therefore, more attentive.

**Make the structure explicit.**

The structure must be explicit. Before wading into details, a reader wants the comfort of knowing that a structure lies ahead, not chaos.<sup>18</sup> "If you ask readers to walk into a complex structure the

1. STEPHEN V. ARMSTRONG AND TIMOTHY P. TERRELL, *THINKING LIKE A WRITER* 3 (2d ed. 2003).

2. *Id.* at 6.

3. *Id.* at 125-26.

4. *Id.* at 126.

5. *Id.* at 13.

6. *Id.* at 24.

7. *Id.* at 14.

8. *Id.* at 14-15.

9. *Id.* at 17.

10. *Id.* at 38.

11. *Id.* at 16.

12. *Id.* at 18.

13. *Id.* at 18-19.

14. *Id.* at 18.

15. *Id.* at 42.

16. *Id.* at 42-43.

17. *Id.* at 43.

18. *Id.* at 23.

organization of which is a mystery, they tend to react in the same way as when they encounter a morass of detail without a focus: They back away and begin to skim.<sup>19</sup> Once a reader resorts to skimming, any hope of conveying nuance or complexity is lost. Moreover, the reader loses any sense of context that might help to refocus his attention.

For this reason, the more complex the subject matter, the more important the structural devices become.<sup>20</sup> Road maps should appear, not just at the beginning of a document or a section, but throughout a document.<sup>21</sup> In addition to road maps, readers also need the comfort of “road signs,” which link back to the initial map.<sup>22</sup> For example, if the map was basically a list, the signs may be no more than “first,” “second,” indicating which part of the map is relevant at that moment.<sup>23</sup>

#### Begin with the familiar.

A reader easily becomes confused when unfamiliar information is introduced without context. Therefore, a writer must be careful, where at all possible, to begin with the familiar. “Reading is a complex intermingling of the information the writer provides with what the reader already knows.”<sup>24</sup> Some of what readers already know, they have brought to the document; some of what they know, they have learned from what the writer has told them earlier. Again, this principle applies at all levels of writing. At the sentence level, a paragraph is easiest and least stressful to absorb when each new sentence links clearly and specifically to the preceding sentence.<sup>25</sup> Familiar words, which the reader just read, should come at the front of the next sentence, where they create the smoothest possible transition.<sup>26</sup> At the paragraph, subsection or section level, a new “chunk” of information follows directly from the “old” or “familiar” information that the reader has already absorbed. “If [readers] cannot see the connection immediately, they have then to suspend the new information — put it in parentheses, in effect — until they can figure out how it fits. As a result, they will read less efficiently and more painfully.”<sup>27</sup>

#### Principle Two: Readers absorb information best if its form mirrors its substance.<sup>28</sup>

In other words, the structure of the information should follow the logic of the analysis. Legal writers can be seduced by easy “default” organizational patterns.<sup>29</sup> Analysis must be organized specifically around the conclusion, not the history of the writer’s research, the legal framework adopted by opposing counsel, or the like.<sup>30</sup>

Much legal writing involves the organization of a series of cases within the jurisdiction. Organize cases chronologically only if the analysis unfolds sequentially. More often, the analysis of cases has nothing to do with their sequence because the differences among

them are wholly fact-dependent.<sup>31</sup> When a writer writes about facts, cases should be organized so as to create a context and also to focus on relevant issues.<sup>32</sup> The goal should be to “try to make the legal analysis and result look inevitable.”<sup>33</sup>

#### Principle Three: Readers absorb information best if they can absorb it in pieces.<sup>34</sup>

“Modern readers have very little stamina. If they see a long passage stretching unbroken to the horizon, they flinch, feel faint, and begin to skim.”<sup>35</sup> To avoid taxing the reader, a number of techniques are available: use headings and subheadings; keep paragraphs relatively short; use white space liberally on the page; use numbers, letters or bullet points to break up lists. All of these techniques have the “happy effect” of making the writing look less intimidating and making the page a “friendlier place.”<sup>36</sup>

#### Principle Four: Readers pay more attention if you approach your material from their perspective rather than from your own.<sup>37</sup>

A writer must understand his audience as thoroughly as possible, including “their goals, their expectations, their reading habits, their intellectual framework, and what they already know.”<sup>38</sup> An important sub-principle is the advice that a writer should show the reader from the start that the writer will give practical help without wasting the reader’s time.<sup>39</sup>

The foregoing four principles are the cornerstones of Super-Clarity. Needless to say, Armstrong and Terrell offer much additional specific advice for improving the cogency and comprehensibility of legal writing. For example, the book discusses writing for impact, creating “micro” clarity in sentences, the delicate art of persuasion (a fascinating and important topic worthy of separate treatment), and the differences among writing styles in letters, e-mails, memoranda, briefs and judicial opinions among other useful topics — just to name a few. To make this volume even more helpful, *Thinking Like a Writer* is filled with many examples and excellent before-and-after illustrations.

Without question, the authors of *Thinking Like a Writer* have set themselves an ambitious goal: “to change how you think about communication in writing.”<sup>40</sup> One the whole, they succeed admirably. Carefully applied, the Super-Clarity system holds tremendous potential for improving legal writing intended for virtually any audience. Indeed, it is one of those rare books that seems to hold useful knowledge on virtually every page. It is highly recommended for any lawyer seeking to improve the quality of his or her written work.

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19. *Id.* at 47.

20. *Id.* at 47-48.

21. *Id.* at 60.

22. *Id.* at 63.

23. *Id.*

24. *Id.* at 25.

25. *Id.* at 27.

26. *Id.*

27. *Id.* at 26.

28. *Id.* at 79.

29. *Id.* at 16.

30. *Id.* at 97.

31. *Id.* at 100-01.

32. *Id.* at 104-05.

33. *Id.* at 104.

34. *Id.* at 16.

35. *Id.* at 113.

36. *Id.* at 117.

37. *Id.* at 17.

38. *Id.* at 128.

39. *Id.* at 130.

40. *Id.* at 9.