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A Photographer's Guide to Legal Writing

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PERSPECTIVES

Teaching Legal Research and Writing

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A PHOTOGRAPHER'S GUIDE TO LEGAL WRITING

BY BARBARA BLUMENFELD

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I once took a photography course¹ that taught the three keys to an effective photograph: determining theme, focusing attention on that theme, and simplifying. By adapting these three keys to legal writing, I found an approach that could successfully teach the novice (and remind the experienced) writer the necessary components of an effective legal document.² I would like to suggest this approach as another way to present legal writing to our students.

The text and photographs³ that follow are offered to explicate this method of thinking about legal writing. This approach is not designed to replace other, traditional approaches to legal writing. Rather, it is offered as an alternative that might prove helpful to those students having difficulty grasping, mastering or internalizing traditional approaches. It is simply another tool that some might find helpful in achieving the goal of effective legal writing.

Theme

In photography, theme is what the picture is all about. The photographer wants to convey

¹ New York Institute of Photography, Basic Course in Professional Photography, 1985.

² These concepts can also be applied to smaller segments of writing such as paragraphs and paragraph blocks. The discussion in this article, however, is limited to their application to an entire document.

³ All photographs were taken by the author. The subject, the author's husband, graciously granted permission for their use in this article.

⁴ Richard K. Neumann Jr., *Legal Reasoning and Legal Writing* 42 (1990).

something: a mood, a portrait, a landscape, etc. In so doing, the photographer hopes to cause some sort of reaction in those viewing the photograph. Theme is the photograph's reason for being.

To understand and develop a theme in legal writing, one must first ask, "What am I writing and why am I writing it?" Legal documents are writings designed to make something happen in the real world.⁴ What is the purpose of the specific document? What should happen as a result of this document? Questions such as these determine its theme. For example, the theme of a brief in support of a motion is convincing a judge that the motion should be granted. In litigation documents, the theme will often merge with the theory of the case. But even non-litigation documents have a theme. The theme of a contract is to clearly express the parties' understanding of the terms to which they agreed. The

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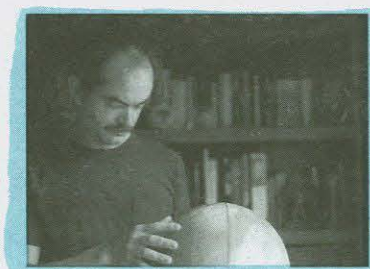
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theme of a will is to clearly express what should occur upon the testator's death. The theme of a particular statute is to clearly express what is required, prohibited, or permissible in a certain situation.

Theme only becomes clear after the writer has thoroughly researched and analyzed the issues involved in the document. Thus, incorporated into this first key are all the teachings that apply to good research and good analysis.

With a clear understanding of the theme of a particular document, the writer can then focus on ways to make that theme clear to the intended audience.

Although the photographer has focused her camera on the globe in the center of the picture—and has given it most of the light—the

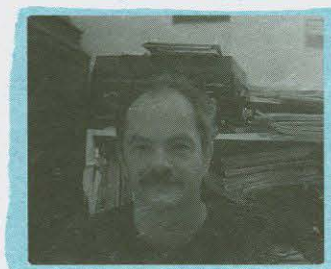


photo's theme is not simply to show the object, but rather to illustrate the contemplative side of the subject. This is the goal of the photo. The objects contribute to the expression of the theme—the books in the background as well as the globe show the subject in the act of study.

Focus Attention

The photographer focuses attention on the theme by making it central to the photograph. Everything in the photograph must point to the central theme. The placement of specific objects⁵ is crucial to achieving this purpose, of course, but the photographer must also consider the overall effect: the interrelationship of various objects, and the impact of light and shadow. All this is done within the confines of the outer borders of the photograph.

The photographer has included extraneous material that does little to focus attention on the subject of the photograph. In fact, the busy background takes the viewer's attention away from the individual who is the subject—the theme—of the photo.



Similarly, the writer must make everything in the document point to and underscore the theme. This must be done within the format restrictions of the particular document being written. The placement of key objects—the document's organization—must be considered by the writer. The writer must also consider the overall structure of the document and the interrelationship of the various parts. Thus, for example, the writer must consider in which order to present issues and when to divide an issue into sub-issues.

The writer must ask, "Who is my audience? What will be the most effective form of expression for this reader?" This will involve the traditional legal writing inquiry into defining and knowing your audience.⁶

Focusing attention requires the writer to use traditional legal writing techniques and tools that result in clarity of organization within issues. Tools such as the standard IRAC outline—Issue, Rule, Application, Conclusion—and the classic deductive reasoning syllogism should come to the writer's mind. As part of the organization process the writer must isolate key facts and key issues. The theme will be lost if the writer includes extraneous material or discusses cases, parts of cases, or issues that are not relevant to the theme.

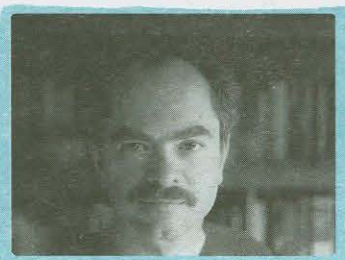
The writer must also consider how to help the reader focus. Here the writer must consider effective topic and thesis sentences as well as the use of thesis paragraphs and transitions.

Focusing attention for the most part concentrates on large-scale organization. Once the writer is satisfied here, the concentration can move to small-scale organization as the writer works on simplifying the document.

⁵ The photographer will consciously consider the exact placement of items within the photograph's boundaries. For example, a key question in portrait photography is whether to have the subject directly in the center or slightly off-center. Each will have a different effect on the viewer. The photographer often mentally divides the space within the photograph's boundaries into grids, with each square of this grid having a different relative impact on the viewer. The photographer will carefully consider within which grid to place the various objects in the photograph.

⁶ Most legal writing texts discuss the importance of knowing your audience. See, e.g., Veda R. Charrow et al., *Clear & Effective Legal Writing* 83 (2d ed. 1995); Mary Barnard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* 25-28 (2d ed. 1993); Larry L. Teply, *Legal Writing, Analysis, and Oral Argument* 5-6 (1990).

Here the photographer has placed the subject in the center of the picture. Although there is some background material, it is



not distracting. By focusing on the subject, not the books or shelves, the viewer is told that the individual pictured is the theme—and is led to focus on that theme.

Simplify

The photographer simplifies by eliminating extraneous background material. Thus, the background of a portrait will be relatively uncluttered unless the photographer is making some statement about the subject's cluttered life.

Now the photographer has eliminated all but the subject, greatly simplifying the photograph and focusing even more effectively on the theme of the picture. The viewer is left with no choice—the subject is unquestionably the photograph's theme.



Similarly, the writer must eliminate everything that is not necessary to advancing the purpose of the document. The writer must ask, "Does everything included in my draft focus attention on my theme?" That which does not must be eliminated.

The writer knows the theme. The writer's organization focuses attention on that theme. Now the writer must concentrate on the fine points of language. This is where traditional guidelines for effective legal writing style come into play.⁷ The writer must eliminate extraneous words. The writer must eliminate ambiguous language. The writer must do away with cumbersome sentences. This is where the writer for example edits out passive voice unless there is a valid reason for its use. Here the writer eliminates "throat clearing" phrases. The writer strives for clarity and conciseness. The writer writes in plain English.⁸

Conclusion

The simplified document that focuses attention on the theme will be a well-drafted legal document. There is really nothing new here, but simply a new way of looking at old teachings. "Theme" gets the student through the thinking and early organization that constitute a major portion of the pre-writing phase. "Focusing attention" gets the student through the first draft and early revisions. "Simplify" consists of later revisions and the final edit. At each stage the student can ask: Do I know what my theme is? Have I focused attention on that theme? Have I simplified? A photographer who asks and successfully answers these questions creates a photograph that affects the viewer in some way, moving the viewer to act or react as planned. A writer who asks and successfully answers these questions creates a document that causes something to happen in the real world, leading the reader to act or react as planned. In so doing, both the photographer and the writer realize an effective end to their efforts, one that achieves its intended purpose. ♦

⁷ Some part, and often the largest part, of nearly all texts on legal writing is devoted to effective writing style. See, e.g., Helene S. Shapo et al., *Writing and Analysis in the Law* (3rd ed. 1995), which includes chapters titled "The Thesis Paragraph," "Effective Paragraphs," and "Sentence Structure," as well as an appendix on grammar and style. Chapter Ten on sentence structure includes such topics as proper use of active and passive voice, avoiding intrusive phrases, eliminating unnecessary verbiage, avoiding vagueness and imprecision, and avoiding jargon.

⁸ In addition to Richard Wydick, *Plain English for Lawyers*, most legal writing texts also discuss writing in plain English. See, e.g., Diana V. Pratt, *Legal Writing: A Systematic Approach* 177-85 (1990).

“ [T]he writer must eliminate everything that is not necessary to advancing the purpose of the document. ”

PERSPECTIVES

Teaching Legal Research and Writing

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