Getting Started - The Five Paragraph Essay

Timothy Blevins, *Florida Agricultural and Mechanical University*
GETTING STARTED:
THE FIVE PARAGRAPH ESSAY

Timothy D. Blevins, J.D.
Professor, Legal Methods
Florida A&M University
College of Law
Orlando, FL.
The upper level writing requirement is a demanding project that should be completed between the beginning of the second academic year (following the 1L summer) and the beginning of your last academic semester. It should not be left for writing in the last semester of your law school experience. Ideally, following a successful first year experience, the student should identify a topic in the third semester and begin doing some initial research on that topic. By mid-term, third semester, the student needs to look to their faculty to identify a faculty member that will agree to mentor or sponsor the student in the writing of the article. Around this same time, the student will want to discuss the faculty members’ expectations regarding the topic and the necessary check-and-balances for completing the project, e.g. outlines, drafts, research logs, etc. The project may then be completed during the fourth semester or, if curricular demands prevent completion during the fourth semester, the project may be delayed until the fifth semester.

This short paper is offered to those seeking the elusive starting point on getting started with the project. It is written specifically from the perspective of my years as a professor that teaches in the area of legal writing, research, and analysis and there is no expectation that my position on the completion of the project should be adopted by any other colleague. It is offered for what it is, a starting point.

I. Introduction

The focus of this paper is on the writing of the upper level document but I offer the reader some insight into two other aspects of the project, topic development and research. These are equally important and prefatory aspects for success in the writing.

Topic Development

This may be the most intrinsic part of developing your paper or it may be the most frustrating undertaking. During the first two semesters students are introduced to, or gain additional development in, a legal subject (Environmental Law) or an area of law (the impact on litigation regarding same-sex individual under a Title VII claim). As the students move toward writing the upper level required paper there is the need to flesh out the issue or idea. There are an equal number of students however that enter their last two semesters of law school never having given the upper level writing requirement any thought. For this group of students, frustration may become a hurdle that impedes the project.

Regardless of which group you may find yourself in, the “I always wanted to research an answer to this question” group or “I have no idea what is expected of me” group, talk with your faculty advisor, a member of the academic success program, or any member of the faculty or administration that you feel is approachable. Once you have identified the person(s) who you want to speak with, go to them looking for advice on how the subject may be developed. A good and thorough conversation may end with this advisor suggesting that they sponsor you on the paper or they may provide you with a referral to another member of the faculty.
The idea behind your paper should be novel and address an original problem area. The legal issue should be of interest to you and you must keep an open mind as to what you may find as a result of your research and that the result may be quite different from what you believed when you began your research.

RESEARCH

Check to see if your topic has been preempted. Your readership is certain to shrink if you address a legal issue that has been thoroughly researched and written upon. Look for those opportunities to bring originality into an area of law by suggesting alternatives to well established principles of law. Too many researchers overlook the value of secondary authorities in this initial phase of the project. Regardless of what you currently believe of the law involving your topic, you may find many surprises with a comprehensive check of the legal encyclopedias, ALRs, the Restatements, Proof of Facts, law reviews, Causes of Action, and other summative collections. You will find fine points of detail on your issue in those thick, leather bound treatises that inhabit infrequently visited areas of the law library. It is important to point out the value of starting and maintaining an all inclusive legal research log. The well maintained log can help you avoid spending hours backtracking to locate what you initially thought was a source of little value.

WRITING

II. The Five Paragraph Essay

Your initial writings will focus on organization, use of grammar, proper punctuation, and spelling. Each of these areas is equally important to you as a law student and as a future practitioner. Your reading audience will be some of the best informed and intellectually challenging individuals you will engage and your credibility as a lawyer will be judged, in great part, on your ability to put together thoughtful and succinct documents. It is strongly suggested that you begin by constructing a five paragraph essay to answer or address these initial writings. Remember, however, that a five paragraph essay is only one model that you can utilize in your writings and, as regards to the upper level writing requirement, your first five paragraphs may morph into twenty or more paragraphs. The idea is that you develop your arguments along the lines set out by this model but do not let the model constrain your writing.

First, a paragraph consists of two or more sentences. Unlike articles appearing in newspaper and magazines where single sentence paragraphs are common, a single sentence paragraph may create a sense of disjunctive writing for your reader; fragments strung together in an attempt to convey an idea. A paragraph is a collection of two or more sentences that convey an idea or information to your reader. Each paragraph should have a theme and begin with a topic sentence. The topic of the paragraph is supported by the two or three sentences that follow. The idea conveyed in the paragraph should conclude with a summation sentence.

Second, based upon the needs of the writer, a five paragraph essay may become a three paragraph essay. And many of your law-based essays will become seven or more
paragraph essays or even multiple five paragraph essays within a single document. The point here is that the five paragraph essay is not an “answer,” it is a structure designed to encourage the writer to fully develop their ideas. Every writing begins with a need to convey information; either the writer is writing for a potential audience, or the audience already exists and been identified for the writer. Regardless of which situation exists, the essay begins with an introductory paragraph.

A. The Introductory Paragraph

Obtaining, and then holding, the attention of your reader is the primary focus of the introductory paragraph. There is little hope that you can create the perfect sentence or paragraph that will hold the attention of everybody, so use your talents to obtain the attention of the widest possible audience that may have an interest in the subject of which you have written. What follows are some examples of ways to create an interesting introductory paragraph. Before you get to the examples, you should know that a second but very important aspect of the introductory paragraph is the introduction of a thesis; what the writing will cover.

Famous Person: Thurgood Marshall’s amazing and influential legal career began many years before the United States Supreme Court rendered a landmark decision in the Brown v. Board of Education case. His forays into legal controversies had brought him to the attention of many courts and the judges who presided over those courts. His association with the NAACP earned him a reputation as being a very effective representative for the minority population while his prowess as an advocate for equality under the law made him a tough adversary. While his contributions to the legal community are legendary, many are unfamiliar with Justice Marshall’s formative years as a young African-American, the subject of this paper.

Declarative: The death penalty, as applied to teenagers, should be abolished. Society should recognize that this is a public policy issue that simply truncates the maturation process and ignores the possibility of rehabilitation. The Eighth Amendment prohibition against cruel and unusual punishment is perfectly applied when any jurisdiction considers punishment for someone who has not reached the age of majority.

Anecdotal: For being a Florida girl, Sara certainly found herself outside of her element here in a ski lodge in Aspen, Colorado, during late February. Not accustomed to the cold weather and deep snow, Sara relaxed in the warmth of the après ski fire provided by the lodge owners and her thoughts turned to the activities of the day. Snow skiing is to this native Floridian as bobsledding is to an Olympic team from Jamaica – something to be tried. And, as much as she tried to focus her current thoughts, her experiences following the death of her father slipped into her thoughts.

Surprise: Bang! Your spouse is dead. There is no defense to this crime. Regardless of the reasons purported by the defendant as to why she needed the money, there can be no defense to the ruthless murder of the shop clerk. The clerk leaves behind a family; a wife of twelve years, an eight year old son, and a three year old daughter. This scenario plays
out too frequently and society has begun to question the shop owners’ responsibility to provide security for employees earning minimum wages.

**Historical:** The defendant’s business was begun in a garage more than forty years ago with the idea of creating a desktop sized computer and with the backing of some forward looking investors, some progress has been made. The competition was fierce from the very beginning and yet the founders of this company found the means to communicate with the competition as technological hurdles were scaled in a desire to fulfill a shared dream. There was no indication that one among the group was willing to sacrifice the group’s trust in a move that was certain to capture a large portion of the global market.

All these writing styles have application in different types of writings, such as magazine articles or newspaper stories, but as a writer of legal documents you should recognize the needs of your audience. The people for whom you will be writing will generally be other attorneys, judges, and your client. Your relationship with your client will determine, to some degree, your writing style but most attorneys and nearly all judges want to know what you are writing about from a very early perspective. Therefore you may find that your writings generally will begin using the declarative form. The declarative form is easily adaptable to your writings because you will be addressing **legal issues**.

Here are three suggestions on what to avoid when writing the introductory paragraph:

- **Wasting your reader’s time.** Move into your essay with confidence and focus. Address your subject matter in an interesting but direct manner.

- **Beginning with a dictionary definition.** Lawyers and judges pride themselves as being “wordsmiths.” If you are using words that are not normally found in a desk reference volume, you may be attempting to write to the wrong audience.

- **Being apologetic about your position.** Again, be confident in your writing. Before you reduce your thoughts to writing you will have completed hours of research and you are now the expert. Eliminate prefatory phrases that undermine your reader’s confidence in your ability and knowledge.

  *Examples:*
  
  “Based upon my [limited] research . . .”

  “As I understand the issue(s). . .”

As you complete your introductory paragraph, ask yourself if you have created one or more reasons for the reader wanting to read your document. As you proofread this important paragraph you should also look to see if you have created a transition from the introductory paragraph into the body of the remainder of the document.
B. The Middle Paragraphs

Once you have obtained your reader’s interest in your writing, you now have an obligation to fulfill their need for information. The cliché is “Time is money” and never was it more true than in the business of the law. Do not waste your or your reader’s time by failing to fully develop your document in a confident and succinct manner. Likewise, ineffective writing will result in larger bills as you eat up scarce resources for your client as you face the necessity of re-writing.

The information contained in the second paragraph of the document should address your strongest position. Your reader will want to know the story behind your writings. In documents drafted for use in the legal community, this paragraph will likely address points of law that are most favorable to your client or this paragraph may illuminate the most favorable facts for your client. In other writings, this first paragraph may address public policy issues that suggest that society would be best served if your reasoning is adopted. As you construct this paragraph, place your topic in an earlier position rather than a later position within the paragraph. Finally, create a transition for your reader to move on to the next paragraph.

The third and fourth paragraphs are constructed in a manner similar to the second paragraph and the reason they come after the second paragraph is based upon your application of logic and reasoning. Generally these paragraphs will contain “less strong” positions than the position you adopted in the second paragraph. They may go directly to support the position or topic found in the first paragraph or they introduce the reader to other reasoning that creates alternative means for the reader to accept the position in the second paragraph. The point is simple, do not create filler material to round out the document; continue to develop your topic or thesis. Keep your reader interested.

Transitions between paragraphs are difficult but when done correctly your document’s worth is increased ten-fold and your message is more likely to be understood and accepted. Each paragraph should contain some reference to the prior paragraph and it should allude to the information yet to be found in the subsequent paragraphs. There are times when there seems to be a natural flow to the events found in your document and the paper almost seems to write itself. Celebrate this truly rare occasion as you strive to continue the process of writing for your reader. Your obligation to keep your reader engaged will oftentimes require multiple re-writes to eliminate what may be best termed disjunctive writing. A document that contains ample information, and perhaps even good reasoning, may be ignored or forgotten because the reader became confused or lost between paragraphs. Your careful attention to transitions will result in a more memorable document.

A transition that is ineffective, and perhaps insulting to your reader, suggests that the reader may have already forgotten what you had previously discussed. Such a transition should be avoided. Here are examples of ineffective transitions:
Syllogistic Writing

At some point during your first year law school program you were introduced to a simple but strong argument.

“All men are mortal.
Socrates is a man.
Socrates is mortal.”

This is a prime example of a simple syllogism consisting of a major premise, “All men are mortal,” a minor premise, “Socrates is a man,” and a conclusion, “Socrates is mortal.” Because your reader will be your intellectual equal, your reasoning must be logical. Logical reasoning becomes persuasive when your reader realizes that you have presented an argument that does not insult the intelligence of your reader while it leads toward a deeper understanding of the law.

C. The Conclusion

Most conclusions are simply too wordy. You have done all the work to get your reader to this point so do not suggest that everything you have already done now needs to be done again. Restate (do not repeat) your thesis statement. Summarize the major points in your essay and keep in mind that not every point is a major point. Include in this final paragraph a sentence that signals the end of the essay. Examples of final statements for essays dealing with legal matters and which might encompass a recommendation follow:
“Mrs. Smith should consider seeking damages for her injuries.”

“Our client will likely find relief under this cause of action.”

“The federal sentencing guidelines allow the judge the discretion to impose such a sentence under these circumstances.”

If you will accept The Five Paragraph Essay as a model upon which you begin developing your document, you will undoubtedly find the necessary transition to the more formalized and convention-laden writing form of legal documents easier to make. Writing instruction necessarily involves some subjectivity regarding what is right or effective but The Five Paragraph Essay model is well accepted within writing courses.

D. Footnotes

Law students generally do not work with footnotes. When citing to authorities, law student will imbed the citation directly into the body of the document using rules taken from a citation manual. The upper level writing project will incorporate the use of footnotes and the easiest way to make the transition from imbedded citations to footnotes is to take a first year memorandum or appellate brief and move all the citations into footnotes. Cited authorities are but one of the many uses for footnotes but, again thinking of your reader, be careful in the use of footnotes that the footnotes do not become distracting.

Here are two guidelines to consider when using footnotes. First, if the information you plan on putting into the footnote is important to the reader’s understanding of your narrative, that information should not be in the footnote, rather it should be in the body of the narrative. Second, place your hand over the footnoted materials and re-read your narrative. If the narrative makes sense without referring to the footnote, you probably have selected correct materials for the footnote.

E. A Final Thought

Often there is a perception among readers of legal documents that the author of the document is “out of touch” with the people or corporations that are involved in the dispute. This may be due to the overuse of pronouns such as defendant, appellee, or co-respondent to identify the party. Your documents will become more reader friendly if you will refer to the parties by using a personal name, e.g. Mrs. Smith, the bank, the owner of the dog, and the child’s mother.

III. Documenting Success - The Rubric

I have attached a rubric that will provide you with some specifics in meeting the requirement. This not meant to a definitive assessment rubric but it does provide insight
to both the student author and the evaluator when determining whether the document will satisfy faculty, and hopefully A.B.A., review of the submitted document. The reader will note that this rubric allots 80% of the effort to the substance and writing components and generally, 80% is not sufficient in meeting the requirement. The student author must go further and include scrivener-like attention to the other details in the drafting. Poor or inadequate attention to grammar, punctuations, spelling, and formatting creates an environment of distraction and the more distracted the evaluator is when assessing the document, the more likely the author will be required to do another edit and proofread of the document.

As part of the initial meeting between author and evaluator, something similar to the rubric should be agreed upon so that neither party loses sight of what parameters would constitute a satisfactory writing. This rubric can be easily modified or appended to meet the demands of the project.
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<th>Categories</th>
<th>Excellent</th>
<th>Good</th>
<th>Deficient</th>
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<tr>
<td><strong>Introduction</strong></td>
<td>Oriented the reader to time, setting, issue, and thesis. Focused the attention on the problem at hand. Provided a summary of the topic for each paragraph. Proper use of action verb.</td>
<td>Discussed the problem and theme. Limited summary of the topic paragraph.</td>
<td>Failed to orient the reader to the focus of the paper. No identification of the thesis</td>
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<td>Points 5</td>
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<td><strong>Body - Headings</strong></td>
<td>Consisted of headings of no more than five parts. Each heading contains a mini thesis. Each step is a coherent idea. Reading the subheadings in order creates a coherent idea.</td>
<td>More than six or more subheadings. Some coherent idea was created by the headings, but some headings were inconsistent with the coherent idea.</td>
<td>More than six or more headings. No coherent idea could be established by reading the subheadings.</td>
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<td>Points 10</td>
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<td><strong>Body - Substance</strong></td>
<td>Each section illustrates the theoretical arguments with concrete examples drawn from cases, facts, or realistic ideas. The paragraphs make up a comparison or contrast and/or analysis. Each paragraph expresses its own discrete idea. All paragraphs in the sections make out an argument that proves the thesis and/or heading.</td>
<td>Some sections illustrate the theoretical arguments. Some examples were drawn from cases, facts, or realistic ideas. Some or limited paragraphs comparison and contrast, Limited expression of discrete ideas. Some paragraphs failed to make out an argument that followed the scope of the thesis.</td>
<td>Limited illustrations of the theoretical arguments. Limited example and analysis. Limited comparisons in the paragraphs. No expressions of discrete ideas. More than a few paragraphs failed to make out an argument that followed the scope of the thesis.</td>
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<td>20 - 25 - 30 - 35</td>
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<td><strong>Conclusion</strong></td>
<td>Indicates the closure of the paper. Restates the thesis of the paper. Connects the thesis of the section with the thesis of the paper as a whole. Recap the paper’s arguments by paraphrasing or in some other way referring back to the topics of each of the section paragraph.</td>
<td>Indicates the closure of the paper, but fails to restate the thesis. Some connection of the sections, but all sections were not recapped. Too much repeating of the main arguments.</td>
<td>Fails to indicate the closure of the paper. Limited or no connection to the thesis of the section with the thesis of the paper as a whole. Limited or no recap of the paper’s arguments. Failed to refer back to the topics of each of the section paragraphs. Too much repeating of the main arguments.</td>
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<td><strong>Writing</strong></td>
<td>The writer presented many drafts. The writer made edits from the drafts according to instructions. The paragraphs had common theme. The paragraphs and thoughts lacked redundancy. The writer avoided passive voice. Few or no grammatical errors. Citations are helpful and explanatory. Evidence of substantial research was shown by way of cases, statutes, law review articles, etc.</td>
<td>The writer submitted very few drafts. Some required edit suggestions were adhered to. Some paragraphs failed to follow the common theme. Some passive voice in the writing. More than few grammatical errors. Some citations require more explanations. Evidence of substantial research was there but lacking in certain topic areas.</td>
<td>The writer submitted very no drafts. Limited to required edit suggestions were adhered to. Most paragraphs failed to follow the common theme. Passive voice was used in the writing. Many grammatical errors. Citations require more work. Little or no evidence of substantial research to support the topics.</td>
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1 Grading Rubric created by Prof. Victoria Dawson.
### Timeline for Completing the Writing Requirement – 15 Week Semester

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<td>Identify Topic and Meet with Advisor; Complete registration paperwork.</td>
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<td>Submit research log with synopsis of five most cited authorities.</td>
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**Comments:**

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2 It is better for most students to undertake this project during the academic year rather than during summer break. Some advisors will want more or fewer submittals during the writing. The student must undertake the project with the same level of professionalism shown in the Torts, Contracts, or other doctrinal class in order to complete the project on time.
Bibliography


