How to write and speak persuasively to achieve organizational goals.

Power Communication

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CHAPTER 6

Write the First Draft

Once you have designed an excellent outline of your document, one which permits you to see logical connections among objectives, reasoning and evidence, risks and action, you are ready to write a first draft. Your immediate objective should be to get a first draft done as quickly as possible so you get a sense of the whole from which you can generate improvements to the draft.

QUICKLY WRITE A FIRST DRAFT

With your outline in front of you, write a first draft from top to bottom. If you cannot think of the right word or right idea, go immediately to a new paragraph or a new section, then come back and fill in those sections you left incomplete. Sometimes you write most effectively when you come back and fill in a section because the sentence or section makes more sense to you once you have finished and have a clear idea of how it fits into the whole.

Resist urges to revise as you write the initial draft; don't worry about misspellings or poorly constructed sentences. Your objective is simply to record your ideas on paper; your successive drafts will refine and improve your early efforts. In fact, you should set a time limit for yourself for writing this draft. Under the pressure of time, you are much less likely to stop and edit than if you proceed without such a self-imposed limit.

REVISE YOUR DRAFT PARAGRAPH BY PARAGRAPH

The remainder of this chapter will show you how to review drafts of each section of the memo, including opening, background, methods, body, risk, follow-up, and action step paragraphs. Chapter 7 discusses how to compose tables, graphs, and charts. Chapter 14 includes numerous models of completed memos, letters, and reports.

Write an Opening Paragraph that Concisely Summarizes Your Document

Complete a draft of your opening paragraph by adding information to the What, the Why, and the When you believe is needed to concisely summarize the entire document. Such information might include timing, results, follow-up, concurrences, benefits, costs, and attachments, as the following examples illustrate. In sum, this “strategy”paragraph should concisely and accurately summarize the entire document, getting readers off to a fast start in understanding the relevance and significance of your message.

Discovery and Report Memos: WHAT, WHY, WHEN, Plus Other Information, Such as Attachments, Needed for a Clear Summary

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Discovery Memo: Please send me, by March 1, one copy of the 1991, 1992 and 1993 Shareholder Satisfaction surveys. [What and When] I will incorporate the results into a report on Stockholder Relations that my department is preparing for distribution at the Board of Directors meeting in June [Why]. A preliminary outline of the report is attached.

Report: This summarizes agreements reached at a meeting of the Murray Hill Engineering group on May 29, 1991. [What and When] The meeting was called to determine if Analogy better meets MHE hardware needs than the current ABC ATs. [Why]

The group decided that Analogy is the superior product and recommended setting up a test system at the Murray Hill substation. [Results] Details follow.

Analysis and Evaluation Memos: What, Why, When, Results, Follow-Up, Plus Other Information Needed for a Clear Summary

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Analysis Memo: I am writing to report the results of an air quality test conducted the week of April 3 in the Ipswich laboratory. [*What, When, and Where*] Its purpose was to determine if the use of ventilators would reduce airborne dust levels at the Lexington plant. [Why] Results indicate ventilators significantly reduce dust levels [*Results*]. A test to confirm this finding will be fielded at the Lexington plant the week of May 4. [*Follow Up*] Details follow.

Evaluation Memo: This discusses the status of the Promotion Effectiveness Report (PER) project. [*WHAT*] We conducted this test to see if PER would help Salted Snacks evaluate the effectiveness of its promotion methods. [*Why*]

Results to date are disappointing. As currently conducted, PER is of little value in measuring promotion effectiveness. [*Conclusion*].

By March 1 [When], we will complete the test using the most stable measures with Taco Chip data. At that time we will also evaluate the use of two outside vendors as an alternative to PER. [F*ollow Up*] A sample PER is attached. [*Attachment*]

Proposals: What, Why, When, Benefits, Costs, Concurrences, Plus Other Information Needed for an Accurate Summary

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Proposal: The National Sales organization recommends a telemarketing effort behind the C-Mark national introduction in April 1990. The effort will consist of a teaser mailing followed by telephone sales calls to 12M nonusing and switching accounts. [*What and When*]

Our objective is to gain sales and share by offering C-Mark in a functionally superior design and size. *[Why]* We project $3MM in new C-Mark sales and share growth of 1.5 basis points. [*Benefits*] The $200M cost of this effort is included in the current brand appropriation budget [*Cost*] A. Gibson, J. Herbold, and P.B. McDonald agree.[*Concurrence*]

Review your Opening Paragraphs for Completeness and Consistency Given the all important nature of the opening paragraph, take time to make sure it is both complete and concise. To do so, put an imaginary box around it. Then ask yourself: "Does it clearly orient your readers to your thesis? Does it indicate its significance to the company? Does it concisely and accurately summarize the entire document?"

In addition, because this paragraph sets up reader expectations for the rest of the document, ask yourself the following additional questions: "Is there too much information? Too little? Does this opening precisely predict the rest of the message?" If not, review the discussion below and make appropriate changes to your document.

Beware of Including too Much Detail in the Opening While it is valuable to compose introductory paragraphs as a concise summary of the entire document, beware of writing opening paragraphs that include information that does not help readers gain a broad perspective of the key issues involved in the document.

For example, evaluate the following opening paragraph. Ask yourself if it adequately summarizes key issues or if it focuses too much on implementation details.

```
The Sales Department recommends that Pretend conduct a
national coupon event with Sometimes during February
1993. Specifically, we have been offered the opportunity
to deliver 10 million $.20 off any size Pretend coupons
to 15% of households at a cost of about $200,000, in-
cluding redemption. [What] Pretend will be in-packing
the coupon in its 9 ounce size. The coupon values will
be announced to consumers on the Sometimes package
[How].
```

This passage fails to meet significant reader needs. It omits information about why the company will benefit from this proposal, who else agrees with it, and whether the money for it is in the current budget or will need to be authorized as additional funding. On the other hand, its last two sentences include too much implementation detail. This information belongs in the Body of the document, because it becomes relevant to readers primarily after the author proves the plan is sound: that is, that it is feasible, has significant benefits, is on target with overall company strategy, and is cost effective. Once readers agree these key points have been proven, then they are ready to determine if the implementation plan is an effective one.

A better opening would be:

```
The Sales Department recommends that Pretend conduct a
national coupon event with Sometimes during February
1993 [What and When]. The program will deliver ten mil-
lion $.20 off any size Pretend coupons to 15% of house-
holds at a projected cost of $200,000, including redemp-
tion. [Expansion of What, Cost] Previous experience
indicates this program will conservatively translate
into a 6% increase in quarterly volume and similar in-
creases in share and profit. [Benefit] The project will
be funded internally and is supported by both Pretend
and Sometimes brand management teams. [Funding, Concur-
rence] Details follow.
```

Beware of Including too Little Information in the Opening Paragraph Similarly, opening paragraphs that contain too little detail force readers to hunt through the document to find answers to questions they'd prefer to see answered in an opening summary.

Consider this opening paragraph,

```
This is in response to Mr. Jones' request on recent
pricing trends for advertising in Sunday supplements.
[What and Why] The review covers 1978-1992. [When]
```

This paragraph forces the reader to find answers to key questions elsewhere in the memo. For example, most readers would appreciate knowing early on why Mr. Jones requested the study and, briefly, what its results were and what actions the company is taking in response.

Notice how much more responsive the revision is to reader needs:

```
This report summarizes the results of a study Mr. Jones
requested to determine if recent price increases in the
cost of advertising in Sunday supplements were justi-
fied. [What and Why] The review, which covers 1978-1992,
revealed that prices increased far faster than did the
costs of producing the Sunday supplements. [Conclusion,
When] I have forwarded this report to the Purchasing
Department for use in future negotiations with relevant
suppliers. [Follow-up]
```

Use a Forecast in Long Documents In addition, in reports four pages or longer, a forecast of the entire document is necessary; in extremely long reports, an executive summary may be required.

```
EXAMPLE: The following presents: (1) an overall vision
for Pretend; (2) realistic financial objectives for
Pretend over the next three years; (3) the strategic
framework by which the Pretend team will operate; and
(4) a specific program designed to meet set objectives.
```

Write Background Paragraphs that Clearly Link the Opening with the Body

After reviewing your opening paragraphs, compose the Background section. Your background paragraphs should both further orient readers to the content of the memo and also serve as a smooth connection between the opening and the body of your message.

Background paragraphs serve four important purposes:

1. They provide a concise summary of historical facts that clarify why the memo is being written.
2. They link the current document to previous documents the reader has received on the topic.
3. They provide a context for the memo, which is particularly useful for those not intimately acquainted with the details of the topic being discussed.
4. They "set up" the rationale in recommendation memos, objectively describing the current situation in terms which make it easy for readers to see the advantages of the recommended changes.

Background paragraphs, being historical, should be objectively positioned, focusing on facts. Normally, they should not forward an argument or refer to the future state of the company.

Begin background paragraphs with a topic sentence which predicts the rest of the paragraph's development. In addition, write them so their relationship to both the opening and body paragraphs is clear. For example, the background paragraph below, while relevant to the thesis of the memo, is not positioned to reflect the author's strategic objective—to show that new copy can build the business—nor is it clearly linked to the recommendation paragraph.

Example of an Unfocused Background Paragraph

Objective: to gain approval for a new copy strategy for the entire Sometimes line of products

Background
The existing "rockin and rollin" copy has shown no significant advantage of Sometimes in delivering key acne prevention benefits. Overall growth in the segment behind this copy has been flat for the past two years, primarily due to strong competitor heritage advantages and aggressive expansion of herbal lotions.

Recommendation
We propose changing copy for the entire line of Sometimes products to focus on the theme of "clear skin improves sex appeal," using supermodels Hunk Smith and Blaire Benson as spokespersons.

By contrast, note how the background paragraph below has been written to make a smooth, logical, and persuasive progression from the objective—to gain approval of a new copy strategy—to the body of the document.

Example of a Strategically Positioned Background Paragraph

Objective: to gain approval for a new copy strategy for the entire Sometimes line of products

Background: How good copy builds business
Company experience indicates that a well-conceived and executed copy strategy can grow Sometimes share. For example, past 6-month share for Sometimes with Jojoba increased 22% behind "Christy Smith" copy. This copy was the result of progress we have made in uncovering key insights motivating our teenage target audience—the single largest homogeneous group of acne lotion users, representing 60% of category volume (index 159 vs. population).

The current "rockin and rollin" copy strategy, by contrast, has shown no significant advantage of Sometimes in delivering key acne prevention benefits. Overall growth in the segment behind this copy has been flat for the past two years, primarily due to strong competitor heritage advantages and aggressive expansion of herbal lotions.

Recommendation
We propose changing copy for the entire line of Sometimes products to focus on the theme of "clear skin improves sex appeal," using supermodels Hunk Smith and Blaire Benson as spokespersons.

Compose Easy-to-Understand Methods Paragraphs

In memos where methods are described, such as reports on the results of experiments, market research, or surveys, a distinct methods section typically follows Background.

- **Methods should be described in list format.**
  This allows readers to easily follow the steps of the method should they wish to replicate the test.
- **Methods should be written in the passive voice.**
  Writing in the passive voice (with the object rather than the subject starting the sentence) also produces an objective tone—suggesting that if the test is replicated, the same results will occur.
- **Methods should be described concisely.**
  The actual test methods should be described concisely in the body of the report, with more detailed descriptions attached.

Example of Methods Paragraph

Objective: to test the ability of Prod X to remove stains from linen and silk ties

Methods

1. Sixteen linen and sixteen silk ties were preheated in either spaghetti sauce or barbecue sauce for 50 minutes.
2. They were then washed with recommended usage of Prod X.
3. Each tie was examined by an independent laboratory for stain removal.
4. Trained raters classified the cleaning of the stains as either satisfactory (95-100% stain removal) or nonsatisfactory (less than 95% stain removal).

Write Scannable Body Paragraphs

If the opening serves as an appetizer to the document, the body constitutes the main course. You prove your case here, expanding on What you have found and Why it is significant, as well as presenting the Data underpinning your position. In all but the simplest memos, develop this section as an argument.

Paradoxically, although you report most of your evidence in the body, research indicates it is one of the least carefully read sections of most memos.

Typical readers scan this portion of a document. Even readers who give memos a thorough analysis typically skim—then scan—the body first before coming back and reading it in detail. Therefore, it is essential that you make this section easy to scan and make its logic extremely clear from scanning alone.

Two techniques—writing paragraphs in What, Why, Details format and underlining key sentences to give readers the ability to scan the logic of the argument—will allow you to compose bodies that are clearly understood both from a scan and from a careful reading.

These methods work because they help readers accomplish three important objectives: to scan through an entire argument efficiently, to understand the overall logic of an argument, and to see immediately the relevance of data to the writer's position.

Topline Topic Sentences Readers can easily scan memos in which the thesis of each paragraph is distilled to one simple, telegraphic topic sentence. This sentence clarifies, as appropriate, the What or the Why or both, and is underlined. The remainder of the paragraph amplifies that point with facts and logic.

That is, paragraphs begin with the point to be proven, followed by a clarification of the relevance of the point, and then details proving the point. This might best be illustrated by viewing paragraphs as inverted triangles in which you present the WHAT followed by the WHY—the most significant information first—followed by relevant details.

This technique prevents undercommunication, writing without answering the three key questions of What, Why, Proof.

It also inhibits overcommunication because when you start with a thesis, a what and a why, you provide only the data necessary to prove your thesis.

On Your Own Compare and contrast the two versions of the body of a memo which summarizes the results of a meeting. The first does not use toplining and is not organized in What, Why, Details order, while the second one is. Which do you find easier to scan? To understand? Which is more persuasive?

Meeting Summary, Inductively Organized

Objective: to define ways in which the Systems Engineering Laboratory could help sales close orders

1. Sales pointed out, and we agreed, that the laboratory does not have its systems connected and operational most of the time; that is, it is not kept in a "customer ready" state. Sales can call in from a customer's office asking for a demonstration; and if we have other priorities, we delay getting the lab ready to the point where the sales representatives seldom call for this service any more.

   In essence, Sales made the point that the laboratory would be used more if we kept it up to date, operational, and customer ready. To do so, we agreed to define the expected lab conditions and content and then investigate designating a coordinator for the lab who would be responsible for maintaining it in a customer-ready condition.

2. The other issue we discussed was the reluctance of potential customers to come to Detroit to actually see the product in the laboratory, especially at the early "preselling" stages. Customers are most likely to buy when they get "hands-on" experience in our laboratories. This would be especially useful early in the process before they have either eliminated us from consideration or have sought out a number of bids from competitors.

   When we offer to take them to the Detroit laboratory, customers object to the time and expense lost to send several people away from the office for one or two days and paying their travel expenses. We discussed what it would take to actually move the laboratory to the customer. We thought it would be feasible to move a duplicate lab—on a rotating basis—to each of our six regional sales centers, and agreed to investigate setting up a demonstration project in the Lexington sales center to test the idea. We chose Lexington because it is the closest sales center to Detroit and because it has the smallest sales base of the regional centers, thus offering the least complexity of the other five alternatives. (290 words)

Note how the second example is more concise because it provides only the details necessary to prove the stated thesis. Note also how reframing the toplines in What, Why, Details order helps the writer focus on solutions rather than problems—thus projecting a more proactive image of both the sales and Systems Engineering team members.

Revised, Toplined, Deductively Organized Meeting Summary

Objective: to define ways in which the Systems Engineering Laboratory could help sales close orders

1. We agreed to investigate the feasibility of designating a laboratory coordinator who would be responsible for keeping the Systems laboratory in a customer-ready state.

   Sales pointed out its reps will bring customers to our laboratory on a regular basis only when we can assure them that we can immediately deliver a professional presentation of the benefits of our system. [why] Currently, our lab does not have its system connected and operational most of the time. [data]

2. We also agreed to investigate rotating the laboratory to each of the six regional sales centers, starting with a pilot project in Lexington.

   This will allow sales to give potential customers a realistic demonstration of the benefits of our system at a greatly reduced cost to customers in time and money. [why] Sales experience indicates "hands-on" product demonstrations are a key to customer "buy in" in the often critical early stages of a sale. Customers are currently reluctant to visit the laboratory because they do not want to incur the expense of sending several people to Detroit to experience a full-scale product demonstration. [data]

   If we proceed, we agreed Lexington would be the best test site because of its smaller sales base and proximity to Detroit. [how] (174 words)

As the illustration demonstrates, the combination of toplining and highlighting encourages readers to scan the body of the memo, helping them see the logical structure of the argument. With the logical structure clearly in their minds, they can go back to read the memo for details, on a point-by-point and word-by-word basis.

Evaluate Each Paragraph for Logic and Evidence For this form of toplining to work as an accurate scan of the document, the following criteria must be met:

1. Toplines are clearly relevant to objectives highlighted in opening.
2. Toplines make sense when read in sequence.

For example, the following right hand example violates both norms. The objective statement in the opening leads to reader expectations that each toplined learning will indicate a way of expanding merchandising at Fruit Market. The toplined sentences do that only indirectly in the poorly written example. Likewise, the toplines do not flow well in sequence in the poorly written examples. By contrast, in the well-written one, they flow logically into one another when scanned.

clearly aligned with objective, logically sequenced toplines	weakly aligned and connected, difficult to scan toplines

Objective: to learn what action plan our company should follow to expand merchandising at Fruit Market Inc.

Key Learnings

Clearly aligned with objective, logically sequenced toplines:

1. ABC should prove that its product mix appeals to Fruit Market's core markets: the retired segment and the young family segment.
2. ABC also needs to show that its products will generate strong consumer demand, independent of featuring, at Fruit Market.
3. ABC should sponsor promotions that move fruit as well as its own products.

Weakly aligned and connected, difficult to scan toplines:

1. Fruit Market's marketing goal is to attract young familes that are fuelling Florida's explosive growth rate.
2. Fruit Market will not stock a variety of brands unless there is strong consumer demand for that specific brand.
3. Tony Frizone, produce manager, suggested we consider that he and his buyers are first and foremost "produce" people.

In addition, in order to make sure your argument meets tests of both reader understanding and good proof, your paragraphs should meet three additional tests.

3. Topline predicts all the information that follows it.
4. First sentences of data section provide immediate proof.
5. Evidence positively proves point.

Note how the poorly written document fails to meet these tests.

1. The topline does not predict key information about retired purchasers being the biggest Fruit Market customer. Readers will thus be unprepared for this information when they read the rest of the paragraph.
2. The first sentence is only tangentially relevant to the topline; it indicates neither Why nor How Fruit Market is marketing to young families, thus failing the "because" test.
3. Its first data, concerning the growth rate of Florida, does not prove its toplined claim, failing the "based on" test.

Clear, Relevant, Positive Proof	**Unclear and Incomplete Relationship of Proof to Toplined Claim**
ABC should prove that its product mix appeals to FM's core markets: the retired segment and the young family segment.	Fruit Market's marketing goal is to attract young families that are fueling Florida's explosive growth rate.
FM will view ABC products more favorably if we align them with its marketing strategy. [Why] Specifically, we can show that our 120-oz jug is a good fit with their "young families" program while plus calcium lemonade could support an impactful program targeted at preventing osteoporosis in senior citizens. [application]	Florida's the fastest growing eastern state. [data] FM recognizes that they own the retired segment and will continue to cater to this group. [data] This suggests an opportunity to use the 120 oz jug for a "young families" program and to implement an impactful seniors program targeted at seniors on behalf of plus calcium lemonade. [application]

Write Further Discussion Paragraphs

The Further Discussion section of a document is a place to discuss issues that have not as yet been addressed.

Constraints/Risks A key issue frequently discussed here is risk. After reading about the key reasons to do something, readers are ready to see the limitations of the approach. As a rule of thumb, accompany statements of risk with plans that show you have a means to minimize them.

Example of a Constraints Paragraph

```
ABC is at slight risk from price competition in this
market [What]. We can manage this risk because (1) we
are pricing our product at levels comparable to the
generics and (2) we can achieve target margins and prof-
its at these price points because packaging, manufactur-
ing, and distribution efficiencies have significantly
reduced costs [Why].

Given our low prices and the already slim margins of
competing products, the generics have little room to
sustain price cuts. As a result, our current entry into
this market is projected to be much more successful than
our previous entry, which we withdrew in response to
deep price cuts from generics [Estimate of signifi-
cance].
```

Alternative Solutions Rejected Alternative solutions rejected are also discussed after the body, generally in memos where the reader is expecting to see a different solution than the one offered.

Example of an Alternative Solutions Rejected Paragraph

```
We will not be sending you any double-sided display
cases as we have not as yet found any that meet ABC's
aesthetic standards.
```

Write Follow-up Paragraphs

The follow-up section of a memo is important to completing the logic of your argument. The How, Implementation Steps, are discussed here, since it is only after knowing What is being discussed and Why it is important that readers want to consider the details of implementation.

The action steps must flow logically from all that have preceded them. They must be closely related to the objectives and the argument of the memo. This section should answer three questions: Who does What? When? and Why? including specific data on steps, timing, and responsibilities.

Action steps should be written in list format, so readers can clearly see where one step ends and another begins. Put burdens on yourself and on readers to follow up on action steps, using accessibility statements to encourage others to carry out the steps for which they are responsible and to keep in touch with you on the subject.

Example of Action Steps Paragraph

Action Steps

1. I will draw up a purchase order and circulate it to committee members by March 18.
2. Members are to suggest improvements to the P.O. and submit them to me by March 21.
3. I will send the revised purchase specifications to A. Jackson of purchasing by March 25.
4. A. Jackson has agreed to solicit phone bids from six suppliers and send the committee a report by March 30.

Call me at 555-1234 with concerns or questions.

SUMMARY

To write a good first draft, follow a two-step process. With your outline as a guide, put a rough draft on paper without stopping for revision. This will allow you to view your document as a whole. Then review and rewrite each paragraph to complete your first draft. View each in terms of its function to the reader. Make sure:

- opening paragraphs concisely summarize and forecast the entire document.
- background paragraphs clearly link the opening and body paragraphs.
- methods paragraphs are arranged in a list format.
- body paragraphs are scannable and deductively organized.
- further discussion paragraphs identify and address key reader concerns, including risks and alternatives.
- follow-up paragraphs answer the Who does What? When? questions.

Exercise Write a complete draft of the memo or report you organized in a planning matrix.

CHAPTER 10

Edit to Avoid Litigation

The "litigation explosion" has had a serious impact on business communications. Consider these facts:

Careless words as much as actual business practices have become decisive factors in legal cases, influencing both the decision to bring a case, and the ultimate decision on the merits of the case. Companies must be careful about what they say about themselves as well as about competitors. They must even be careful about what others say about them.

Internal thought processes are subject to discovery. That means that lawyers may subpoena documents to establish company thinking and motives regarding the issue being litigated. The text of documents, as well as comments written in the margins, may be used as evidence.

Some readers may not be your intended readers. Documents, including memos transmitted electronically, may be read by numerous people, holding differing, possibly hostile, frames of reference.

In short, business writing has an uncertain lifespan and may create liabilities for your organization.

This chapter discusses how to write to avoid antitrust, product safety, and employee litigation.

WRITING TO AVOID ANTITRUST LITIGATION

Companies with leading shares in markets often become targets of antitrust suits. Of particular relevance to writers is that their words can be used against their companies. In fact, when intent to monopolize is the key criterion, careless use of words may be the central element in the prosecution's case. Therefore, business writers must select words carefully, avoiding language that suggests market-dominating behavior.

Use Words Carefully

Avoid words in the following categories, as they are most likely to be used against your company in antitrust suits. They may indicate an intent to use unfair practices to dominate a market.

- **Guilt complex words**, such as *Destroy after reading*, *Confidential*, *Please destroy*, *For your eyes only*, and *No copies*. Documents so marked are likely to be the first documents opposing lawyers subpoena.
- **Power, intent, and market share words**, such as *leverage*, *foreclose*, *dominate*, and *preempt*. A sentence such as "our objective is to become the market leader in this area, with a share of 55% or more of all items we market" indicates an intent to dominate a market.
- **Bragging words**, such as "we have a lock on this market; no one who values quality and service will buy from anybody else."
- **Overselling words**, such as "this price is for you alone."
- **Overcompetitive words**, such as "Let's give him a strong dose of his own medicine." "Let's cut ABC off at the knees." "This signal on price will surely send our competitors a message about our intent to retain a leading market share."

  Be sure your company is described as competing *vigorously*, not *aggressively*.
- **Undercompetitive words**, such as "Margins were low due to competition, which we expect to be remedied next year."
- **Disparagement**, nonobjective evaluations of competitors' goods and services. You must not be quoted as saying your company can "exploit" its competitor's weaknesses.
- **Loose talk about competitors**, anything that suggests collusion, such as "We have matched their price." Instead, you should "meet" their price.

Focus on Business Benefits

Articulate recommended actions in terms of their benefits to the company, wholesalers, retailers, and end users. These include building volume, delivering better products and value to consumers, communicating benefits clearly, and understanding consumer needs more effectively. This is the proper focus of your company's efforts.

Do not position actions in terms of how they will damage competition. Use language that suggests a positive attitude toward customers and consumers; eliminate passages or words which suggest negligence or market dominating behavior on the part of your company.

Proper vs. Improper Positioning of Ideas

Proper Positioning

- `Our jointly devised partnership with BigMart will help our company grow share, give BigMart the inventory control it requires, and save consumers money.`

- `This new product is projected to generate 500 cases of incremental volume.`

Improper Positioning

- `Our jointly devised partnership with BigMart will virtually cut our main competitors out of this market. They simply do not have the resources to match our offer to BigMart, given their current financial distress.`

- `This new product will blow our competition right out of the water!`

WRITING TO AVOID PRODUCT SAFETY AND RELATED LITIGATION

Companies are responsible for their safety practices with regard to their products, facilities, equipment, and services. So that your writing does not expose your company to product safety and related suits, use precise descriptions and avoid speculation.

Describe Events Precisely

Imprecise descriptions can lead to serious consequences. For example, an engineer's report stated that an automatic transmission "jumped out of park" when he meant that on "two or three occasions out of ten thousand, a transmission slipped into an intermediate position between park and reverse." This statement played an important part in a prosecutor's product negligence case.

Avoid Speculation, Unless it Is Clearly Labelled as Such

In one case, a scientist wrote a memo speculating on the possible areas of medical attack by the plaintiffs, without clearly labeling the ideas as speculation. In the court case, the opposing attorneys used the memo to attempt to demonstrate the company had concrete knowledge of a number of ways its product was medically unsound. In this case, the writer would have protected his company had he written: "In response to your request concerning possible areas of legal attack on our product, here are the kinds of speculative issues that have been raised previously; none has validity, as I show below."

Speculative vs. Empirically Precise Description

Speculation
The tank holding thorium is over 30 years old and probably leaks like a sieve.

Precise Description
The tank holding thorium was purchased in 1958 so a potential for leakage should be investigated, and if confirmed, appropriate remedial actions taken.

Avoid Sensational Language

It can later be used against you. For example, avoid writing something like this:

"If the tank does leak, it will result in major contamination of the aquifier for the entire Miami Valley."

Instead phrase your position passively and in terms of what the company should do:

"Spill protection measures for the thorium tank are being investigated and evaluated."

If You Raise a Problem, Solve the Problem

Make sure the record shows that when you have identified an issue, you have taken steps to address it. For example, instead of writing:

```
"We need to address this potential leakage problem
immediately."
```

Write:

```
"To address the potential for leakage, I will call in a
consultant within the month to recommend methods for
improved spill control."
```

WRITING TO AVOID EMPLOYEE LITIGATION

Employment law has expanded to encompass a number of issues including defamation, invasion of privacy, discrimination, and unlawful discharge. Therefore, follow the guidelines below in writing about people in your organization.

Be Cautious in What You Write in Letters of Recommendation or in Employment Offers

Employees have sued former employers for libel and slander based on evaluative statements made in letters to prospective employers and for promises to applicants not kept once employment had begun. Some legal experts suggest communicating only indisputable facts in letters of recommendation, such as dates of employment and positions held. Anything suggested orally during an employment interview should be documented in writing so there are no misunderstandings which could later be used in a wrongful discharge case.

Document Disciplinary Interviews, as Well as Terminations Documentation is important because you cannot be sure the supervisor who initiated the disciplinary action will still be employed at the time of a court hearing.

Be Sure Disciplinary Interview Write-Ups Are Complete

They should include the following:

- **A precise statement of the reason for the disciplinary interview**, such as "Your time card indicates that you arrived at work at 9:50 on Monday, one hour and twenty minutes past the starting time for work, and you stated you did not call in to indicate that you would be late or when you would arrive."
- **A statement of the company policy**, such as "I showed Mr. Jones the statement he signed upon employment that company policy requires timely arrival each day of employment on or before 8:30 am. Mr. Jones said he remembers signing that statement and understands the policy is important for the efficient operation of the company."
- **An indication the employee being disciplined had an opportunity to explain why the behavior occurred**, such as "Mr. Jones explained that his alarm clock failed to go off and he did not think to call in his rush to get to work as soon as possible. He said he would purchase a second alarm clock as a backup so this situation could be avoided in the future."
- **A statement indicating what disciplinary action is being taken and what future disciplinary action may be taken if there are future violations**, such as "I explained to Mr. Jones that since this is his second violation in two weeks, a formal letter of discipline will be put in his personnel evaluation file and will be considered during his performance review. I also explained that a third violation of the starting time within the next four months may result in a disciplinary hearing, one which may lead to dismissal."
- **Termination letters should indicate that the action taken is consistent with other actions in similar situations and that the employee was aware such behavior could lead to the termination of employment**, such as "A guard found three company-owned socket wrenches concealed in Mr. Jones' overcoat as he was leaving the workplace. Two coworkers testified at the dismissal hearing that they saw Mr. Jones hide the wrenches in his coat during his afternoon break.

  Mr. Jones signed a statement upon employment indicating that any employee found leaving the premises in possession of company equipment would be subject to immediate dismissal."

Use Objective Language

Evaluate work behaviors, not unobservable factors, such as attitude. In particular, substitute objective, factual descriptions, preferably with reference to measurable company standards, for subjective comments, such as those based on age, gender, race, religion, place of national origin or disability. Protected classes of employees can sue if they have evidence a company has violated their civil rights.

For example, a company lost an unlawful discharge suit on the basis of the testimony of a coworker who said that the unit manager told her the dismissed employee was "too old to effectively handle the lunch hour rush of business." The company would have had a far stronger legal defense had the unit manager said "Mr. Sanchez did not meet bank standards for the number of transactions completed per hour. He completed an average of 16 transactions per hour, 33% fewer than the minimum bank standard of 24 transactions per hour."

Write Candid Performance Evaluations

Often when fired employees sue companies for unlawful discharge, they produce on their behalf years of excellent employee evaluations—evaluations that look little different than those of employees who were not discharged.

Be sure evaluations include discussions of where employees are not meeting expectations for their positions. If you feel uncomfortable identifying flaws in an employee's performance, you are better off not conducting formal appraisals at all.

For example, avoid ambiguous communication, such as "Mr. Jones has the opportunity to further build productive relationships with customer contacts" which, while diplomatic, does not convey precisely the behavior desired. A preferred statement would be "Several of Mr. Jones' clients have asked that he be more responsive to their needs for the size and timing of shipments. Mr. Jones has agreed to listen more carefully and respectfully to his clients, including those with smaller orders, in order to strengthen his customer relations skills."

Be Sure That Policies Written in a Company Manual Are Followed in Actual Company Practice

Seemingly benign statements in a policy manual may be interpreted in court to be part of a binding contract between the company and employees. For example, if an employee manual promises the company will listen to both sides of a dispute, this policy must be followed consistently—with terminations taking place only after a fair hearing of both sides to the dispute.

Add Disclaimers to Company Manuals

Typical disclaimer statements include "This manual does not constitute an employment contract and the company has the right to change it at any time" or "This manual does not affect the company's right to terminate the employment of any employee, for any reason, at any time, nor does it in any way interfere with the right of employees to terminate their employment with the company." Check with legal counsel for the precise wording most appropriate for each state in which your organization operates.

SUMMARY

Good writing is so clear it is not only capable of being understood, it is incapable of being used against you and your company in litigation. When editing documents, ask yourself these questions:

- Does my message suggest an intent to dominate or a disregard for safety concerns?
- Does it suggest unfulfilled promises to employees or unfair treatment of them?

If so, carefully revise your document, so it is free of potentially incriminating statements.

Given the serious consequences of lawsuits, when in doubt, consult your company's legal advisors—especially when discussing patent issues, mergers and acquisitions, and plans to defend against competitive activity. Do not draw legal conclusions, paraphrase legal advice, or speculate about your company's legal position on issues. Your comments may restrict your company's future ability to defend itself. In short, keep in mind how your comments may be used against you and your company every time you write a message.

Exercise Evaluate the following passages; then revise them to improve their legal defensibility.

- We are aggressively leveraging our dominant advertising budget to preempt the impact of the entry of ABC's new product; this will surely send a message of our serious intent to the rest of the market.
- We hired Fred Jones because he exhibited greater maturity and emotional stability than either Debbie Gregory or Juwan Jefferson, two, hardworking, up-and-coming managers.

How did you do?
Alternatives might read as follows:

- We are increasing our advertising budget in response to the heavy advertising supporting ABC's new product.
- We hired Frederick Jones because his education and work experience best met the criteria the company established for this position.

How to write and speak persuasively to achieve organizational goals.

Power Communication