

Roadmap Paragraphs

Plotting Success From the Opening Line

BY KIRSTEN K. DAVIS

Persuasion Through Organization

Kirsten Davis writes a recurring column for *Arizona Attorney* magazine. In those columns on legal writing, she takes a real-practice approach to improving work and workflow by focusing on writing skills.

In her own prior law practice and in her current work as a legal writing professor, she has seen that good mental organization translates into good written organization. And that, she argues here, translates into excellent persuasive power.

In this three-part series, the author dissects what comprises good organization in legal writing and says there are three essential elements: roadmap paragraphs, thesis sentences and useful transitions.

This article takes us through the first element. Look for future “Legal Word” columns to examine the other two.

A clear, persuasive legal argument, if sketched out visually, might be seen as a chain, with each legal proposition a link. One link after another, connected together, the connection between the first link and the last obvious from the continuous links in between.

When it comes to written legal arguments, though, the chain sometimes has a missing link. In a recently published survey of federal judges, 96 percent said that they sometimes had difficulty following the written arguments of advocates.

This missing link and the resulting lack of clarity can create serious problems for both lawyers and clients. When an argument isn’t followed, it isn’t persuasive. No lawyer—or her client—wants a judge to only “sometimes” understand the arguments raised in a motion.

The question, then, is what can be done to make arguments more clear to the reader?

A legal argument can be unclear and unpersuasive when any of three basic organizational components are missing from a document. Good roadmap paragraphs, strong thesis sentences, and useful transitions are the most effective ways to increase reader understanding of legal arguments and to enhance their persuasive power. In this article, we take a look at the roadmap paragraph.

Previewing the Reader

In a legal motion or brief, the roadmap paragraph (or section) appears at the beginning of an argument and functions as

a persuasive preview of what's to come in the remainder of the argument. The roadmap paragraph is important because it (1) facilitates the reader's understanding of the legal argument and (2) meets the reader's need to evaluate the argument as it is made and to be able to see how the argument is organized.

Studies on brain hemispheric preferences—left-brained thinking or right-brained thinking—show that readers will learn the most from (and thus better understand) a document that has a roadmap paragraph. Why is that the case?

The roadmap paragraph appeals to left-brained thinkers by providing a step-by-step outline of the argument, enabling them to better understand the argument details as they are added in the body of the document. Conversely, right-brained thinkers find roadmap paragraphs useful because it gives them the overview of the argument. The “big picture” keeps right-brained thinkers from getting mired in the same details that left-brainers love, allowing them to better understand the argument from a broader vantage point.

The roadmap paragraph also allows legal readers to begin to evaluate the arguments raised in written advocacy immediately as well as to see how those arguments are organized. Legal readers tend to be skeptical readers. As a result, they want to know up front what arguments are being made so they can test how well the law and facts support those arguments. In fact, 76 percent of federal judges said a roadmap paragraph was important.

Moreover, a roadmap paragraph outlines for the reader how the legal arguments will be divided and discussed. For example, if the paragraph divides the arguments into two issues, each with three elements to be examined, the reader will expect that the writer will address each issue in order and will break down the discussion of each issue into the three elements described in the roadmap.

Plotting the Map

Here is an example of a good, albeit basic, roadmap paragraph from a fictitious memorandum in support of a motion for change of venue based on a recent California case:

The widespread and negative media reports surrounding this case have made it impossible to seat a fair and impartial jury in Imperial County. Courts consider five factors in determining whether to grant a change of venue when there has been the dissemination of material in the community prejudicial to the defendant. *Martinez v. Superior Ct.*, 29 Cal. 3d 574, 583 (1981). If (1) the consequences to the defendant are grave, (2) the community is small, (3) the victim enjoys celebrity status, (4) the defendant is vilified in the community, or (5) there are political overtones in the case, the court should grant a motion for a change of venue. *See id.* Here, Mr. Jones is facing a grave consequence—the death penalty. Second, Imperial County is small county of only 500,000 residents; coupled with the daily negative media coverage of this case, this fact weighs in favor a venue change. Furthermore, the victim is revered by the community, while Mr. Jones has been characterized as an outsider. Finally, the political overtones, as evidenced by the County Attorney’s comments, have surrounded this case and are a separate and independent reason for a change of venue.

This paragraph illustrates the three components of a basic but persuasive roadmap paragraph: the legal conclusion, the summary of the law, and the summary of the factual analysis.

First, the roadmap paragraph gives the writer’s overall conclusion on the legal issue being argued. Of course, more could be added to bolster that conclusion, such as facts about the nature of the media reports being generated about the crime and the trial. But, at the very least, the opening sentence tells the reader what conclusion should be drawn from the argument that follows.

Second, the paragraph summarizes the law on the issue. Here, the writer has indicated that this is a factor test—one in which not all of the listed items must be satisfied to meet the test—and has written the rule to suggest the outcome he advocates. For example, the writer does not say the court must consider “the size of the community” but instead says that the court should grant the motion if the “community is small.”

In the body of the motion, the reader will expect to see case law cited that supports the writer’s conclusion that the court should grant a change of venue motion when communities are small as

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well as an argument that this community is small by precedent standards. By using a numbered list to describe the rule, the writer is creating an expectation that the analysis will be divided into five parts, one part for each factor. If the writer does not use this organization for the remainder of the argument, the reader will be confused.


Finally, the roadmap paragraph summarizes the factual basis for the legal conclusion and highlights those facts that are most important to the writer's position and that will be further discussed in the motion. Note that the writer uses specific detail for facts that he wants the reader to remember.

Roadmap paragraphs can be used at the beginning of documents and at the beginning of sections. They should include conclusions about the outcome of issues, summaries of the law to be applied, and summaries of the factual analysis.

Why the Paragraph Works

The roadmap paragraph appeals to both left- and right-brained thinkers. The left-brainers will appreciate the five steps in analyzing the venue question. The right-brainers will appreciate seeing the whole picture before getting into the details of each factor.

In summary, roadmap paragraphs help the reader understand written legal arguments. They give a preview of what's to come later in the argument and provide a framework of conclusions, law and facts in which to organize the remaining details of the argument. Thus, because they are more easily understood, the arguments are more persuasive.

Upcoming articles will detail the value of thesis sentences and useful transitions. 

endnotes

1. Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 LEG. WRITING 257, 272 (2002).
2. For an easy read on learning preferences and styles, see RICKI LINKSMAN, HOW TO LEARN ANYTHING QUICKLY: AN ACCELERATED PROGRAM FOR RAPID LEARNING (Carol Pub. Co. 1996).
3. Robbins, *supra* note 1, at 273.