From PLI's Treatise

Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing

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The Principles of Super-Clarity

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Legal writers have to master two kinds of clarity, only one of which comes naturally. They must impose a precise and rigorous logic on often-recalcitrant material. Then they must make that logic obvious to their readers, from the document's start through every page to the end. By training and inclination, most lawyers are skilled at the first task. But they are seldom as good at the second. In fact, many never realize that the two are different, that an impeccably logical analysis may still leave readers exhausted and confused.

As a writer, your goal is not just to create logic in your material. It is also to create coherence—the *perception* of focus and organization—in your readers' minds. A coherent document has to be logical, but it also has to be much more.

To approach this second goal, begin by seeing your document from your readers' perspective. To you, it is a finished product that you can grasp as a whole. For them, as they are reading it, the document as a whole never exists. At any one point, they will remember only a few sentences, if that, in relatively precise form. What has gone before will have been winnowed and compressed to fit into their memory, and what lies ahead is largely a mystery.

When you write a document, therefore, you are organizing a complex process: the flow of information through your readers' minds. In fact, they are trying to cope with two flows at once: the page-by-page progression of large-scale themes, ideas, and over-arching syllogisms, and the sentence-by-sentence stream of details. In the face of this onslaught, they do not remain passive. They read actively, although much of the action happens in split seconds and never reaches full consciousness. At each moment, they are deciding how much of what they just read they need to remember, figuring out how the next sentence connects with the previous ones, and forecasting where the analysis is heading.

To help readers through this process, writers have to create a clarity based not just on logic, but also on how a reader's mind deals with complicated information. This "cognitive" clarity is based on three facts about how people read. In terms of logic alone, none of them matters. In terms of coherence—of clarity in the reader's head at every moment, not just at the document's end—they are critical.

1.   Because readers have trouble grasping dissociated details, they focus on and remember details better if they fit together with others to form a coherent pattern. Only the pattern—the story, the logic, the theme—enables readers to decide how a detail matters and whether they should bother to remember it. The harder they must work to see the pattern or fit new information into it, the less efficiently they read, and the greater the chance they will misinterpret or forget the details. In a detective story, readers are not supposed to appreciate the significance of the broken watch strap on the corpse's wrist until much later, when they realize how smart the detective has been—and how dumb they were. With good legal writing, in contrast, they should never have trouble understanding the significance of and the relationship among details as they flow past.

2.   As the information flows past, they want its structure and sequence to match the logical order of the propositions or events it is describing. In other words, they want the document to unfold in step-by-step synchrony with the legal analysis or factual story it conveys, so that its form matches its underlying substance. They don't like it,

for example, when your writing follows the wandering path you took in researching an issue, rather than the logic of the analysis you finally uncovered. Nor do they like it when you recite facts chronologically when the key factual issues have nothing to do with the interminable tale of who-did-what-when. They are irritated if a section is divided into five sub-sections that look of equal importance, when the fourth is logically subordinate to the third. And they are annoyed, if only subliminally, when a sentence's structure implies that three details are equally important, although two are just appendages to the other.

3.   With words as with food, they cannot easily ingest an unbroken flow. At both the large scale (the document as a whole) and the small (paragraphs and sentences), they want writing cut into manageable pieces, so they can pause and begin to digest each before they go on to the next.

From these facts, this chapter draws three principles of "super-clarity" that apply at all levels of a document, from its overall organization down to its sentences. In the summary fashion in which they are outlined below, they will look abstract, vague, and less practical than the usual tips. Like some legal principles, their value comes from their persistent application, not their initial impact. In the rest of the book, our job is to turn these three principles into specific, concrete advice that, in the long run, will be far more useful than fifty random tips.

PRINCIPLE 1

Readers absorb information best if they understand its significance as soon as they see it. Therefore, before inundating them with details, give them a context or framework that helps them grasp the details' relevance and the organization that binds them together. To create this context:

- A. Provide a focus.
- B. Make the information's structure explicit.
- C. Begin with familiar information before moving to unfamiliar, new information.

PRINCIPLE 2

Readers absorb information best if its form (its structure and sequence) mirrors its substance (the logic of an analysis, the plot of a story, the theme of an argument). But legal writers are often seduced by "default" organizations: organizations that arise spontaneously from their research or thinking, or are so familiar they fall effortlessly onto the page. These defaults look plausible but obscure the underlying analysis, story, or argument. Therefore:

- A. When you organize a series of propositions or facts, make their sequence follow your underlying logic, plot, or theme.
- B. When you organize a series of sections or "chunks" of information, make their hierarchy match the relative importance of their contents.
- C. When you organize a sequence of information, put the most important information where readers naturally pay most attention.

PRINCIPLE 3

Readers absorb information best if they can absorb it in pieces. Therefore:

- A. Break up larger blocks of text by using headings, shorter paragraphs, and white space.
- B. Break up smaller blocks (when you can) by using bullet points and lists.
- C. Break longer sentences into phrases and clauses separated by punctuation (or into shorter sentences).

This chapter introduces these principles at a relatively high level of generality, rather than in the specific form they take in specific situations. The same principle takes a quite different shape when it is applied to a document's overall organization than it does when applied to a sentence. The examples, therefore, are examples in the same way a giraffe or a bear is an example of a mammal: not a model, but just one form among many different ones. The later chapters demonstrate in detail how the principles apply to specific aspects of writing complex documents.

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So far, we have not had much to say about your readers. By implication, they seem to be an eager, friendly group, trying hard to understand what you have to offer and grateful for your help. You know better. All your effort to write clearly is worthless unless you can first make your readers pay attention and trust you. To the first three principles, therefore, we add a fourth, which chapters 6 and 7 discuss.

PRINCIPLE 4

Readers pay more attention if you approach your material from their perspective, not yours. Therefore:

A. Understand your readers as thoroughly as possible: their goals, their expectations, their reading habits, their intellectual framework, and what they already know.

B. At the document's start, show your readers (quickly) that you will give them practical help without wasting their time.

C. Adapt your language and organizational habits to your readers'.

One way to grasp this principle is through a metaphor. Imagine that the information you want to communicate is a liquid. Inside your own mind, it behaves abnormally: It stays in place, rather than spilling out formlessly and irretrievably, as liquids tend to do. It is behaving so politely because it is held in place by a container. That container is your understanding of its significance: its point, its importance, the logic that makes all its pieces cohere.

When it comes time to communicate the information, most legal writers dump the liquid on the page as quickly as they can. After all, isn't it what really matters, what they're being paid to provide? 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.

When you set out to communicate complex information, therefore, your first task is to create a container in your readers' minds *before* you give them information. And that task never ends, because you should continue to create containers throughout the document whenever you are about to dump new information on the page. The containers' function is to make readers smart—smart enough to understand the significance of every detail that follows as soon as they see it.

Before turning this metaphor into more concrete advice, let's demonstrate the trauma you can inflict if you ignore the principle. The example below is the first section of a judicial opinion that disposed of several evidentiary motions.

**Motion to Suppress and Exclude Evidence
Unlawful Search and Seizure**

At approximately 4:00 p.m. on December 7, 2000, West Carolina State Troopers Charles Jones, Ronald Brown, and David Green, accompanied by Assistant State's Attorney Frank Smith, went to John Torrance's home located at 1819 Fawn Way, Centerville, West Carolina. A search of the premises was conducted resulting in the seizure of a brown calendar book and a red notebook from Torrance's bedroom. Torrance attempts to suppress these items.

Torrance had developed as a prime suspect in a homicide that occurred during the afternoon of December 7. That fact led the troopers to his residence. At trial, Troopers Jones and Brown and Torrance's father testified about what happened in the Torrance residence.

Jones stated that Brown was in charge and that, upon arriving at the front door, they were greeted by Torrance's mother. Brown asked permission to search the house for Torrance. She allowed them to enter the house, but asked that they wait for the arrival of her husband. Brown's version of the initial contact is similar. There is no question that the purpose of the troopers was to determine if Torrance was in the house. Brown also told her that Torrance was a suspect in the homicide case and that the police wanted to search the home for Torrance. The troopers and Mrs. Torrance waited in the kitchen for the arrival of Mr. Torrance, a wait of some fifteen to twenty minutes. During the wait two events took place. First, Brown testified that while they waited they observed and listened for the signs of any movement in the house. Second, as a result of a conversation between Brown and Mrs. Torrance about a gun missing from the . . .

After a few steps into this passage, most readers, even the most conscientious, begin to fidget. As the torrent of details continues, the fidgeting becomes an overwhelming itch to skim and skip. By the second page of these facts—and they go on for three pages—many readers would be long-jumping over whole paragraphs.

Why would they read in such a sloppy, ill-mannered way? The writer would no doubt claim that they lack stamina and discipline. But the real reason is more fundamental. As readers, we all know something we tend to forget as writers: The human mind is not a computer. It cannot absorb and remember vast banks of mysterious data, waiting patiently for the writer to punch a "compute" button to make sense of it all. As a result, it tries desperately to figure out what the details mean. Does Torrance's address matter—is there a dispute about the address on the search warrant? Do we need to know that the calendar is red and the notebook brown—will we have to distinguish them from something green and something purple?

Readers do not go through this analysis consciously (at least, not most of the time). Subconsciously, however, they expend a lot of effort on it. If this effort is frustrated, and they cannot figure out how and why the details signify, they quickly decide there is no point paying attention to them.

To avoid this unhappy result, a writer should apply the first principle in three specific ways. We begin with the ones that usually require the toughest intellectual labor from the writer. If we were to begin instead with the kind of information the reader wants first, we would start with Principle 1C.

PRINCIPLE 1A

Provide a focus before the details.

Readers absorb information best when their minds can engage with it, think about it, and work on it, rather than just try to remember it. They can engage with it in several ways: by using it to answer a question or test a conclusion, for example, or simply by following a thread—a theme or a topic—through it. They can do none of this, however, unless you have given them a focus for their thinking in the form of a question, conclusion, or topic.

Assume, for example, that the passage about the search had been preceded by this introductory paragraph:

> John Torrance attempts to suppress evidence seized from a drawer in his bedroom by the state troopers who searched his parents' home, where he lived. He argues that the troopers did not receive his parents' informed consent for the warrantless search. Although the troopers conducted the search only after Torrance's father had signed a form permitting them to search his home and seize any material relevant to their investigation, they did not clearly explain the form to the father, and stated explicitly that they were searching only for Torrance himself. The evidence they seized is therefore inadmissible.

This introduction does several good things that most introductions should do, and to which this and later chapters will return. For the moment, one thing matters most. It gives us a focus—in fact, three intertwined foci. In legal terms, there was no informed consent; in factual terms, the father did not clearly understand the purpose of the search; in decisional terms, the seized evidence is inadmissible. The foci could have been differently shaped, as questions (was there informed consent?) or simply as topics (the issue is informed consent). But the results would have been much the same:

- We can now throw our minds into gear and think as we read, not just try to memorize.

- We can distinguish between important details, secondary ones, and those we can afford to ignore.

- Because we can grasp the significance of each detail as we see it, we can read more efficiently and with far less distraction and frustration.

Note the power of this change. The passage has more wrong with it than the lack of an introductory focus. It contains too many irrelevant facts, and the facts are badly organized. Ideally, if the writer had begun with a focus, he then would have recognized these other problems and fixed them. But even if that did not happen, if the rest of the passage remained badly written, the focus has transformed our ability to cope. It has the same result as putting a flashlight in the hands of someone about to walk down a dark, winding, treacherous path. The

terrain remains the same, but his chances of navigating it successfully improve tenfold.[1]

The example showed this principle at work on the large scale, where readers confront a lot of detail. Although the principle matters most at this level, it also applies on smaller scales, down to paragraphs (remember topic sentences?) and even sentences. Later chapters show you these applications. For the moment, one small example.

Before:	*After:*
The reason that funded programs have been less utilized is that if employees are given a non-forfeitable interest in a non-qualified trust they will experience immediate taxation on the amounts set aside for them.	Funded programs have been used less often because they create tax problems: If employees are given a non-forfeitable interest . . .

In the original, we travel a mile into the sentence before learning what it is about: not "funded programs," which is only the subject matter, but tax problems. In the revision, because we know from the start that we should look for tax issues, we can relax and focus on the details more comfortably and efficiently.

At every level, the key is to tell readers what to look for, and to give them a guide for distinguishing between critical and background details. In practice, as chapter 3 demonstrates, crafting a focus—especially in introductions—requires skill and judgment.

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1. Contemporary writers face a problem when they want to use a singular pronoun to refer to a generic human being. Traditionally writers have assumed that this person is masculine. In most professional circles, however, that chauvinism is now unacceptable or, at least, cause for suspicion. But English has no genderless pronoun to refer to a single person except, in some situations, "one," which has a very formal and old-fashioned flavor. "S/he," a useful but ugly coinage, never caught on. Writers have tried a variety of techniques to get around the problem: most commonly, making all references plural ("they") or neutral ("he or she"). We have reached our own imperfect compromise. Whenever we can, we will use the plural; when style or grammar requires the singular, we will use the masculine in the first half of the book and the feminine in the second. (If we were women, we would no doubt reverse the order.) In most professional documents, because you cannot drop a footnote to explain yourself, we recommend "he or she" when you have no choice but to use the singular. The double pronoun may be stylistically clumsy, but that is not enough reason to revert to chauvinism.

PRINCIPLE 1B

Make the structure explicit.

If readers are to absorb and remember complex information, they have to be able to divide it into parts and understand how the parts connect. In other words, they have to see a structure. And they have to see it not gradually and retrospectively, but quickly and easily, from the start. Before they wade into the details, they want the comfort of knowing that a structure lies ahead, not chaos.

Like each of our principles, this one applies at all levels of a document, from its overall organization down to its sentences. Return to our first example about the search. In addition to giving us a focus, the revised introduction also gives us a skeletal plot summary for the facts we are about to read. This summary is not a "map" in the classic "we have three issues" sense. But it creates a simple structure for the narrative that follows, a structure that helps us to relax (we know will not get lost) and to see from the start how the details will hang together.

For a more graphic demonstration of this principle at work, here is a smaller-scale example. As you read the following paragraph, ask this question: How quickly or slowly do you catch on to its basic organization? The first sentence will look familiar.

Before:

> The reason that funded programs have been less utilized is that if employees are given a non-forfeitable interest in a non-qualified trust they will experience immediate taxation on the amounts set aside for them. Furthermore, the complex and onerous requirements of Title I of ERISA would normally apply to a funded program.

The paragraph does a masterful job of hiding its two-part structure for as long as it can. Structurally, in fact, it begins with a lie. The first words imply that it is about one thing, a single reason. We then plow through the interminable

first sentence, hit the period, and breathe a sigh of relief—only to confront that fearsome word, "Furthermore." This is depressing not only because it tells us we have more work to do. If forces us, at least sub-consciously, to redraw our mental map of the paragraph's structure: The analysis has two prongs, not one. In a paragraph this simple, although we may be annoyed, we can cope. In larger, more complex structures, this organizational clumsiness would leave us confused and angry.

In the revisions below, the structure appears explicitly on the surface of the prose:

Revision 1:

> Funded programs have been used less often for two reasons. First, they have tax disadvantages: If an employee is given a non-forfeitable interest in a non-qualified trust, he or she will be taxed immediately on the amounts set aside. Second, they have administrative disadvantages: They are normally subject to the complex and onerous requirements of Title I of ERISA.

If this structure is a little too blatant for your taste, here is an alternative:

Revision 2:

> Funded programs have been used less often because they have both tax and administrative disadvantages. In funded programs, employees are immediately taxed on the amounts set aside for them, because they are given a non-forfeitable interest in a non-qualified trust. Furthermore, funded programs are normally subject to the complex and onerous requirements of Title I of ERISA.

Incidentally, notice that both revisions apply the principle of "focus before detail." We have already shown you how that works in the first revision. (See page 22.) In the second, the focus for each of the second and third sentences appears at the end of the first ("tax and administrative disadvantages"), on the theory that the paragraph is so short readers can remember the focus when they

get to the relevant sentence. Finally, the revisions also apply the principle we are about to introduce: Begin a new chunk of information with familiar information—in this case, "funded programs" or the equivalent pronoun.

There is a moral here. If problems tend to hunt in packs, virtues also tend to reinforce each other. Although this book tackles principles and techniques one by one, in your writing they usually collaborate: As you apply one, others fall happily into place. For this reason, as you have seen, the book often returns to the same example more than once, each time for a different purpose.

Later chapters show you how to apply this principle on both the larger scale, to bring "super-clarity" to a document or a section as a whole, and the smaller scale, within a single sentence.

PRINCIPLE 1C

Begin with familiar information, not new.

Whatever lip service they pay to "understanding our readers," lazy writers—as all of us are at times—behave as if readers bring to a document minds as blank as the empty page. In fact, reading is a complex intermingling of the information the writer provides with what the reader already knows. Without the latter, the new information would be meaningless.

As a result, at the beginning of a document, you should decide what your readers already know, and then link what they are about to read to that pre-existing knowledge. For an example, return for a last time to the revised version of the introductory paragraph about the house search. Here are the first two sentences again:

> John Torrance attempts to suppress evidence seized from a drawer in his bedroom by the state troopers who searched his parents' home, where he lived. He argues that they did not receive his parents' informed consent for the warrantless search.

These sentences ask the reader to bring to bear two kinds of knowledge this particular reader already possesses: "legal" about informed consent and the suppression of evidence, and "real-world" about homes, bedrooms, and drawers. The sentences situate him within a familiar context, and therefore help him to absorb new information more confidently and intelligently.

This principle turns out to matter just as much after the document has begun as at the start. "Familiar" or "old" information consists not only of what readers bring to your document. As they read, it also consists of what you told them earlier in the document. And, as they move on to a new chunk of information—a section, paragraph, or sentence—the "old" information that matters most is the information you just gave them in the preceding chunks. When they see the new chunk, their first question is, "How does this connect with what I just read?" If they cannot see the connection immediately, they then have 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.

Although this point applies at all levels of a document, it is easiest to demonstrate at the sentence level. Here is a paragraph by a sophisticated writer who lacks this one crucial skill.

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 which 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.

Because the paragraph is organized logically enough, we can make our way from one sentence to the next without much conscious pain. But it is harder to read than it should be. Even if the difficulty is mild enough to remain subliminal, it is still stressful enough so that, after several pages of this kind of prose, we would be exhausted. Here is the problem: In each new sentence, the words

that link it most clearly and specifically to the preceding sentence—the words that feel most "familiar" because we just saw them or words very much like them—appear too late. They should come at the front of a sentence, where they create the smoothest possible transition. Instead, they come at or near the sentence's end. As a result, to use the distinction made at the chapter's start, although the paragraph is logical, it is not fully coherent.

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 which 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.

At almost every step, the paragraph forces readers to digest new information before they find out how it fits into the paragraph's pattern. The damage is less because the paragraph is logical, but it is damage nevertheless. Subliminally, they will feel like explorers entering an alien land, always a little bemused and tentative, a little slow to catch on.

Why would a sophisticated writer inflict this kind of torture on his readers? Because it comes naturally to all of us as writers. When we begin a sentence (or paragraph or section), we instinctively focus first on what is new about it, which is our reason for writing it. Only then do we bother to give readers what they want first: a link to what went before. For our readers' sake, we have to change our priorities:

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 which 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.

As later chapters show, familiar or "old" information comes in many forms, and there are many ways of using it effectively.

PRINCIPLE 2

**Readers absorb information best if its form
(its structure and sequence) mirrors its substance
(the logic of an analysis, the plot of a story, the theme of an argument).**

Most of you are now saying, "Give me a break. I've known this since sixth grade." True. But this principle is still violated repeatedly by lawyers who are sophisticated thinkers and good writers because they fall prey to a "default" organization. In computer jargon, a "default" is the path a software program will take automatically if it is not told otherwise. For everyone who has been subjected to a professional education, default organizations abound: ready-to-hand, easy-to-use organizations that are our first line of defense against the chaos of facts, ideas, and arguments thrown at us every day. When we start to write, these patterns can fall onto the page with almost no organizational effort. As a result, they are especially dangerous when an over-worked writer sets out to organize an analysis or a set of facts, a task that requires hard intellectual labor most of us would prefer to avoid.

In these circumstances, the most common failing is to use an organization that arose as we struggled with our raw material, without worrying enough about whether it does justice to our substance.

One common default, for example, is to retrace the history of how we thought through an issue. If our thinking was relatively logical and efficient, it offers us an organization that requires no further effort and that looks plausible to other lawyers, because they recognize it as a familiar form of "thinking like a lawyer."

Another common default is to mirror someone else's organization. For example, when we respond to another lawyer's analysis, we can use its structure as an organizational crutch. That is what happened in the following example. In the first version, the writer was distracted from his own logic by his opponent's argument, which presented too tempting a target to resist. In the revision, he organizes around his own thinking, relegating his opponent's point to the rebuttal position.

Before:

Assessment of Costs

Appellant admits that the assessment of costs is a discretionary matter for the trial judge but asserts that, under the particular facts, the trial court abused its discretion.

Appellant relies upon *J.V. Brown Co. v. Smith, Inc.* . . . . The court there reversed the trial court and relieved the defendant from paying costs where he was not found negligent and had not prolonged the trial. The court held that: . . . .

After:

<u>Assessment of Costs</u>

Appellant admits that the assessment of costs is a discretionary matter for the trial judge, but asserts that, under the particular facts, the trial court abused its discretion. As the court's opinion demonstrates, however, the court correctly based its assessment on the principle that costs must be assessed in accord with the results at trial.

This principle arises from C.C.P. Article 2198: . . .

The principle is stated even more explicitly in Comment (b) to Article 2198. . . .

[Discussion of principle applied to this case]

While appellant rightly points to *J.V. Brown Co. v. Smith, Inc.* as an authoritative application of Article 2198, he ignores crucial differences between the facts of that case and of the present situation. . . .

The second version, by the way, is not necessarily better than the first in some abstract, universal sense. Although it does a better job of making the writer's logic as clear as possible as quickly as possible, the goal on which this chapter focuses, that "cognitive" goal could be trumped in some circumstances by another, rhetorical one, such as catering to a reader's expectations. For example, if the writer were a judge, he might prefer the first version because he wants to show the appellant that he gave a losing argument full consideration before rejecting it. Or the writer of a responding brief might decide that his opponent's point is so plausible that he has to knock it down before he has a hope of persuading a judge to pay attention to his own argument. The problem with default organizations is not necessarily the organization. It is the "default" itself, the failure to think about what the organization should be.

This principle applies not just at the level of large-scale organization, but even down at the sentence level. There, the danger is usually simple sloppiness,

with information dumped haphazardly into the sentence rather than organized logically. For example:

Before:

A creditor is required under California's one-action rule to foreclose upon collateral before proceeding against the debtor's unsecured assets when the debtor's obligation is secured by real property.

This sentence is a jumble: At its beginning, you think you are reading about a generally applicable rule. By its end, you discover that the rule applies only in a particular context. Although the "logic" of this sentence could take several forms, here is one revision:

After:

Under California's one-action rule, when a debtor's obligation is secured by real property, a creditor must foreclose upon collateral before proceeding against the debtor's unsecured assets.

PRINCIPLE 2B

When you organize a series of sections or "chunks" of information, make their hierarchy match the relative importance of their contents.

In a document's overall organization, this principle simply tells us to be sure that, if we have constructed a "I, II, III, IV. . ." series of sections, we are not obscuring what is really a "I, IIA, IIB, III. . ." series. The problem is usually easy to spot and cure, if we remember to look for it. But similar problems crop up on a smaller scale, where they are often harder to spot. For example, when writers have four relatively short points to make in a sequence, they sometimes put

three into one paragraph and the fourth into a second, either because the first paragraph threatens to become too long or because the fourth point will take more space to explain. This structure implies, however, that the fourth point alone is as important as the first three taken together. If that is the case, the structure is fine. If not, then each point probably needs its own paragraph or bullet point.

In a sentence, the problem can be even trickier to spot. In the example below, because the two italicized points were put into grammatically equal "containers" (parallel verbs and objects attached to the same subject), the sentence implies that both are equally important. (See Technique 1.4 on page 199.) In fact, as the revision shows by placing one in a phrase and the other in an independent clause, the first is much less important.

Before:	*After:*
The trial court *heard argument on May 9, 1999*, and *entered final summary judgment in favor of the defendants.*	After hearing argument on May 9, 1999, the trial court entered final summary judgment in favor of the defendants.

PRINCIPLE 2C

When you organize a sequence of information, put the most important information where readers naturally pay most attention. These spots are beginnings, ends, places where the rhythm or focus of a passage changes, and, in a sentence, the grammatical core (subject, verb, and object).

Among the many ways in which readers demonstrate that they have minds of their own, one is particularly important. Whether we want them to or not, they will instinctively pay the most attention to certain spots in a sequence of information. In long sequences, such as a whole document, they will pay more attention to the beginning than to anything else. In shorter sequences, such as paragraphs and sentences, they will focus on the beginning and the end, especially the end. The moral is obvious: Put important information into the spots to which readers naturally pay most attention. And, if you have no choice but to

put key information into the middle of a sequence, find a way to draw attention to it, perhaps by interrupting or varying the passage's rhythm (as later chapters suggest).

In sentences, readers also tend to focus subliminally on the grammatical pieces—subject, verb, and object—that they must grasp to make sense of the sentence. To take advantage of this instinct, a sentence should put the core of its substance into its grammatical core. In the sentence below, in contrast, the grammatical core ("reason . . . is") is virtually empty of meaning. Consequently, as readers follow the sentence's grammatical "plot," they learn nothing about the sentence's real story. The revision brings the grammatical form into line with the sentence's substance.

Before:	*After:*
The reason for there having been less utilization by corporations of funded programs is . . .	Corporations have used funded programs less often because . . .

PRINCIPLE 3

Readers absorb information best if they can absorb it in pieces.

In ancient languages, the earliest written texts appear as one long unbroken string of characters or symbols. There are no chapter breaks, no paragraph breaks, no sentence breaks, not even spaces to mark off one word from another. Only gradually did writers realize that readers appreciate a break now and then. In modern writing, we chop the flow of characters into words, sentences, and paragraphs so automatically that it feels as if we are obeying a natural law, not applying a principle that we could choose to ignore. But most legal writers still tend to lose sight of this principle in three situations.

First, within sections or long passages, they under-use sub-headings, white space, and other devices for breaking up the text.

Second, within paragraphs, they pack a lot of information into one block of text, without thinking about breaking the block into shorter paragraphs or using such devices as bullets or numbers.

Third, within sentences. For example:

Before:	*After:*
This case involves the novel issue of whether or not a minor is responsible for damages sustained by a restaurant in lost profits resulting from a liquor license suspension caused when the minor orally misrepresented her age to the owner of the restaurant who thereafter sold liquor to her.	The issue in this case is novel: If a minor lies about her age to a restaurant owner who sells liquor to her, and as a result has his liquor license suspended, is the minor responsible for the damages sustained by the restaurant in lost profits?

Would you want to take the next step, and break this sentence into shorter ones?

> The issue in this case is novel. A minor lied about her age to a restaurant owner who then sold liquor to her. As a result, his liquor license was suspended. Is the minor responsible for the damages sustained by the restaurant in lost profits?

This is a judgment call. The final version is easier to read. But you could make an argument, and a strong one, that in an issue statement the factual predicates and the legal question are so tightly intertwined they belong in the same sentence. In either case, this principle continues to apply, though its results differ depending on decisions about your subject matter and audience.

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These three principles flow through the rest of the book. From here on, they are applied in specific contexts: organizing a document as a whole, crafting paragraphs, writing sentences, and so on. In the process, they are translated from the abstract form in which they first appeared into concrete, specific techniques, easy to grasp and to use.