



February 28, 2014

MEMORANDUM

TO: Students and Colleagues
FROM: Arthur F. McEvoy
RE: Writing Materials

Attached herewith is a collection of devices that I use to help my students with their writing. The main items are:

- An outline for a 20-minute talk, “Scholarly Writing: Thesis and Argument,” that I use when I present this material in person.
- A model paragraph, written according to its own instructions.
- A model short paper consisting of five paragraphs, also written according to its own instructions.
- McEvoy’s Guaranteed Foolproof Model for Writing Academic Papers, a step-by-step guide for producing effective writing, of any length and for any purpose.

Ancillary materials include sample thesis statements from various writings, purported thesis statements from one issue of a leading law journal, and important information from the dictionary regarding the terms *thesis*, *argument*, and *analysis*. I include two writings from my daughter, each of which fits the form perfectly. That I had no influence on these writings substantiates further the objective truth of the method. There is a business complaint letter, organized according to the five-step model to demonstrate the model’s universality. I include, finally, handy instructions for preparing a 20-minute presentation for an academic conference, business meeting, or similar occasion.

I learned this stuff from my high school English teacher, Mr. Hughes, but have refined it over the years. These models have helped students focus and clarify, not only their writing but their thinking as well. These materials have propagated all over the country; quite simply, they never fail. Please feel free to duplicate your copy and use as you wish. I will gladly entertain questions, comments, and (most of all) testimonials as to your experience with the materials.

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SCHOLARLY WRITING: THESIS AND ARGUMENT

THESIS: Effective academic writing demands a single thesis and an argument proving that thesis in a manageable number of logical steps.

I. Academic writing must contain a thesis, expressed in a single sentence with an active verb.

A. An academic writing, by definition, argues a thesis.

B. A thesis, by definition, entails a single predication.

C. Active voice makes a predication clear.

II. Only an argument of discrete and logical steps can prove a thesis.

A. Reasoned argument necessarily moves in discrete steps.

B. As with a thesis statement, only a coherent predication makes out a discrete step in an argument.

C. Reasoned argument necessarily tracks some orderly sequence.

III. Three steps – five, including thesis and concluding statements – most effectively convey an argument.

A. Three points suffice to mark out a stable position.

B. Three clear points will remain in a reader's mind from the writing's beginning to its end.

C. Using more or less than three steps increases the likelihood that the argument will be either unstable or ephemeral.

CONCLUSION: Students who learn this method stand out among their peers because the method empowers them to communicate their ideas clearly and effectively.

the·sis ('thē-s&s, British especially for 1 'the-sis)

Function: noun

Inflected Form(s): plural the·ses /'thē-'sEz/

Etymology: in sense 1, Middle English, from Late Latin & Greek; Late Latin, lowering of the voice, from Greek, downbeat, more important part of a foot, literally, act of laying down; in other senses, Latin, from Greek, literally, act of laying down, from tithenai to put, lay down -- more at DO

1 a (1) : the unstressed part of a poetic foot especially in accentual verse (2) : the longer part of a poetic foot especially in quantitative verse b : the accented part of a musical measure : DOWNBEAT -- compare ARSIS

2 a : a position or proposition that a person (as a candidate for scholastic honors) advances and offers to maintain by argument b : a proposition to be proved or one advanced without proof : HYPOTHESIS

3 : the first and least adequate stage of dialectic -- compare SYNTHESIS

4 : a dissertation embodying results of original research and especially substantiating a specific view; especially : one written by a candidate for an academic degree

ar·gu·ment ('är-gy&-m&nt)

Function: noun

Etymology: Middle English, from Middle French, from Latin argumentum, from arguere

1 obsolete : an outward sign : INDICATION

2 a : a reason given in proof or rebuttal b : discourse intended to persuade

3 a : the act or process of arguing : ARGUMENTATION **b : a coherent series of statements leading from a premise to a conclusion** c : QUARREL, DISAGREEMENT

4 : an abstract or summary especially of a literary work <a later editor added an argument to the poem>

5 : the subject matter especially of a literary work

6 a : one of the independent variables upon whose value that of a function depends

b : a substantive (as the direct object of a transitive verb) that is required by a predicate in grammar c : the angle assigned to a complex number when it is plotted

in a complex plane using polar coordinates -- called also amplitude; compare ABSOLUTE VALUE 2

anal·y·sis (&-'na-l&-s&s)

Function: noun

Inflected Form(s): plural anal·y·ses /-'sEz/

Etymology: New Latin, from Greek, from *analyein* to break up, from *ana-* + *lyein* to loosen -- more at LOSE

1 : *separation of a whole into its component parts*

2 a : *the identification or separation of ingredients of a substance* **b** : *a statement of the constituents of a mixture*

3 a : proof of a mathematical proposition by assuming the result and deducing a valid statement by a series of reversible steps **b (1)** : a branch of mathematics concerned mainly with functions and limits **(2)** : CALCULUS **1b**

4 a : *an examination of a complex, its elements, and their relations* **b** : *a statement of such an analysis*

5 a : *a method in philosophy of resolving complex expressions into simpler or more basic ones* **b** : clarification of an expression by an elucidation of its use in discourse

6 : the use of function words instead of inflectional forms as a characteristic device of a language

7 : PSYCHOANALYSIS

an·a·lyze ('a-n&l-'Iz).

Function: transitive verb

Inflected Form(s): -lyzed; -lyz·ing

Etymology: probably irregular from analysis

1 : *to study or determine the nature and relationship of the parts of by analysis*

<analyze a traffic pattern>

2 : to subject to scientific or grammatical analysis

3 : PSYCHOANALYZE

- an·a·lyz·abil·i·ty /'a-n&l-'I-z&-'bi-l&-tE/ noun

- an·a·lyz·able /'a-n&l-'I-z&-b&l/ adjective

- an·a·lyz·er /-'I-z&r/ noun

synonyms ANALYZE, DISSECT, BREAK DOWN mean to divide a complex whole into its parts or elements. *ANALYZE suggests separating or distinguishing the component parts of something (as a substance, a process, a situation) so as to discover its true nature or inner relationships* <analyzed the problem of the trade deficit>. DISSECT suggests a searching analysis by laying bare parts or pieces for individual scrutiny <commentators dissected every word of the President's statement>. BREAK DOWN implies a reducing to simpler parts or divisions <break down the budget>.

SAMPLE THESIS STATEMENTS

(1) "There has developed in this country (in the late 20th century) what I call here a general expectation of justice, and a general expectation of recompense for injuries and loss."

Lawrence M. Friedman, Total Justice (Russell Sage, 1985), 5.

(2) "Popular and professional awareness of disease (silicosis) is not necessarily due to medical advances or epidemiological changes. Rather, it is shaped by social, political, and economic forces as well as technical and scientific innovation."

David Rosner and Gerald Markowitz, Deadly Dust: Silicosis and the Politics of Occupational Disease in Twentieth-Century America (Princeton, 1994), 4.

(3) "Most high-risk systems have some special characteristics, beyond their toxic or explosive or genetic dangers, that make accidents in them inevitable, even "normal."

Charles Perrow, Normal Accidents: Living With High-Risk Technologies (Basic Books, 1984), 4.

(4) "I think the fatal error of the legal arm of feminism has been its failure to understand that the mainspring of sex inequality is misogyny and the mainspring of misogyny is sexual sadism."

Catherine MacKinnon, Feminism Unmodified (Harvard, 1987), 5.

(5) "In the years between 1780 and 1832 most English working people came to feel an identity of interests as between themselves, and as against their rulers and employers."

E.P. Thompson, The Making of the English Working Class (Vintage, 1966), 11-12.

(6) "It is precisely the dual character of society in terms of objective facticity *and* subjective meaning that makes its reality *sui generis*."

Peter L. Berger and Thomas Luckmann, The Social Construction of Reality (Anchor, 1966), 18.

(7) "Our thesis is that the idea of a self-regulating market implied a stark utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man [*sic*] and transformed his surroundings into a wilderness. Inevitably, society took measures to protect itself, but whatever measures it took impaired the self-regulation of the market, disorganized industrial life, and thus endangered society in yet another way. It was this dilemma which forced the development of the market system into a definite groove and finally disrupted the social organization based upon it.

Karl Polanyi, The Great Transformation: The Political and Economic Origins of Our Time (Beacon Press, 1944), 2-3.

PURPORTED LAW-REVIEW THESIS STATEMENTS

Of the seven articles in this edition of a leading law review, only two stated a thesis. Which ones?

(1) “This Article presents an outline of considerations for addressing the constitutional questions presented by involuntary medication of the pretrial criminal detainee, and suggests several components for a new standard upon which the Court might settle.” 2000 Wisc. L.Rev. 307

(2) “In this Article we will examine a number of previously unexplained or uncategorizable cartels that can be explained by this construct [*supra*].” 2000 Wisc. L.Rev. 943

(3) “[T]his article proposes that Congress reinstate the stock-for-debt exception for corporations that are insolvent or in bankruptcy . . . such a proposal will harmonize the bankruptcy policy of rehabilitating financially distressed corporations with the tax policy fo ensuring that true economic income is subject to federal taxation.” 2000 Wisc. L.Rev. 1005

(4) “[O]utcomes that the jurors reached in our various experimental conditions suggested that they were responsive to the detailed racial dynamics of individual cases – what we came to think of as the *racial ecology* of the courtroom.” 2000 Wisc. L.Rev. 1187

(5) “This Article urges Congress to expand [Individual Retirement Accounts] to permit current and former welfare recipients to save for the acquisition of needed household durables and reliable automobiles.” 2000 Wisc. L.Rev. 1225

(6) “This Comment argues that the Seventh and Ninth Circuits’ approach in *Smart and Lumber Industry*, particularly in their analysis of federal statutes of general application, is flawed.” 2000 Wisc. L.Rev. 1294

(7) “This Comment proposes a new legal theory under which Wisconsin governors could sue to enforce their executive orders and a new test that the Wisconsin Supreme Court should employ to determine whether a particular executive order is constitutionally valid . . . Part II examines . . . Part III analyzes . . . Part III also examines . . . Finally, Part IV concludes that . . . “ 2000 Wisc. L.Rev. 1324

Only #3 and #4 state theses. Why?

McEVOY'S RULE OF FIVES: PARAGRAPH VERSION

The ideal paragraph contains five sentences. The topic sentence almost always comes first and states as clearly as possible the point that the paragraph makes, just as the first sentence of this paragraph did. The three middle sentences of the paragraph follow the topic sentence in some rational order and substantiate it with examples, analysis, or other kind of development; if written clearly, middle sentences may employ conjunctions or subordinate clauses to put across complex ideas without breaking the basic form. Every well-written paragraph ends with a “clincher” sentence that in some way signals completion of the paragraph’s point and places it in context, either by restating the topic sentence, relating the topic back to the thesis of the writing as a whole, or by providing a transition to the paragraph that follows. While good style may require a writer to vary this basic form occasionally, the five-sentence model captures the Platonic essence of the paragraph and most effectively accomplishes its purpose, which is to state a single idea, in sequence, discretely and comprehensively.

Summer

I like summer for three reasons. Let me tell you why.

First, I like summer because you have NO SCHOOL!

Second, I like summer because you have NO HOMEWORK!

Lastly, I like summer because of the 4TH OF JULY.

In conclusion, these are the reasons why I like SUMMER!

BY, Frannie McEvoy

4/6/05

My dad is the best dad in the world. He is kind to me and reads and plays with me. He buys me nice things and he's very smart. I love my dad!

McEVOY'S RULE OF FIVES: SHORT PAPER VERSION

The number three seems to play some fundamental role in human consciousness: in Western culture, for example, there are the three branches of government in Madisonian constitutionalism, the Holy Trinity in Christianity or, indeed, Huey, Dewey, and Louie. McEvoy's Rule of Fives harnesses this cosmic insight to the pursuit of effective writing, whether of term papers, business correspondence, or prize-winning dissertations. The Rule (and the thesis of the writing you now hold in your hands) is this: the most effective writing makes its point in three analytical steps, plus an introduction and a conclusion to make five steps in all. The basic model consists of a short paper made up, *naturellement*, of five paragraphs: an introduction, three body paragraphs, and a conclusion. Following this easy model will pay significant dividends in the clarity and forcefulness that it lends to written work of any kind.

The introductory paragraph must accomplish a number of things. It must, first, orient the reader to time, setting, issue, and so on, so as to focus her attention on the problem at hand. Most important, the introductory paragraph should state the paper's thesis as clearly as possible, preferably in a simple declarative sentence with an active verb. Typically, effective introductions also sketch out the course

of the paper's argument in some way, perhaps by summarizing the points of each of the three paragraphs that make up the paper's body or simply by hinting at the sequence of parts in the way that the fourth sentence of the paragraph preceding this one did. The ultimate success of any writing depends crucially on a well-crafted introduction.

The body of the paper ideally consists of three paragraphs, each one constructed according to McEvoy's Rule of Fives, Paragraph Version. Each paragraph should develop one step in the paper's argument succinctly, thoroughly, and in proper sequence. Depending on what kind of argument the writer intends to make, the three body paragraphs might collectively make up a comparison/contrast, an analysis, or a dialectic consisting of thesis, antithesis, and synthesis. In a short paper each body paragraph might constitute one item in a list, although this strategy entails risks because – beware – a list does not make out a coherent argument. In any event, each paragraph must express its own argument that proves the thesis.

The paper's concluding paragraph should finish the argument. At a minimum, the conclusion should reiterate the thesis of the paper, not only to remind the reader of what, exactly, the paper meant to prove, but also to provide a

rhetorical signal of completion and closure. The conclusion should also recapitulate the paper's argument, again possibly by paraphrasing or in some other way referring back to the topics of each of the body paragraphs: sophisticated writers will not do this didactically but will find some way to make the structure and style of the writing accomplish the purpose. Good conclusions also move the reader's concentration out of the writing's highly structured world and back into her own, now better-organized one by drawing a moral, placing the thesis in some broader context, or some other such device. In the conclusion, the writing gets its last crack at the reader's attention and should leave her with a lasting impression of the author's point and its relevance to her life.

The Rule of Fives will serve not only for short papers but for longer writings as well. The thesis, of course, must control both the structure and the content of the argument, and different theses may call for slight variations in the basic form. McEvoy's Guaranteed Foolproof Model for Writing Academic Papers explains how to use the basic form for papers of any length, but the essence of the form – introduction, three-part body, and conclusion – fits all kinds of writing and always works well because it harnesses the magic of the number three. Students sometimes chafe under the form's discipline and have even, on occasion,

denounced it as fascistic and oppressive of their individuality. Take or leave it: just remember that Mozart never stopped practicing his scales and arpeggios and that even a Jackson Pollock painting qualifies as “art” because it has *structure* to it: we know, somehow, that a grown-up did the work.

TEST PARAGRAPH, RULE OF FIVES SHORT PAPER

You can test the coherence of any writing by stringing together the main points to see if they make out a coherent paragraph. The main points of the writing, as you know by now, all come in single declarative sentences with active verbs. If they fit together, if they “track” from beginning to end, if they make out an argument, then the writing as a whole is probably okay. For example, in my “Rule of Fives” short paper, take the thesis sentence of the paper first, then tack on the topic sentences from each of the three body paragraphs, and finally the topic sentence of the concluding paragraph. I have underlined these sentences in the five-paragraph essay. This is what you get:

The most effective writing makes its point in three analytical steps, plus an introduction and conclusion to make five steps in all. The introductory paragraph should accomplish a number of things. The body of the paper ideally consists of three paragraphs, each one constructed according to McEvoy’s Rule of Fives. The paper’s concluding paragraph should finish the argument. The Rule of Fives will serve not only for short papers but for longer writings as well.

Note that this is a standard five-sentence paragraph with a topic sentence, three body sentences, and a clincher sentence. Note that it “tracks” from beginning to end and makes out the argument stated in the topic sentence. This indicates that my five-paragraph short paper makes out an argument.

You can use this test effectively at any scale of writing, from five-paragraph thesis abstracts to whole books. See Step #2 of McEvoy’s Guaranteed Foolproof Model for Writing Academic Papers, *infra*.

LAW REVIEW THESIS PARAGRAPHS

The next two pages contain paragraphs from the introductions to two recent law review articles. Only the full paragraph on each page is of interest here. Each of the paragraphs purports to state the thesis of the article and to lay out the organization that the argument will follow. The form resembles the test paragraph with which you just worked, and comes at the end of the introduction to the article. One of them does a much better job. Why?

manufacturers' actions. While other jurisdictions have had the opportunity to deal with this type of litigation with varying results, the Wisconsin Supreme Court has yet to rule on such a case. However, the court's doctrine of non-support suggests that it would likely reject such a lawsuit, thereby leaving housing officials, landlords, and health agencies without support to combat the negative impact of its decisions in this area of the law.

Nonetheless, since the court's rulings have left the housing industry with few other choices, lawsuits against the paint industry are likely to arise. To that end, the likely outcome and consequences of that litigation are the subject of this Comment. Part I of this Comment will take a more thorough look at the history of lead paint in Wisconsin and in the United States as a whole. Part II will focus on the doctrine that has been created in Wisconsin and its effects on landlords and the rental housing industry. Part III will then take a look at litigation against the lead paint pigment manufacturers, and analyze the feasibility of such a suit under Wisconsin's risk contribution theory of market share liability. Finally, Part IV will discuss the need for remedies, the impact of the court's prospective decision, and the workability of other non-judicial solutions to the lead paint poisoning problem. This Comment concludes by suggesting that a lawsuit against the lead paint pigment manufacturers under Wisconsin law, and that, while the current court is not likely to sustain such a suit, in the interest of fairness and accountability, it should.

I. BACKGROUND

A. *The History and Effects of Lead-Based Paint*

When unsafe levels of lead are introduced into the body, either by ingestion, inhalation, or absorption, a chain reaction is set off in the body's systems that can lead to coma and even death.¹⁴ Because the body is not able to metabolize the lead, the lead is stored in the body's tissues, bones, and fluids,¹⁵ in particular the blood stream and in cerebrospinal fluid, which results in pressure on the brain.¹⁶ In cases of high-level exposure to lead, this pressure can cause severe neurological damage including convulsions, seizures, and severe irreversible mental retardation.¹⁷ Even low-level lead exposure can result in devastating and

14. THOMAS MATTE, CHILDHOOD LEAD POISONING: EXPOSURE SOURCES, TOXICOLOGY, AND PUBLIC HEALTH IMPLICATIONS OF RECENT RESEARCH 3 (1992); CDC REPORT, *supra* note 2, at 2.

15. Alexandra Greeley, *Getting the Lead Out . . . of Just About Everything*, 25 FDA CONSUMER, July-Aug. 1991, at 27, 27.

16. Edmund J. Ferdinand, III, *Asbestos Revisited: Lead-Based Paint Toxic Tort Litigation in the 1990s*, 5 TUL. ENVTL. L.J. 581, 586 (1992).

17. *Id.*

becomes what, if any, impact the constitutional right to present a defense has on the acceptance-of-responsibility/entrapment discussion.

This Note argues that Section 3E1.1 of the Federal Sentencing Guidelines must be interpreted to allow defendants who claim entrapment at trial to remain eligible for the acceptance-of-responsibility adjustment. To interpret Section 3E1.1 in any other way would run afoul of defendants' constitutional right to present a defense. Part I argues that the entrapment defense does not put factual guilt at issue; instead the entrapment defense challenges whether the statute should apply to the defendant's conduct. Part II contends that the legislative intent in creating the sentencing guidelines in general and the acceptance-of-responsibility adjustment in particular are furthered by requiring sentencing judges to make individualized assessments about the extent to which defendants have accepted responsibility. Part III argues that the use of the entrapment defense as an automatic bar to the receipt of the acceptance-of-responsibility adjustment is a penalty for the exercise of the defendant's constitutional right to present the entrapment defense. This Note concludes that because the assertion of entrapment and acceptance of responsibility are not inherently inconsistent, the use of a per se rule barring the adjustment is a violation of the defendant's constitutional right to present a defense.

I. THE ENTRAPMENT DEFENSE DOES NOT DISPUTE FACTUAL GUILT

Sentencing courts that prohibit defendants who unsuccessfully claim entrapment at trial from receiving the acceptance-of-responsibility adjustment do so by mischaracterizing the nature of the entrapment defense. In any criminal case, the government must prove that the defendant committed a criminal act, the "actus reus," and that the defendant had a culpable state of mind, or "mens rea," in order to obtain a conviction.²⁴ Both the actus reus and mens rea are components of factual guilt. Some courts have found the entrapment

compulsory process for obtaining witnesses in his favor, and the have the Assistance of Counsel for his defence.

U.S. CONST. amend. VI.

24. See Ariel L. Bendor, *Prior Restraint, Incommensurability, and the Constitutionalism of Means*, 68 FORDHAM L. REV. 289, 339 (1999) (explaining that in order to hold a defendant criminally liable, it must be shown that he "was aware of his conduct and the circumstances in which it was performed" (citing Alan C. Michaels, *Acceptance: The Missing Mental State*, 71 S. CAL. L. REV. 953, 958-59 (1998))). "The Constitution limits the state's power to create strict liability offenses; that is, offenses that do not include a mental element." Bendor, *supra*, at 339-40 (citing Alan C. Michaels, *Constitutional Innocence*, 112 HARV. L. REV. 828, 830 (1999)).

Schumpeter | Sticking together

Advice on managing partnerships, courtesy of Keith Richards and Michael Eisner



FEW people will read Keith Richards's book, "Life", for its insights on business. There are far more exciting things to learn about. Where did Mr Richards first have sex with Anita Pallenberg? (In the back of his Bentley, somewhere between Barcelona and Valencia, apparently.) What are his reflections on the mayhem at the Altamont concert? ("If it hadn't been for the murder, we'd have thought it a very smooth gig.") How did he survive all those years of self-medication? (He took the finest heroin and cocaine, and avoided "Mexican shoe-scrapings".)

But "Life" does nevertheless throw light on one of the most intriguing problems in business—how to keep a creative partnership alive. The music business "is one of the sleaziest businesses there is", Mr Richards argues, only one step above gangsterism. Most partnerships, from Lennon and McCartney on down, are destroyed by a lethal cocktail of ego, greed and lust. But, for all their ups and downs, Keith Richards and Mick Jagger have been in business together for half a century.

Most business pundits have little interesting to say about partnerships. Journalists focus on solo superheroes—all those mighty chief executives and mould-breaking entrepreneurs. Management gurus fixate on the next big trend in such areas as innovation or business models. But there are signs that the subject is starting to get the attention it deserves. Michael Eisner, a former boss of Disney, devoted a recent book to it, "Working Together: Why Great Partnerships Succeed".

A striking number of businesses were created by partners, despite all the fuss made over lone geniuses. Where would Goldman have been without Sachs? Or Hewlett without Packard? Arthur Blank and Bernie Marcus—known as Bernie Arthur to their colleagues—revolutionised the retail business when they founded The Home Depot. Bill Gates worked with a succession of partners while he was at Microsoft—most notably Paul Allen and then Steve Ballmer—and now runs his foundation with his wife, Melinda. ("I've never done anything solo", he told Mr Eisner, "except take tests".) Warren Buffett has worked with Charlie Munger, his sidekick, confidant and best friend, since before the Rolling Stones were formed.

It must be said that successful partnerships are rather rarer than failed ones: business people tend to be alpha types, and

money and fame can destroy even the solidest friendships. Disney thrived when Mr Eisner was running it jointly with Frank Wells. But when Mr Wells died and Mr Eisner tried to replace him with Michael Ovitz the result was a disaster: the rows prompted key people to leave, and Mr Ovitz himself quit after 14 months, with a sizeable pay-off.

Dysfunctional partnerships seem to be particularly common in high-tech industries. Although Google's Larry Page and Sergey Brin remain so close that they share an office, Facebook and Twitter have both been plagued by feuds between founders: Twitter's Evan Williams failed to get on with Jack Dorsey, and Mark Zuckerberg has a testy relationship with Facebook's other surviving founder, Dustin Moskovitz.

There are few iron rules on why some partnerships succeed where most fail. Messrs Buffett and Munger seem to get along effortlessly, as if joined by a chemical bond. Mr Gates, however, has had to work at his partnerships: after leaving the chief executive's chair at Microsoft he almost drove Mr Ballmer to distraction and the two had to make peace over dinner in 2001. But Mr Eisner argues that there are some general principles that increase the chances of success. Partners need to be able to trust each other absolutely. Mr Eisner notes that many successful partners split the profits down the middle regardless of their contribution to particular projects. Partners also need to possess a delicate balance between similarities and differences. A striking number of successful partners combine similar backgrounds with very different attitudes to fame: Messrs Buffett and Munger are Midwesterners who grew up a few miles from each other. But Mr Buffett adores the limelight whereas Mr Munger prefers the shadows.

Not fading away

Mr Richards echoes many of these arguments. He also has some good advice on how to repair your partnership after it has been torn apart by money and fame. Messrs Jagger and Richards enjoyed the solidest partnership in the music industry: "Glimmer Twins", as they called themselves, who had fallen in love with American blues as teenagers in London. Mr Richards laid down the riffs and Mr Jagger provided the vocal pyrotechnics. But time took its toll. Mr Richards's decision to give up heroin destroyed the delicate division of labour in which Mr Jagger took care of the details while Mr Richards took the drugs. Mr Jagger started to refer to the Stones as "his" band. He even performed the group's songs on solo tours. A formal break-up looked likely.

But in 1989 the two decided to solve their problems in the same businesslike way as Messrs Gates and Ballmer. They met on neutral turf—Barbados—and thrashed out their differences. Three things helped them to succeed where so many other bands have split: their "under-rooted friendship", as Mr Richards puts it; forged in London in the 1960s; their recognition that they were much better together than apart (who remembers any of their solo work?); and their mutual love of money.

There are clearly still tensions between the two: Mr Richards takes a perverse delight in mocking Sir Mick's "tiny todger", for example. But after 50 years as partners Mick and Keith still recognise that "I pull things out of him; he pulls things out of me." At a time when the French are griping about raising the retirement age to 62 these doughty senior citizens (Mick is 67, Keith 66) are contemplating yet another world tour. ■

“Schumpeter: Sticking Together,” The Economist, v. 397 no. 8708 (13 November 2010), p. 80

topic: book review of Richards, Life, and Eisner, Working Together.

outline:

INTRO (¶¶ 1-2): gets reader’s attention, orients to the issue, starts easy and fun. Note that ¶1 has five sentences (not counting parenthetical ones, which attach to preceding sentences)

Thesis: “But Life does throw light on one of the most intriguing problems in business – how to keep a creative partnership alive.” (Affirmative statement, even though not as substantial as an academic writing requires. Still, it captures the point of the article, it’s non-trivial on its face, it makes the reader say, “Oh? Tell me more.”)

PART I (¶¶ 3-4): Partnerships are an important but under-studied part of business.

Thesis: “Most business pundits have little to say about partnerships.”

PART II (¶¶ 5-6-7): Successful partnerships are hard to make.

Thesis: “It must be said that successful partnerships are rather rarer than failed ones.”

PART III (¶¶8-9): It’s also hard to fix partnerships once they get into trouble.

Thesis: “[Richards] also has some good advice on how to repair your partnership after it has been torn apart by money and fame.”

CONCLUSION (¶10): first sentence both refers back to Part III and makes a joke, which points back to the introduction and signals an end of the writing. Second sentence points to the essence of successful partnership (restates the thesis). Third sentence suggests a “so what?” and draws connection to the broader world outside the subject of the writing.

generally:

note the symmetry of the structure

note that the “test paragraph” works (writing materials, p.14)

note the efficiency, elegance of the introduction and conclusion. Refer to Rule of Fives (short paper version)

note the paragraphing: all roughly equal in length, each one has a clear topic sentence at the beginning, each one covers a discrete step in the argument, in logical sequence, each one crafted tightly, exactly the right info in exactly the right order

note the perfect grammar, syntax, diction: crystal clear from start to finish. You never have to read a sentence twice.

OUTLINE OF HAMILTON, THE FEDERALIST #78

In taking notes on The Federalist #78 for my Legal History class, I noticed that Hamilton's discussion of the benefits of life tenure on good behavior for federal judges fits the rule-of-fives model very nicely. I don't suppose I should have been surprised, inasmuch as The Federalist Papers are not only some of the most important writings in our culture but also models of the essay form as Montesquieu and others invented it in the 18th Century. I have marked the different parts by paragraph numbers in the edition that I use; other editions may vary. The Federalist #78 is a very powerful writing: read it yourself, make your own outline, and you'll see why.

¶1 Introduction

Now (at end) we examine the judiciary department. Divides the subject into three: (1) mode of appointing judges; (2) tenure of office; (3) relations between different courts.

Did (1) earlier; (3) will come after. this paper is about life tenure ("good behavior") for federal judges, provisions for their support, "precautions for their responsibility."

opposition to life tenure "is no light symptom of the rage for objection, which disorders their imaginations and judgments."

issue: whether tenure on good behavior is the right way to organize the judiciary

the "most approved" state constitutions do it this way, including New York

in monarchy life tenured judiciary is a barrier to despotism of the king; in republic a barrier to the "encroachments and oppressions of the representative body." Best device to secure "steady, upright, impartial administration of the laws."

Judiciary the "least dangerous branch." Has neither force nor will, only judgment

¶6 *thesis* of the paper: "The standard of good behavior for the continuance in office of the judicial magistracy is one of the most valuable of the modern improvements in the practice of government."

clinch (so what): much to fear from a judiciary that's subservient to the other branches

¶9 I. Independent Judiciary a Bulwark Against Legislative Encroachment

thesis: "The complete independence of the courts of justice is peculiarly essential in a limited Constitution" (i.e., contains specific limitations on legislative authority).

Only way to preserve these limitations is to have an independent judiciary with power to declare legislation contrary to the constitution void. Judiciary keeps legislatures w/in bounds of their authority.

¶10 A. Judicial review is confusing because it looks like judicial review implies the superiority of the judiciary. This not true.

No legislative act contrary to the Constitution can be valid. Otherwise would mean that the representatives of the people are superior to the people themselves. (Constitution represents the people, who are sovereign – not the legislature as in England).

¶12 B. The Constitution is the fundamental law, issued from the people. judiciary's job is to speak for the people if legislature exceeds its authority, interpose itself between the legislature and the law. Constitution is superior to the legislature, constitution is a law, interpreting the law is the peculiar job of the judiciary.

Doesn't mean that the judiciary is superior to the legislature, only means that the power of the people is superior to both. Where the will of the legislature is contrary to the will of the people, judiciary should stand with the people.

if two statutes conflict with each other, common construction is to prefer the later one in time. But that's just if the conflicting laws are equal in authority.

opposite when conflict is between fundamental and derivative law. If a particular statute conflicts with the Constitution, courts must defer to the Constitution

¶13 C. This doesn't mean that courts are substituting their pleasure for that of the legislature. courts must declare the law, which means they exercise judgment, not will

clinch: so, if courts are to be bulwark of limited Constitution against legislative encroachments, this is the best argument for an independent judiciary with life tenure

¶18 II. Independent Judiciary a Guardian of Individual and Minority Rights

thesis: "The independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which . . . sometimes disseminate among the people."

A. Courts must protect fundamental law from legislative invasions instigated by the majority.

fundamental principle of republican government is right of revolution. But that doesn't mean you do it whenever a majority feels like it, when "momentary

inclination happens to lay hold of a majority, incompatible with the provisions of the existing Constitution." (compare "faction" discussion in #10).

Here you need "uncommon fortitude" of judiciary willing to oppose the majority

¶19 B. Courts must guard against injury to private rights of particular classes by unjust and partial laws.

Benefits of integrity and moderation of the judiciary already felt in more states than one. Rule of law important for all

firmness of judiciary will discourage legislatures from exceeding authority. effect will be more important to character of new government “than but few may be aware of.”

¶20 C. Can’t expect “inflexible and uniform adherence” to rights of Constitution and individuals from judges who hold office by temporary commission. to the rights of the Constitution, and of individuals,”

Too great a tendency to consult popularity

clinch: have to make sure that judges consult nothing but the Constitution and the laws

¶21 III. Independent Judiciary Economizes Virtue

thesis: “There is yet a further and weightier reason for the permanency of the judicial offices, which is deducible from the nature of the qualifications they require.”

A. Law is hard and complicated. Courts must be bound by precedent and rules to avoid arbitrary discretion. Law must control the judges. Only a few men in society able to study and get competent knowledge of the law.

B. The number of people who have both knowledge and integrity (virtue) required for the job is fewer still, “making the proper deductions for the ordinary depravity of human nature”

C. Temporary appointments would discourage best people from leaving “lucrative line of practice” for the bench, leave it in hands less able/qualified to do job “with utility and dignity”

clinch: the problems of a politically-appointed bench would be greater than they would appear at first sight

Conclusion

¶22 *restate thesis:* no doubt, then, that the convention acted wisely in copying those states that have judicial tenure on good behavior.

Plan would have been “inexcusably defective” had they not done so.

clinch: “The experience of Great Britain affords an illustrious comment on the excellence of the institution.”

RULE OF FIVES ANALYSIS EXERCISE

Edsall, "How Did Conservatives Get This Radical?" (NYT 9/24/13)

This exercise should take no more than ten minutes in all.

First, read the accompanying article through once, carefully. You'll note that, even though the article does not disguise the author's personal sympathies, it nonetheless makes a coherent, analytical, nonpartisan point about its subject. What is that point? Find the one sentence in the article's introduction that expresses that point and underline it.

Then, go back over the article and mark out the structure in the margins. You'll discover that, even though the article is written (as most newspaper articles are) in one-sentence paragraphs, it actually has the five-part structure that we have discussed: it has an introduction with a clear thesis, three discrete sections in the body to make out the argument, and a conclusion to tie it off. The writing is not perfect (even professionals make mistakes sometimes); the mistakes are instructive, however, and we can discuss them later.

For now, please fill in the blanks below:

1. The article's thesis sentence begins on line _____.
2. The first body section (I) begins on line _____.
3. The second body section (II) begins on line _____.
4. The third body section (III) begins on line _____.
5. The article's conclusion begins on line _____.
6. Which one of the body sections *does not* support the argument? _____.

1

2 September 24, 2013, 10:20 pm

3 **How Did Conservatives Get This Radical?**

4 *By THOMAS B. EDSALL*

5

6 Whether they did so out of conviction or fear, House Republicans bent to the will of the
7 dominant Tea Party faction of their party and voted 228 to 1 on Sept. 20 to make continued
8 financing of the federal government contingent on defunding the Affordable Care Act.
9 Whatever you think of this strategy, the tactics are radical. How can Republicans, courting a
10 full-fledged fiscal crisis, claim to be conservative?

11 Peter Wehner, who held key posts in the last three Republican presidential administrations,
12 declares that they cannot:

13 This is not conservatism either in terms of disposition or governing philosophy. It is,
14 rather, the product of intemperate minds and fairly radical (and thoroughly
15 unconservative) tendencies.

16 The Wall Street Journal editorial page, normally a principled advocate of belligerent
17 conservatism, argues that House Republicans are on a path to defeat: “Kamikaze missions
18 rarely turn out well, least of all for the pilots,” one editorial pointed out:

19 We’ve often supported backbenchers who want to push G.O.P. leaders in a better
20 policy direction, most recently on the farm bill. But it’s something else entirely to
21 sabotage any plan with a chance of succeeding and pretend to have “leverage” that
22 exists only in the world of townhall applause lines and fundraising letters.

23 Wehner and the Journal’s editorial writers might gain insight into the collective psyche of
24 their right flank from unexpected sources: the sociologists, psychologists and political
25 scientists who are exploring what they see as the core differences between conservatives and
26 liberals.

27 Since the emergence of intensified political polarization in the late 1970s, there has been a
28 burst of studies examining linkages between ideology, partisan identification and moral
29 values.

30 Much of the more recent research in this vein suggests that Tea Party conservatives and their
31 political leaders in and out of Congress are a special subset within the broader universe of
32 conservatives.

33 Christopher Parker and Matt Barreto, who teach political science at the University of
34 Washington, recently published “Change They Can’t Believe In: The Tea Party and
35 Reactionary Politics in America.” They contend that there are two major strands of
36 conservatism in America: what they call “non Tea Party,” “traditional” or “real”

37 conservatism; and what they describe as “Tea Party,” “reactionary” or “pseudo-
38 conservatism.”

39 In response to my inquiry, Parker wrote in an e-mail:

40 Ultimately, a conservative — in the classical sense — wishes to preserve a stable
41 society. Of course, this includes stable institutions and observing the rule of law. For
42 these reasons (and several more), a conservative prefers evolutionary, more
43 incremental change to revolutionary change: revolutionary change threatens the
44 stability conservatives seek to conserve. Hence, conservatives reluctantly accept
45 change — so long as it isn’t revolu-tionary. They do so for the sake of stability and
46 order. Moreover, for the sake of order and stability, real conservatives are amenable
47 to political compromise with their opponents.

48 Conversely, according to Parker, reactionary conservatives are

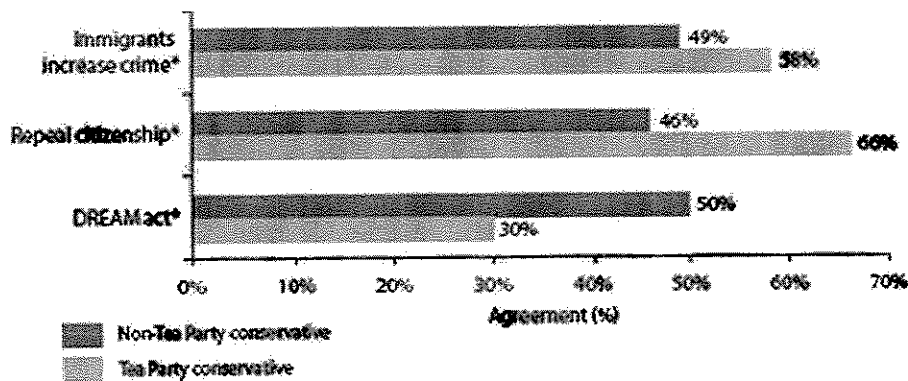
49 backwards looking, generally fearful of losing their way of life in a wave of social
50 change. To preserve their group’s social status, they’re willing to undermine long-
51 established norms and institutions — including the law. They see political
52 differences as a war of good versus evil in which their opponents are their enemies.
53 For them, compromise is commensurate with defeat — not political expediency.
54 They believe social change is subversive to the America with which they’ve become
55 familiar, i.e., white, mainly male, Protestant, native born, straight. “Real Americans,”
56 in other words.

57 Parker and Barreto conducted surveys to see if Tea Party conservatives differ from non-Tea
58 Party conservatives. As the graphs in Figures 1-3 show, the two kinds of conservatives
59 diverge significantly on key issues: immigration, civil liberties and in how they see President
60 Obama.

61

62 **Fig. 1. Support for immigrant equality by type of conservatism**

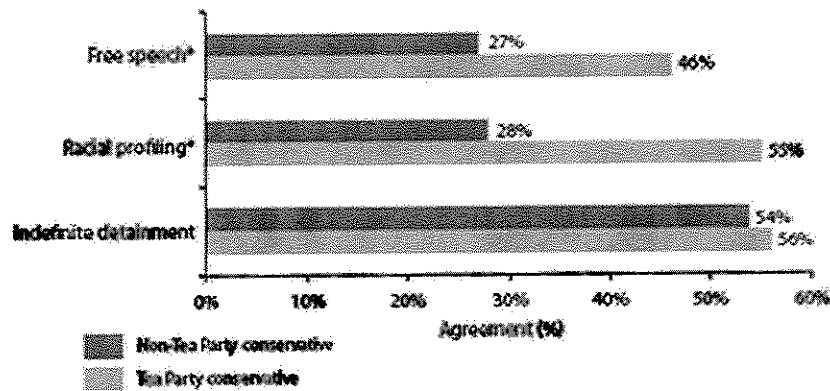
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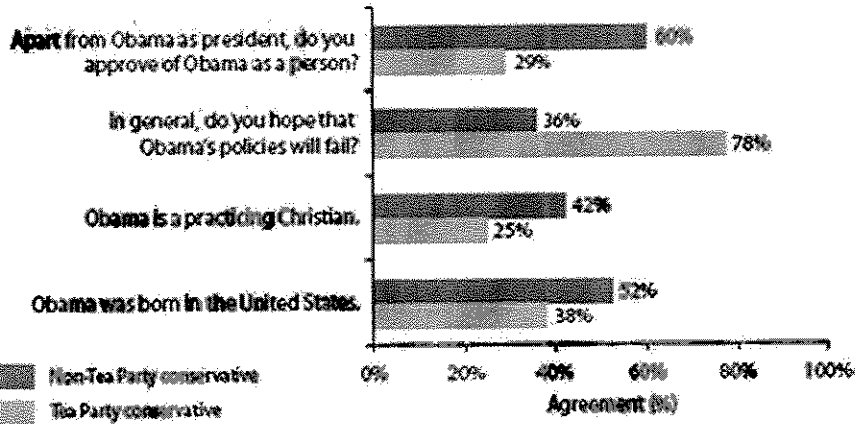
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65 **Fig. 2 Support for civil liberties among Tea Party and non-Tea Party conservatives**



66

67 **Fig 3. Attitudes toward President Obama**



68

69 A newly published book, “Our Political Nature: The Evolutionary Origins of What Divides
 70 Us,” takes a different tack in exploring the contradictory ideological positions of left and
 71 right. The author, Avi Tuschman, who earned a doctorate in evolutionary anthropology at
 72 Stanford and now works at the Inter-American Development Bank, contends that “the best
 73 cross-cultural predictor of left-right voting and party affiliation” is revealed by a 22-item test
 74 developed by Robert Altemeyer, an emeritus professor of psychology at the University of
 75 Manitoba.

76 Altemeyer’s questionnaire asks respondents to estimate their agreement or disagreement with
 77 statements like these:

- 78 • The established authorities generally turn out to be right about things, while the
 79 radicals and protestors are usually just “loud mouths” showing off their
 80 ignorance.
- 81 • Atheists and others who have rebelled against the established religions are no
 82 doubt every bit as good and virtuous as those who attend church regularly.

- 83 • The only way our country can get through the crisis ahead is to get back to our
84 traditional values, put some tough leaders in power, and silence the
85 troublemakers spreading bad ideas.
- 86 • Everyone should have their own lifestyle, religious beliefs, and sexual
87 preferences, even if it makes them different from everyone else.
- 88 • God’s laws about abortion, pornography and marriage must be strictly followed
89 before it is too late, and those who break them must be strongly punished.

90 Tuschman makes the case that Altemeyer’s questionnaire reveals three clusters of measurable
91 personality traits that correlate with political conservatism or liberalism:

- 92 1) Tribalism vs. xenophilia (an attraction to outsider groups); religiosity vs.
93 secularism; and different levels of tolerance of “non-reproductive sexuality”;
- 94 2) opposing moral worldviews concerning inequality, one based on the principle of
95 egalitarianism, the other based on ordered hierarchy, what people used to call “the
96 great chain of being”; and
- 97 3) perceptions of human nature, people who see human nature as more cooperative
98 vs. others who see it as more competitive.

99 John Jost, a professor of psychology and politics at N.Y.U., uses descriptive language
100 (language other social scientists characterize as unflattering) to describe conservatives and
101 flattering language to describe liberals. In “Political Ideology: Its Structure, Functions, and
102 Elective Affinities,” a 2009 paper, Jost and two co-authors write:

103 Specifically, death anxiety, system instability, fear of threat and loss, dogmatism,
104 intolerance of ambiguity, and personal needs for order, structure, and closure were
105 all positively associated with conservatism. Conversely, openness to new
106 experiences, cognitive complexity, tolerance of uncertainty, and (to a small extent)
107 self-esteem were all positively associated with liberalism.

108 James Sidanius, a professor of psychology at Harvard, working from a liberal perspective,
109 uses a measure he calls “Social Dominance Orientation” to describe “the extent to which one
110 desires that one’s in-group dominate and be superior to out-groups.”

111 An individual’s social dominance orientation ranking, according to research Sidanius has
112 conducted, derives from negative or positive responses to 16 statements. A person responding
113 positively to the first eight (1-8) questions and negatively to the second group (9-16) would
114 have a very high S.D.O. rating.

115 First Group: 1. Some groups of people are simply inferior to other groups. 2. In
116 getting what you want, it is sometimes necessary to use force against other groups. 3.
117 It’s O.K. if some groups have more of a chance in life than others. 4. To get ahead in
118 life, it is sometimes necessary to step on other groups. 5. If certain groups stayed in
119 their place, we would have fewer problems. 6. It’s probably a good thing that certain
120 groups are at the top and other groups are at the bottom. 7. Inferior groups should
121 stay in their place. 8. Sometimes other groups must be kept in their place.

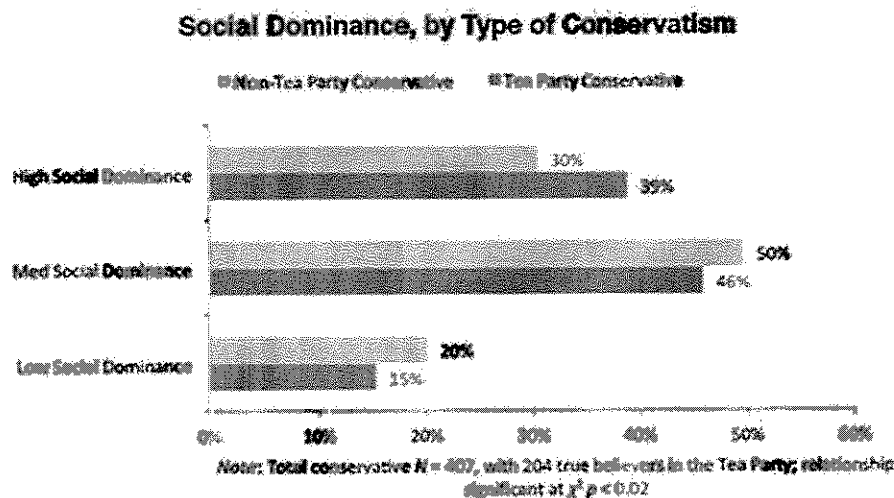
122 Second Group: 9. It would be good if groups could be equal. 10. Group equality
123 should be our ideal. 11. All groups should be given an equal chance in life. 12. We
124 should do what we can to equalize conditions for different groups. 13. Increased

125 social equality is beneficial to society. 14. We would have fewer problems if we
126 treated people more equally. 15. We should strive to make incomes as equal as
127 possible. 16. No group should dominate in society.

128 In their book, Parker and Barreto found a strong linkage between higher S.D.O. ranking and
129 Tea Party conservatives (“True Believers”). They write:

130 S.D.O. is a reflection of one’s “preference for inequality among social groups.” Someone who
131 has high levels of S.D.O. is likely to buy into the hierarchy-enhancing ideologies, ones that
132 resulting in the perpetuation of inequality. People who are low on S.D.O. are more likely to
133 promote equality. We contend that people high in S.D.O, people who are intent on keeping
134 subordinate groups down as a means of maintaining group-based prestige, are likely to
135 support right-wing movements and, therefore, the Tea Party.

136 The following graph (Fig. 4), provided to The Times by Parker, shows that there are more Tea
137 Party conservatives with high measured levels of social dominance orientation (39 percent)
138 compared with non-Tea Party conservatives (30 percent):



139
140 Mainstream conservatives trying to figure out how to extract their party from the hole their
141 more extreme colleagues are digging for them face a major hurdle: the dependence of the
142 national Republican Party on the votes of besieged whites, especially white Southerners.
143 Another signal of the intransigence of this core Republican constituency was a little noticed
144 development last week: the announcement that two Republican members of the House
145 bipartisan immigration reform group, Representatives John Carter and Sam Johnson, both
146 from Texas, had quit the reform effort. They joined Representative Raúl Labrador of Idaho,
147 who left in June. Representative Mario Diaz-Balart of Florida is the lone, and presumably
148 lonely, Republican on this ad hoc committee, which was once split evenly between the
149 parties.

150 There may be no way to overcome this hurdle except to wait. Until more white voters come to
151 terms with their status as an emerging American minority, the forces driving voters to support
152 Tea Party candidates and elected officials who adamantly reject compromise will remain
153 strong — and the Republican Party will remain fractured.

BUSINESS COMPLAINT LETTER, IN FIVE PARAGRAPHS

December 12, 2007

General Manager
Field's Jaguar - Land Rover - Volvo
6624 Seybold Road
Madison, WI 53719

Dear Mme/Sir:

Today I had my third irritating visit in a row at your service department and I thought I would write to tell you about it. I have a 2001 Volvo S60 T5 that I bought new at Smart's. It now has just over 100,000 miles on it and has given me little trouble.

- The first of my three irritating visits took place in early November. I was in for regular maintenance, plus a malfunctioning door lock. The tab was, in all, just over \$3,000. I picked up the car on a Saturday morning and got it home before I realized that the door in question would not open from the inside. Inasmuch as this was a safety issue, I brought the car back immediately. If your people had checked their work they would have noticed the problem and saved me a trip.

- The second visit came last week when my "check engine" light came on. I made an appointment for the next day and showed up a little early. The entry part of the service bay was a jumble of cars but I managed to squeeze in. Nobody greeted me so I closed the bay door myself. Both of the service rep offices had people in them; in one there was a person talking on the phone and in the other was another person working on his computer with the woman I usually encounter as the cashier. This person looked up, looked me in the eye, and went back to his work without acknowledging my presence. After about ten minutes a man in a jumpsuit, carrying a broom, asked me if I'd been helped yet. When I said "no" he went in to the office and spoke to the man on the computer, who then came out and took my car from me.

- The third visit was this morning, when my car developed a wobble on its way into work. Again, I closed the bay door myself. The service rep pointed out that one of the wheels had snow packed into it; we decided to wash the car and see if that took care of it. A moment later the rep came up to say that the part they'd ordered to fix the problem from the last visit had come in overnight and that they could install it while I waited. Perhaps an hour later another person came out to say that they'd already sold the part to somebody else, but that my wash was about done that they'd bring the car around front momentarily. Maybe a half hour after that I went back, collected the cashier along the way, and found my car waiting for me at the back entrance.

I'm getting the distinct feeling that the Volvo business doesn't matter to Field's, and in particular that the business of my 100k Volvo means even less. I notice, also, that I no longer get postcards asking me how my service visits went. My partner, whose BMW lease runs out in a few months, was getting enthusiastic about a new C70 Volvo from you. She now thinks that she'll stick with Zimbrick.

Yours sincerely,

Arthur F. McEvoy

KANTROWITZ'S FUNERAL ORATION: A TESTIMONIAL

I received by email the following testimonial from a satisfied customer who used the rule-of-fives model in an unusual context. Professor Kantrowitz is a member of the UW History Department. He regularly teaches research seminars to graduate students in History, to whom he distributes these materials. Kantrowitz is an exceptionally good writer himself, but confesses that the materials have influenced the way he does his work.

Never failed. Never will.

----- Original Message -----

Subject: testimonial

Date: Sat, 15 Mar 2008 13:41:03 -0500

From: Stephen Kantrowitz <skantrow@wisc.edu>

To: ARTHUR F F MCEVOY <amcevoy@wisc.edu>

Dear Art -

A few weeks ago I was called on to give a eulogy for my grandmother. She had passed quietly and easily at 97 after a great run; it was hard to imagine a better timed or managed death. So I was surprised when the eulogy evoked very strong reactions not only from family but from the rent-a-rabbi and others as well. This morning, at their urging, I sat down to turn my notes and memory of the occasion into a text; my wife-to-be, who missed the funeral and is a tough critic of my writing, loved it too. So I looked it over again and suddenly realized why it worked so well.

You saw this coming: the rule of fives.

Thanks.

Steve

MASTER CLASS IN PREPARING CONFERENCE PAPERS

Here is an algorithm for preparing a 20-minute talk, such as one might deliver to an academic conference, or on a job interview. It includes, first, a step-by-step process for putting such a talk together. There follows an actual script for a talk that I gave at the University of Virginia, which I prepared according to the instructions. I claim that this method will yield good results in any academic or business setting, whether the presentation is oral (as this one) or written.

Preparing the paper:

(1) The conference organizers invited me to participate. We agreed on the topic “Environmental Law and the Decline of the New Deal,” which was a problem I’d been working on.

(2) I then pondered what I wanted to say and tried to write down the basic point in one sentence with an active verb (notice how “Environmental Law and the Decline of the New Deal” (above) is *not* a sentence: it is thus a “topic” for the paper, and not a “thesis.” Every presentation, written or oral, *must* have a one-sentence thesis (a point or argument to be proven). I wrote each of several attempts down by hand on a blank sheet of paper. I came up with

"The decline of environmental law and the decline of the New Deal state generally are one and the same process."

It was neither perfect nor earth-shattering, and it hung on a “to be” verb, which is bad. It was a sentence, nonetheless, it expressed an idea, and it was good enough to start with.

(3) I wrote down three steps to the argument (I - II - III) in complete sentences (still on a yellow pad in a coffeehouse on State Street in Madison, Wisconsin). Once I decided that they made out an argument (they “tracked,” one-two-three), I went back and adjusted the thesis statement into what you see on the outline now. I then read the thesis sentence and each sentence (I - II - III) *seriatim*. Since they “tracked”, I knew I was still in business.

(4) I then filled in points A - B - C under each of the three main parts, first in sentence fragments and then, when they were all sketched in, in declarative sentences with active verbs. I then checked each of the three parts by reading the point (I, II, or III) and then the attached A - B - C *seriatim*. Each one of them tracked. Since I was back at the computer by then, I made minor changes in wording, rearranged the order of points here and there, and then re-checked each of the A - B - C sequences behind their main points and then the I - II - III sequence behind the big thesis. Everything tracked, so I knew that the structure of the talk was solid.

(5) I then added introductions, conclusions and transitions for each of the I - II - III parts, checked all the big steps, and read the whole thing through. It still tracked.

(6) I then filled in the outline with actual data, jokes, political invective, etc.

The whole process of preparing the outline (steps 2-4) took three or four hours. Pondering the problem (beforehand) and filling in the paper (afterward) took longer, of course, but the real work of preparing the presentation was in (a) coming up with the point, and (b) outlining the point. I do every one of my presentations (and every one of my writings) in exactly this way. You may judge its effectiveness for yourself. This paper eventually found its way into print at 46 Akron Law Review 881 (2013).

ENVIRONMENTAL LAW AND THE DECLINE OF NEW DEAL CONSTITUTIONALISM

Arthur F. McEvoy
University of Virginia Law School
October 7, 2005

INTRODUCTION: It is a time of transition for environmental law, as it is generally for the regulatory-welfare state that came into being during the New Deal, which reached the peak of its hegemony in the early 1970s, and which since then has come under sustained and increasingly effective attack from the right.

THESIS: Environmental law is an integral part of the constitutional order that came into being with the New Deal; its current decline entwines with that of the New Deal regime generally.

I. The current structure of environmental law came into being during a very brief period in the early 1970s, simultaneously with other reforms that we think of as culminating the New Deal era.

A. Most of the statutes, caselaw, and administrative reforms that we think of as typifying the modern regulatory welfare state appeared during the few years around 1973, at the same time as the cornerstones of the modern Environmental Law edifice.

B. Those who midwived the birth of Environmental Law were, for the most part, members of the same political coalition that reared the New Deal state to its maturity.

C. People who have written about the reforms of the late 1960s and early 1970s lump environmental and other initiatives together under such rubrics as “Beauty Health and Permanence” (Hays), “Public Interest Regulation” (Rabin), and “New Social Regulation” (Vogel).

Conclusion: Debate among environmental law writers as to whether the statutes of the early 1970s represented a “republican moment” of some sort or simply the normal working of interest-group politics; in any event the environmental initiatives of the period came knit into a much larger package of reforms.

II. Environmental law conforms in fundamental respects to the structure, the dynamics, and the organizing principles of New Deal constitutionalism generally.

A. Like New Deal law generally, environmental law works through a synthesis of expansive commerce-power authority and non-traditional (non-common law) rights trumps.

B. Like New Deal law generally, the main strategy of environmental law is to bring scientific expertise to bear on social problems, not directly as in the Progressive model, but mediated through agency procedures designed to promote public interest objectives.

C. Most fundamentally, environmental law rests on the assumption that “scientific expertise” and “the public interest” are real things that legal processes can identify and that legal agencies can (or should) bring to bear on events.

Conclusion: Defining characteristics of environmental law are those of New Deal government generally.

III. Environmental law has since the 1970s decayed along with the New Deal regime generally, under the same combination of internal contradictions and external pressures that have beset the larger New Deal order.

A. As in the case with New Deal regulatory law generally, competing and incompatible rights claims have increasingly gridlocked lawmaking and administration for natural resources and environment

B. The original structure of environmental law has eroded under the pressure of claims to traditional, common-law entitlements masquerading under the banner of cost-benefit or risk-benefit efficiency.

C. Since the New Right critique of government has become equal and opposite in power to the New Deal’s critique from the left, government’s regulatory/welfare functions have lost much of their former legitimacy and become vulnerable to the right-wing tactic of hollowing out from within.

Conclusion: The more “ecological” an agency’s mission (environmental protection, workplace safety, disaster management), the more vulnerable it has been to gridlock, subversion, and evisceration by anti-New Deal forces.

CONCLUSION: New Deal grew out of the effort to make corporate power responsible to the public interest in the advanced, complex, highly interdependent industrial society that the United States had become by the mid-twentieth century. Environmental law was a critical element of that campaign – indeed, in many ways, its apotheosis. Conversely, attacks on environmental law are at once part of the general assault on the New Deal state and its leading edge. The question has implications not only for our understanding of the period but for the political choices that confront us in a time of significant change.

McEVOY'S GUARANTEED FOOLPROOF MODEL FOR WRITING ACADEMIC PAPERS

What follows is a model architecture for writing academic papers. I have found this model extremely effective; if you wish, try it and see how it works for you. This is not the only way to write effective papers, nor is it the only pattern to which I personally respond favorably. What I *do* think essential in all writing is a clear idea and an orderly development. This is one way that I've found to do that efficiently. The model architecture itself appears after three pages of instructions for its use.

I swear: learn to use this model correctly and you'll never get another B on a paper.

Instructions for use:

1. Organize the material you have to work with, think about it, and come up with a *thesis statement* that expresses the idea you want to put across in the paper. This statement should be in *one* sentence, simple declarative, with an active verb. Once you have this sentence in your head, *write it down* on a blank sheet of paper, look at it objectively, and decide

- (a) whether it says exactly what you want to say, and
- (b) whether it's good enough to commit your paper to.

This is the hardest part of the whole enterprise, and should take the most time (likely more time than the writing itself, if you do it right). It is also by far the most important step, because in order for a paper to work it must have one and only one main idea. If you can't express the idea clearly in one sentence, the idea is not clear to you: if it's not clear to you, there is no way in which it will be clear to your reader. Check this out in the things that you read: you will find that papers, articles, books, etc., that do not have one thesis, clearly expressed at the outset, don't hang together. On the other hand, once you have this sentence the rest is easy because you must devote the rest of the enterprise to the single purpose of proving that statement and only to that proof.

2. Once you have your thesis, decide on a *manageable number of logical steps* to your proof. Three is a good number, four is okay, five is probably too many for your reader to keep in her head. Each one of these steps will form one main section of your paper. Each step should itself be a coherent idea, so develop a mini-thesis statement for each section and *write it down*. Apply to each the same scrutiny you gave to your thesis statement in Step #1.

3. Write down the thesis statement, followed by each mini-thesis in order. You now have the basic outline of your paper. *Check it for coherence* by reading them in order, as if they made up a single paragraph. Do they constitute a logical proof of your argument (in whatever form you choose: dialectic, syllogism, comparison-contrast, etc.)? If the problem is in one of the steps, re-formulate the mini-thesis for that step. If the problem is in the main thesis, go back to Step #1.

4. *Allocate space* to each step of the argument. In a 15 page paper, e.g., give each of the three body sections 4 pages, plus 1-2 pages each for the introduction and conclusion. *Write* the number of pages in the margin next to each of the mini-thesis statements. Allocations in the model attached assume a 15-page paper.

5. Apply Steps #2 and #3 to each one of your mini-thesis statements. Each step to your development of each mini-thesis should, again, be in a single sentence, simple declarative, with an active verb. As you outline each body section, *check it for coherence*: do the three or four steps to the development of each section constitute a whole proof of the mini-thesis claim? If the problem is in one of the steps at this level, change it. If the problem is with the mini-thesis of the section, go back to Step #2. If the problem is in your formulation of the paper's main thesis, go back to Step #1.

Note: it is very important that you proceed in a systematic way, checking the coherence not only of the section but of the outline as a whole each time you change something. Do not proceed until you are happy that the whole thing hangs together thus far. If you skip steps, the paper will not cohere.

6. If this is a 15-page paper (see note below), each of the statements from Step #5 will be a topic sentence for one or two paragraphs. Now, *plug in your data* (facts, quotes, books, etc.) in the right order underneath each of these statements. Check for coherence, step by step, back up the order.

7. Each main section of the paper should have its own introduction and conclusion, probably one paragraph each. See the model below for the rhetorical and architectural functions that these must serve.

8. You are now ready to write prose, and not a moment before this. By this time, the paper is so coherently organized and thoroughly outlined that you can devote your full attention to writing style (grammar, syntax, flourish, etc.). If you've been systematic about the process thus far, you'll be amazed at how easy it is to write clearly at this point. You don't have to worry about what to put in and what to leave out because the time for deciding that is long over. If, as you go along, you find the paper getting away from you, *stop*. Go back up the sequence, step by step, to find out where the mistake is, and change it. Check the whole paper for coherence, as above, with each change that you make.

9. Remember that each paragraph in the paper must represent a complete, coherent idea, in proper sequence in the argument. Each should have a topic sentence (long since formulated into one simple declarative sentence with an active verb), and a concluding or "clincher" sentence that indicates closure, restates the topic of the paragraph, and provides a transition to the next step in the argument. Sometimes the transition can go in the next paragraph's topic sentence, but each step should have some kind of transition to keep your reader moving along. Remember that the structure of the paper should be coherent enough and clearly enough stated in the introduction that your reader knows where she is in the sequence of the argument at every step of the way. Transitions between paragraphs and especially between sections can help this by referring back to the main thesis in some way.

10. *Proofread* the whole thing for style: eliminate passive verbs, grammatical errors, infelicities of style, redundancies, etc. If you've followed the steps properly, the paper should hang together and flow smoothly, with no logical gaps in the argument and no extraneous information.

Note: this model will serve for a 15-page paper. If the assignment is longer than that, simply embed another series of Steps #2 through #6 until you get to the right length. A book chapter or an MA thesis, for example, will have two or three or four 15-page papers in it, one for each section listed here at Step #2. A 5-page paper will go to data entry at Step #5 instead of #6 in this model. A dissertation will consist of a manageable number of parts, each divided into a manageable number of chapters, etc.

Note: if this looks didactic or overly-disciplined to you, remember that your job here is to communicate the proof of an argument to a reader unfamiliar with the material. Think of it as a plastic art: every painter and every sculptor starts with a sketch built on a grid. Listen to a Mozart sonata and you'll hear the same thing: one main theme that you're never able to forget, developed in a nice, tidy, three-part structure, the relationship of each part to the main theme perfectly clear. That's why a Mozart sonata works so well: a catchy tune (thesis) and an elegant structure. Like music and unlike the plastic arts, discursive communication (written or spoken) is imprisoned in time: it necessarily proceeds one idea at a time, one sentence at a time, with subjects and verbs and objects. The function of writing style is to make the whole thing flow smoothly and elegantly; the elements of style (parallelism, contrast, metaphor, etc.) can also be very powerful carriers of meaning. But all the style in the world won't save a paper that has no coherent thesis and no coherent structure to it.

Note: For an example of how this works in practice, take a look at A. McEvoy, The Fisherman's Problem (Cambridge, 1986): you'll see every one of these steps in each section, each chapter, each part, and the book as a whole. Another example is the extremely well-crafted piece by T. Haskell, "Capitalism and the Origins of the Humanitarian Sensibility," American Historical Review, 90 (1985): 339, 547. It works. Trust me, I'm the professor.

The model architecture follows overleaf. This is what your outline should look like by the time you get to Step #8 in the instructions.

MODEL ARCHITECTURE

INTRODUCTION (ca. 2-3 pp.)

A. Orient your Reader to Time, Place, and Issue (1 paragraph)

B. State the Problem (1 paragraph)

C. State the Thesis: one sentence, declarative, with an active verb and to which the rest of the paper is *ruthlessly* subordinated in every detail. **Maxim:** *Subordinate Your Detail To Your Thesis.*

D. Lay Out the Organization of your paper: One good way to do this is to paraphrase the thesis statements from each of the main sections of the paper and lay them out *seriatim* in one paragraph, of which the thesis sentence (C above) is the topic sentence. The "clincher" sentence of this key paragraph should be some kind of paraphrase of the moral you draw in the paper's conclusion.

I. FIRST BODY SECTION (ca. 4 pp.)

INTRODUCTION TO THE SECTION (1-2 paragraphs)

1. Identify this section as a subfield of the paper's thesis (orientation to the section).
2. State the problem that this section specifically addresses.
3. State the *thesis* of the section: one sentence, declarative, with an active verb.
4. Lay out the organization of the section, as above.

A. POINT (1-2 paragraphs)

Each and every paragraph should have a topic sentence that states the idea of the paragraph in a single sentence, declarative, with an active verb. The bulk of the paragraph consists of 3-4-5 sentences (no more) to develop that idea fully and no other. The last sentence of the paragraph should "clinch" it off in some way: indicate closure, provide transition to the next paragraph, etc. No paragraph should have more than 5-6-7 sentences.

B. POINT (1-2 paragraphs)

As above.

C. POINT (1-2 paragraphs)

As above.

CONCLUSION TO THE SECTION (1 paragraph)

1. Indicate closure of the section.
2. Recapitulate the argument of the section A-B-C.
3. Restate the thesis of the section.
4. Connect the thesis of the section with the thesis of the paper as a whole.
5. Provide some transition to the next section.

II. SECOND BODY SECTION (ca. 4 pp.)

INTRODUCTION TO THE SECTION (1-2 paragraphs)

1. Identify this section as a subfield of the paper's thesis and make clear its place in the order of the argument (orientation to the section)
2. State the problem that this section specifically addresses.
3. State the *thesis* of the section: one sentence, declarative, with an active verb.
4. Lay out the organization of the section, as above.

A. POINT (1-2 paragraphs)

As above.

B. POINT (1-2 paragraphs)

As above.

C. POINT (1-2 paragraphs)

As above.

CONCLUSION TO THE SECTION (1 paragraph)

Same as Conclusion to Section I.

III. THIRD BODY SECTION (ca. 4 pp.)

same as Sections I and II.

CONCLUSION (2-3 paragraphs): mirror image of the introduction

- A. Recap the argument of the paper I-II-III.
- B. Restate the thesis of the paper.
- C. Provide some transition back out into the real world; draw a moral, show the significance of the whole exercise, etc.

*“Whew . . . it’s so clear that I almost have to look twice
to make sure it’s not some trompe l’oeil.”*

JM, Satisfied Customer, 04 May 2005