PLAIN LANGUAGE

Make your case in a minute

(WITH SOME HELP FROM ARISTOTLE)

BY MARK COONEY

There's no suspense in good legal writing. If we force readers to wander and bide, then we've wasted precious time — and a precious opportunity. I've long adhered to Bryan Garner's 90-second rule.[1] Whatever we're writing, we should make our position clear within 90 seconds. If we don't, we've missed the mark.

Easier said than done. Cases are often complicated, legally and factually. But here's a concrete strategy that can help.

YOUR NEW COCOUNSEL: ARISTOTLE

You may recall the deductive syllogism from your law-school days or undergraduate logic courses. If you were to Google "deductive syllogism," you'd likely bump into some variation of this example, commonly attributed to Aristotle:

- *Major premise*: All humans are mortal.
- *Minor premise*: Socrates is human.
- *Conclusion*: Therefore, Socrates is mortal.

In a legal syllogism, we think of the major premise as the controlling rule, the minor premise as the crucial fact, and the conclusion as the theoretical holding.[2] Applied to a realistic scenario, it might look like this:

- *Rule*: A trade secret is information that outsiders can't easily get through proper means.
- *Fact*: The information in XYZ's customer list is available online and in trade publications.
- *Conclusion*: Therefore, XYZ's customer list isn't a trade secret.

You can convert this syllogism to prose by adding a topic sentence and devoting a sentence to each component. (The rule or fact part, or both, might sometimes warrant a second sentence.) This approach can produce a quick but meaningful overview of almost any legal argument:

> XYZ Corporation alleges, incorrectly, that its customer list is a trade secret. The Uniform Trade Secrets Act defines "trade secret" as information that outsiders cannot "readily ascertain[ ] by proper means." But the names and contact information in XYZ's customer list are available to the public online and in trade publications. Thus, the list does not meet the Act's definition, and Fred Smith is entitled to summary judgment.

This short overview takes all of 30 seconds to read. Yet the reader still gets a concrete sense that the customer list fails to meet the statutory definition — and why. The judicial reader would surely expect a different perspective from XYZ's attorney. But the reader would at least, we hope, be predisposed in our client's favor.

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 37 years. To contribute an article, contact Prof. Kimble at WMU–Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

LOW CAL, HIGH PROTEIN

For all but the most implausible arguments, the syllogism produces an almost irresistible logical momentum. Note how the paragraph above persuaded you with facially neutral language. You saw no intensifiers (empty, pushy words like *clearly* and *obviously*). You felt no adversarial tone. And at just four sentences, it persuaded without length. These quick overviews grab — but don't tax — readers.

If you're concerned that this four-sentence model is *too* succinct (as it might seem, for instance, in a brief's introduction section), then you might fill in a bit around the edges. But do so with care to avoid blunting your core message. In the example below, I've underlined our original syllogism to help you spot it:

> XYZ Corporation alleges that Fred Smith, its former employee, misappropriated a trade secret by printing off its customer list for use at his new business. To succeed, XYZ must prove that its customer list is, in fact, a trade secret. It cannot.
>
> The Uniform Trade Secrets Act defines "trade secret" as information that outsiders cannot "readily ascertain[ ] by proper means." Here, it is undisputed that the names and contact information in XYZ's customer list are available to the public. Anybody can find this information, with ease, by checking websites or trade publications. Because outsiders can readily acquire the information through these lawful means, the customer list does not meet the Act's definition, and Smith is entitled to summary judgment.

Notice that this beefed-up version is still all meat — no fat. It doesn't bog down in procedural details, such as unhelpful document titles and dates. It doesn't distract with unnecessary party-reference parentheticals. It gets to it. Many lawyers are too tied to conventions to be this direct. A direct style will set you apart and win readers.

In fact, you may have noticed that I didn't even cite, though the act title appears. The raw citation can wait. Remember, this is just an overview of the substance to follow. It isn't the substance. You'll cite plenty when you get to the document's body. But if you fear the citation gods' wrath, at least cite in a footnote to avoid halting your momentum. This overview should *flow*, not stammer.

DIGGING DEEP

The syllogism is also at the heart of Bryan Garner's deep-issue technique, which uses multiple sentences to construct a formal question presented.[3] Garner instructs litigants to follow the deductive-syllogism structure but flip the conclusion sentence to a question:[4]

> The Uniform Trade Secrets Act defines "trade secret" as information that outsiders cannot "readily ascertain[ ] by proper means." XYZ Corporation's customer list contains contact information that the public can find in trade publications and on websites. Is the customer list a trade secret?

As the old saying goes, sometimes to ask the question is to have the answer. And that's the impact that our fictional appellate lawyer hopes for here. Note again that brevity is your ally. This was just 44 words, well below Garner's 75-word readability ceiling.[5] I've envisioned an appellate brief for this technique, but Garner advocates using these syllogism-based issue statements for trial-level motions and briefs too.[6]

LOCATION, LOCATION, LOCATION

The best location for these syllogism-based overviews depends on the document. But no matter the document, your architectural decisions should reflect your first goal: reach the reader within 90 seconds — make an indelible first impression.

In an opinion letter, office memo, or court opinion, our original four- or five-sentence version might appear at the outset, perhaps beneath an "Overview," "Introduction," or "Quick Summary" heading.

In a court brief, a syllogism-based overview — perhaps in the slightly beefed-up style we built earlier — can produce a succinct, meaningful introduction section. If you're the moving party, keep your motion document down to its bare minimum. Your reader should be able to read your motion and the supporting brief's introduction section within 90 seconds. It might look something like what you see in Appendix A, depending on the court and jurisdiction.

You can modify this approach for multiple-issue motions and briefs. In the motion document, use a numbered or bulleted vertical list after the word *because*. And for the brief's introduction section, consider helpful subheadings above each overview. Shorten each overview to our four- or five-sentence model.

For appellate briefs — and longer briefs supporting or opposing dispositive motions — you might use the four- or five-sentence model for thesis (road-map) paragraphs beneath your main argument headings. And for appellate lawyers who are Garner disciples, these syllogisms would appear in your appellate brief's questions presented, grabbing your reader at the outset.

Of course, if your brief is short or you otherwise fear undue repetition, you might skip the overview in one place or another. Let your experience and instincts — and Aristotle — guide you.

Appendix A

[case caption]

Fred Smith's Motion for Summary Judgment

Defendant Fred Smith moves for summary judgment under Fed. R. Civ. P. 56 because XYZ Corporation cannot prove the trade-secret element of its misappropriation-of-trade-secrets claim.

[signature block]

[case caption]

Brief Supporting Fred Smith's Motion for Summary Judgment

Introduction

XYZ Corporation alleges that Fred Smith, its former employee, misappropriated a trade secret by printing off its customer list for use at his new business. To succeed, XYZ must prove that its customer list is, in fact, a trade secret. It cannot.

The Uniform Trade Secrets Act defines "trade secret" as information that outsiders cannot "readily ascertain[ ] by proper means." Here, it is undisputed that the names and contact information in XYZ's customer list are available to the public. Anybody can find this information, with ease, by checking websites or trade publications. Because outsiders can readily acquire the information through these lawful means, the customer list does not meet the Act's definition, and Smith is entitled to summary judgment.

Statement of Facts

[etc.]

Mark Cooney is a professor at WMU–Cooley Law School, where he chairs the legal-writing department. He is editor in chief of *The Scribes Journal of Legal Writing* and author of *Sketches on Legal Style*. He was co-recipient (with Joseph Kimble) of the 2018 ClearMark Award for legal drafting and is a past chair of the SBM Appellate Practice Section.

ENDNOTES

1. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (3d ed) (Oxford: Oxford University Press, 2014), pp 78, 93.
2. Huhn, *The Use and Limits of Syllogistic Reasoning in Briefing Cases*, 42 Santa Clara L Rev 813, 813–815 (2002), available at <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1302&context=lawreview> [https://perma.cc/23J5-QW3X] (all websites accessed January 7, 2022).
3. *The Winning Brief*, pp 80, 112.
4. *Id.*
5. *Id.* at pp 93, 104.
6. Garner, *How to frame issues clearly and succinctly for effective motions and briefs*, ABA Journal (March 1, 2017), available at <https://www.abajournal.com/magazine/article/effective_pleadings_issue_framing> [https://perma.cc/U7LE-CGDZ]