Welcome to the reintroduction of a favorite feature on good legal writing. If there are writing topics you'd like to see covered, write to arizona.attorney@azbar.org

Start Strong, Close Strong

Most lawyers—especially litigators—understand the value of starting strong and closing strong. Many of us even have read articles or studies on the persuasive effects of primacy and recency. In short, social psychologists discovered that your audience tends to be most influenced by what it reads first and by what it reads last.

If most attorneys subscribe to the principle of primacy, you would think that we would not see so many motions that start like this:

> COMES NOW Defendant Magical Mystical Masonry Systems of Southern Arizona, Inc. (hereinafter "MMMSSA"), by and through its counsel, undersigned, and files this, its Opposition to the Rule 702 Motion to Exclude Defendant's Expert Witness Dr. Marcus Ronko filed by Plaintiff Amanda Lahiri (hereinafter "Ms. Lahiri"), pursuant to Rule 702 of the Arizona Rules of Evidence. Support for this motion is contained in the attached Memorandum of Points and Authorities.

Take the time to open your motions with something that grabs your readers and makes them want to read more.

Why begin with a paragraph that seems deliberately crafted to kill interest and deter reader engagement? I usually hear one of two reasons.

First, busy attorneys do not want to reinvent the wheel—nor do cost-sensitive clients wish to foot the bill for retooling standard documents—and perhaps all of the motions in your firm's database start in the same fashion, or maybe that's the way your secretary or paralegal has been trained to set up your motions and pleadings. But the value of engaging your reader with a persuasive opening paragraph far outweighs the cost of writing that paragraph. Delete that dull drivel from your database, and take the time to open your motions with something that grabs your readers and makes them want to read more. What's more, the process of writing that paragraph helps you focus and refine your argument.

The second reason I hear is more perplexing: "Oh, judges don't read that paragraph anyway." So why bother writing it at all? Why not just write gibberish?

Even if we believe that judges skip that first paragraph—which means surely they will never decode the names you use for the parties in the rest of the motion—it hurts nothing to write an opening that quickly tells the story of why you win:

> Defendant Masonry Systems asks this Court to deny Plaintiff's Motion because Dr. Armbruster's testimony easily meets *Daubert*'s requirements. He bases his testimony on his specialized knowledge and experience as a medical doctor, and that testimony will assist the jury in assessing Ms. Lahiri's injuries and her credibility. To the extent that Plaintiff challenges the weight or persuasiveness of Dr. Armbruster's testimony, the proper action is for Plaintiff to probe Dr. Armbruster's conclusions and the bases for those conclusions through cross-examination and to argue their weight in closing.

It also mystifies me that anyone would squander the chance to exploit the principle of recency by ending a motion with a conclusion like this:

> For the foregoing reasons, Defendant asks that this Court deny Plaintiff's Motion to Exclude Defendant's expert pursuant to Arizona Rule of Evidence 702.

Again: Why bother? Why conclude at all, if you are just going to end with the equivalent of "what I just said"? A better, more effective conclusion would take the opportunity to summarize your argument and remind your reader in a succinct way just why you win:

> Dr. Armbruster's medical training and twenty-five years of experience as an emergency-room physician more than qualify him to offer expert opinion testimony regarding the cause and extent of Ms. Lahiri's injuries. Moreover, his testimony will assist the jury in determining whether those injuries are consistent with her account of her accident. If Plaintiff seeks to challenge the weight or basis of Dr. Armbruster's testimony, Plaintiff can do so through cross-examination and argument at trial. Therefore, Masonry Systems asks this Court to deny Plaintiff's Motion.

Certainly, you will face circumstances that demand truncated introductions or conclusions. Perhaps you are up against a page limit, and the remainder of your memorandum is as pithy and concise as possible—you can't possibly remove another word. Most of the time, however, it costs little and loses nothing to draft introductions and conclusions that advance your argument and engage your reader when it counts the most.

Susie Salmon is Assistant Director of Legal Writing and Associate Clinical Professor of Law at The University of Arizona, James E. Rogers College of Law. Before joining Arizona Law, she spent nine years as a commercial litigator at large firms in Tucson and Los Angeles.