Writing up the facts and winning big:
Some secrets of the best writers of legal submissions

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It is an art to write written submissions that persuade. Like all arts, it is impossible to identify a single approach that always works. What works depends on the exercise of judgment based on particular circumstances that present themselves.

How do good advocates exercise their judgment? What secrets do they have?

Perhaps the biggest secret is that, whether or not they consciously think about it, they keep front of mind what persuasion is, they make all decisions based on that notion of persuasion, and they set aside all other considerations.

To many, what is meant by persuasion is another secret. It is probably best described as influencing or, even better, convincing the judicial mind. To succeed at persuasion, the good advocate concentrates on accommodating or meeting the needs of the judicial mind and nothing else. Too many counsel forget this, constructing submissions that warm themselves or their clients, but chill the judges.

Good advocates working on a case have all the masses of knowledge, fears, prejudices, frustrations and bad memories that one accumulates in getting a case ready for hearing. But they have another secret. They can set those personal things aside and think of only one thing when they write submissions: what will influence or convince the judicial mind.

For example, although good advocates, like everyone else, are often reluctant to leave certain facts out of their written submissions, nevertheless they do so when those facts will confuse, distract or repel the judicial mind. They know that the judicial mind is attracted to factual summaries that are brief and simple, based on the careful, intelligent selection of detail. First and foremost, good advocates know the judicial mind and cater to it, and nothing else.

What characteristics does the judicial mind have? The judicial mind comes in all shapes and sizes, and it is dangerous to generalize. Nevertheless, I will throw caution to the wind and offer some generalizations.

I will then discuss some of the characteristics of the bad advocate's mind – the sort of thoughts that get bad advocates into trouble when they draft written submissions.

Finally, based on these observations, I will offer some tips on writing the facts portion of a written submission. Remember, though, that the tips are best seen as general rules that should be departed from in appropriate situations – great advocates depart from them when their understanding of the judicial mind tells them to.

In the end, it is all a question of judgment.

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[1] Justice, Federal Court of Appeal (Canada). I presented this paper at the Advocates' Society Spring Conference, 2011, in Toronto, Ontario.

A primer on the judicial mind

Practical problem solvers. First, most judges are practical problem solvers. They know that the case has arrived in their courtroom because there is a practical problem that the parties have not been able to solve themselves. They want to know what the problem is, and what the possible solutions are.

Efficiency. Many judges want to know the problem and the practical solutions as soon as possible. They also want to know only about the problem and the practical solutions, not irrelevant detail. No one likes it when their time is wasted, and judges are no different. Perhaps by seeing so many underwhelming lawyers, many judges are especially impressed by those who can get to the key factual points early and efficiently, acquainting the judge only with the detail that is necessary to understand the case.

Minimalism. Contrary to what many believe, most judges are not interested in making wide, sweeping pronouncements. Most judges are minimalists. They are interested in adopting the simplest, narrowest solutions for the practical problems posed by the case. If they can take something already developed off of the shelf and apply it to the case before them, they will. To the extent that an already-developed solution is not on the shelf, they will be tempted to fashion a solution that embodies a narrow extension of the law, but only if that extension does not cause unwelcome implications for the case before them or other cases. Narrow and simple approaches appeal more than broad and complex approaches.

Wariness and caution. Judges understand that most of the information about the case is being presented by counsel who, in most cases, are being paid by their clients. It's all commercial free speech. And the stakes are high, with real life consequences for the parties and judges sitting above them, ready to pounce should a reviewable mistake be made. So judges are highly attentive but wary about the words that they hear. Many can detect the slightest inaccuracy or obfuscation and when they encounter it, they don't listen quite as hard anymore. Many are looking for which counsel to trust in a particular case or, more importantly, who not to trust. As a result, judges are suspicious of broad, undemonstrated assertions of fact. They are persuaded by the skilful use of detail that demonstrates that a certain point is so.

A desire for autonomy and empowerment. Judges begin by knowing very little about the case placed before them. By the end of the case, they want to become thoroughly familiar with it so they can work it out for themselves, write reasons on it, and be proud of those reasons. Judges consider themselves autonomous: rather than having bald assertions imposed upon them, they prefer to have well-structured information given to them so they can draw their own conclusions. The greatest of advocates understand that judges hold more strongly onto ideas that they, themselves, work out. So rather than thrusting their ideas on the judges, they offer just the right amount of detail, carefully arranged, so the judge inexorably draws the desired conclusion.

Early attentiveness, especially to the facts. When judges first pick up a written submission, their attention is at their keenest. The antennae are up, the eyes are open, and the brain is ready to receive the detail. It's like the start of a course of lectures that a student has been looking forward to for some time. As between the facts and the law, judges are especially keen to learn early about the facts. Often the keenness is lower at first in the case of legal matters. Upon reading the originating document for the proceedings, or upon reading the first paragraph of a written submission, many judges will probably know the general nature of the legal issue. They will quickly invoke their own understandings of law. But judges have no prior understanding of the facts of a particular case. Good judges, knowing they need to learn about the facts, will be ready to apply real effort to master the facts of the case. They will be thirsty for instruction on that: it's part of their desire to become empowered to deal with the case before them.

Quick to be frustrated. There is a flip side to the thirst for education and keenness to know about the facts early: a quick feeling of frustration when the necessary information is not forthcoming. Some will start to tune out if salient points are not presented efficiently and quickly.

Simplicity sells. Simple messages are most easily grasped and retained. Complex and more nuanced messages often trigger wariness and caution.

Doing law. In most cases, there is a legal test to be met. Certain facts need to be established to meet the legal test. Judges will be especially alert to the relevance and importance of facts that bear directly upon the elements of a legal test. They will be less interested in other facts.

Doing justice. Many judges, working within the law, will exercise their discretions in a way to do what seems to them to be just. They cannot help but react emotionally to facts and, as a result, they sometimes feel impelled to do justice within the limits of the law. So, sometimes, facts that are not strictly relevant to a legal test will matter.

A primer on the bad advocate's mind

Introduction. In my view, most bad advocates are not ignorant: they have some inkling about what appeals to the judicial mind. Their flaw is that they become distracted or diverted from appealing to it. Instead, they do what appeals to their own mind or their clients' minds.

The judge can figure it all out. Many bad advocates draft fact sections of written submissions in such a general way that they do not give the judges the sort of detailed education that they need to become comfortable with the case.

Judges are stupid, so I had better tell them everything. Some bad advocates do the opposite of speaking in generalities. Instead, they throw absolutely everything into the draft. Judges who encounter such a blizzard of detail sometimes tune out. The best way to think about it is to go back to your time in law school. Who were the best lecturers? They were certainly not the lecturers who rambled at the front in

brain-numbing detail. Your job, as a good advocate, is to select the facts, choosing only the most important details. Remember that simple and minimal sells.

I am frightened to leave anything out. Some bad advocates wrongly believe that judges expect to see every last detail in the facts portion of a written submission. This is wrong: judges understand that a written submission is not an encyclopaedia of every last remotely relevant detail in a case. Judges not only know that written submissions contain *selections* of facts, they *expect* it. Have the courage to select. Again, simple and minimal sells.

I went through this mess and now I deserve a medal. Some counsel must have been traumatized by the long hours they spent putting their cases together. They must have worked very hard working with all of the witnesses and examined document after document into the wee hours of the morning. I deduce this from the fact that many counsel share with us in their written submissions every last experience that they had as they put the case together, taking us through all the witnesses, and tens, if not hundreds of documents of questionable relevance. Remember that the judicial mind does not need that information. Have the courage to select. Again, simple and minimal sells.

I figured it all out, here are my conclusions, and so trust me. Some counsel have worked so hard on their cases that they have become very sure about the facts – so sure that they seem to forget the need to convince the judicial mind of them. Remember that the judicial mind needs to be educated and persuaded that a particular set of facts is true. Your job is not to assert factual conclusions, it is to empower and enable the judges, by providing them with useful information, to draw factual conclusions in your client's favour.

The other side has no merit. Some counsel have lost objectivity and are so sure about their cases that they forget that the other side has a competing factual story to tell. And when it tells the competing story in an effective way, the cock-sure counsel's credibility will suffer. Even if you have a really strong factual story to tell, don't just assert it – you have to demonstrate that the facts are so, through careful selection and arrangement of detail, so that the judges are empowered to draw the conclusions that you want.

It's all about who said what. Again, some counsel must be mentally trapped in their preparation of the case, or the first instance hearing or trial that they gone through – they feel the need to review the evidence in the case witness by witness. To the judge hearing this form of exposition of the facts, it is like having to sit in front of a television replay of all of the discoveries, cross-examinations, motions or trial. Remember that judges appreciate efficiency, and the more you can do to select only the most important evidence and synthesize it into neat, readily discernable and understandable packages, the better off your client will be.

Maybe the judge won't notice. Some, perhaps so secure in their command of the facts of the cases, assume that their knowledge of the case will be superior to that of the judge. So some counsel try to leave out an important fact, thinking that the judges will not notice. This is devastating for counsel's credibility with the court. Experienced judges have developed an expertise in learning the facts quickly,

comprehensively, and accurately – as a result, it is hard to snow them on the facts. Don't try. Don't even think about trying.

It's all about emotion. Emotional persuasion has its place. It can affect exercises of discretion. In rare cases, it can influence the development of the law. But it is best to consider emotional persuasion as the advocacy equivalent of adding seasoning to a dish in the kitchen. A little bit can go a long way and enhance the dish. Too much can make it inedible. There are plenty of counsel out there who are bad cooks.

This is my biggest case! That may be true, but, sorry to disappoint, the judge has probably seen more important cases than the one you are bringing to the court. Don't try to puff the case up into something epic. Don't try to turn a five page fact situation into twenty. Remember that there is something about short writing that really glues ideas onto the judicial mind. Perhaps it is the simplicity, or perhaps it is the admiration the judge feels for a tightly-written, efficient summary in an important case. But brevity works.

There was a judgment at first instance? Really? Many of those whose clients have lost at first instance seem to put the loss out of mind and argue their appeal cases or judicial reviews on the basis that nothing has happened. While that is perhaps good for their morale and that of their clients, it is bad for their cases. A judgment at first instance has moved the goalposts. Facts have been found. Unless you can set them aside for palpable and overriding error, you have to accept them. Discretions have been exercised. Unless you can show some fundamental legal error and fundamental misapprehension of the facts, you have to accept them.

Just slap it down on the page, it's not a novel. In the minds of some counsel, good writing is not a priority. If it were otherwise, some of the great books on writing would be seen in almost every litigator's bookshelf.[2] Probably fewer than 1% of counsel have any sort of writing book on their bookshelves. What a shame: clear, direct and brief prose wins cases by communicating ideas simply, directly into the judges' minds.

I'm in a court, I need to be formal. Yes, you often have to gown in court, the same costume counsel have been wearing in Canada since the 19th century. No, your prose need not be borrowed from that same era. You don't need to start paragraphs with, "It is respectfully submitted." Again, clear, direct and brief prose wins cases.

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[2] A wealth of instructional materials are available on writing and how to draft factums. On the basics of writing, especially as applied to factums, see Stephen V. Armstrong and Timothy P. Terrell, *Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing* 3d ed (Thomson Legal Publishing, 2009); Joseph M. Williams, *Style: Ten Lessons in Clarity and Grace*, 10th ed (Harper Collins, 2010); Richard C. Wydick, *Plain English for Lawyers*, 5th ed (Carolina Academic Press, 2005); Bryan A. Garner, *Legal Writing in Plain English: A Text With Exercises*, 2d ed. (University of Chicago, 2001). More advanced factum and writing instruction is available from these works, which I highly recommend: Thomas A. Cromwell, ed., *Effective Written Advocacy* (Canada Law Book, 2008); Bryan A. Garner, *The Winning Brief: 100 Tips For Persuasive Briefing in Trial and Appellate Courts* (Oxford University Press, 1999); Roy Peter Clark, *50 Essential Strategies for Every Writer* (Little, Brown and Company, 2008); Steven D. Stark, *Writing to Win: The Legal Writer* (Broadway Books, 1999); Constance Hale, *Sin and Syntax: How To Craft Wickedly Effective Prose* (Random House, 1999); Arthur Plotnik, *Spunk and Bite: A Writer's Guide to Bold, Contemporary Style* (Random House, 2005).

Some practical tips

A. Before you write

Mastering the evidence

The starting point is to master the evidence in the case. A personal comment: I am surprised at how few counsel realize exactly what is available to them in the record. Often there are golden nuggets and explosive mines sitting there, undiscovered. And in thinking about the record, remember that the evidentiary record can also be comprised of inferences from the lack of evidence offered on a particular point.

Questions to ask

First, ask what the real problem is in the case. Sometimes that matters a great deal. Opposing sides will sometimes have conflicting views of what the real problem is. In an injunction motion, is it the grievous damage that the moving party will suffer? Or is it the inconvenience that the responding party will suffer? The case may turn on the judge's view about which of these problems deserves more concern in the particular case. Have you selected the problem or problems to which the judge will attach primary significance?

A good tactic for defendants or respondents is to minimize the importance of the problem that the plaintiff or applicant is raising. Forget the client for a moment. Forget yourself for a moment. What, on the evidence, will the judge find important?

In thinking about the real problems in the case, remember the characteristics of the judicial mind and factor them into your assessment. Simplicity sells. Judges are concerned about problems that are practical, that have real impact. Judges are fixated on finding appropriate (usually minimal) solutions that fully address the problems placed before them.

Another question to be considered is whether the evidence will lead a judge to grant a solution to the problem (a remedy) that will be useful. How you put your case factually may affect the remedy that you get. Again, depending on the answer to your question, you may wish to revisit the previous questions.

This stage of the writing process is best seen as a dynamic process of identifying questions, assessing them against the available evidence, considering the characteristics of the judicial mind, modifying and tweaking the questions, and then doing all of the foregoing again and again – until you are satisfied that you have properly articulated the matters on which your client will achieve maximum success.

The best fact sections in written submissions have thought out the fundamental questions in the case very carefully.

Reverse engineer the case

Having identified the fundamental questions in light of the evidence in the case, this should be a brief step. Consider what evidence you need to mention in the written submission in order to get the most favourable possible answers. Of course, this will require not just an assessment of what will logically establish the relevant propositions, but what the judicial mind will actually accept. Remember that simple and minimal often sells. And don't forget the value of emotional persuasion – sometimes the odd fact here and there can help to make the judicial mind more favourably disposed to your client's case.

The evidence you develop here is the evidence that should appear in your written submission. If you have done it right, there should be plenty of evidence left on the cutting room floor.

B. Structuring the submission

You have a jumble of facts in front of you. How should they be structured?

Thematic exposition usually works best

By this time, you know the questions that have to be answered in a particular case. This should dictate how the facts are structured.

For example, suppose that counsel is acting for a client charged with an environmental offence, a spill into a watercourse. Suppose that there is no question that a harmful spill took place and the main defence is due diligence. Looking at the law and the available evidence, good counsel has developed the following questions:

- Was there a pollution control plan in place?
- Was all equipment under the plan purchased?
- Were all necessary employees hired?
- Was the equipment maintained?
- Was money pumped into the pollution control system?
- Was performance under the plan monitored?
- Were employees properly trained?
- What did the employees do on the day in question?
- How did the equipment work on the day in question?
- Did the spill cause any harm?

Witness-by-witness exposition of these issues will not shed much light on them. Neither will a chronological exposition. Better is to look at these questions, come up with common themes and use those as your major headings in the fact section.

Think like a museum designer

When you wander into a museum and tour an exhibit, you encounter various rooms. The rooms are skilfully arranged to educate you, simply and painlessly, giving you the right information, at the right level of detail, precisely when you need it. The best drafters of facts sections of written submissions are probably good museum designers.

The best drafters of facts sections of written submissions, like museum designers, offer visitors some basic information at the beginning. As visitors wander further, they encounter more detail, sometimes complex detail, but they master it because they have been educated about how to handle it by the basic information. This being said, they never inflict too much information on visitors. Eyes will glaze, and visitors may stop paying attention.

Another habit of museum designers is to grab the visitors' interest early. The most important information comes out early, with the nuances coming later.

Take the above questions about the environmental case. What rooms in the exhibit might the museum designer provide for? What would be least confusing for the visitors?

A good strategy is to put like with like. The questions above, when combined to put like with like, may translate into the following five "rooms" in the exhibit, with various "displays" in each "room":

- Brief background information: the parties, the incident, the history of the case

- The pollution control plan
  - Was it in place? When?
  - Was money spent on it? How much?

- The pollution control system established under the plan
  - How was it supposed to work?
  - The employees working in the system
  - The equipment in the system

- The operation of the system
  - Maintenance of the equipment
  - Training of the employees
  - Monitoring of the performance of the system

- The day in question
  - What happened?
  - Was the pollution plan to blame?
  - Was the operation of the system to blame?
  - What caused the spill?
  - What harm resulted and why?

This gives you five sections to the facts section, with various subsections.

Incidentally, the transition from the first set of questions in the environmental case to this list of sections was achieved through a technique called "compression" – the rearrangement of detail in order to put like topics with like topics. I explain it more elsewhere.[3] It can serve to compress factual detail into a tighter synthesis, appealing to judges' favourable reactions to approaches that educate them in a simple, efficient, confident and clear way.

C. Within sections of the submissions

Point first exposition

In his now classic article, Justice John Laskin urges drafters of submissions to adopt "point first" exposition.[4] The best structure is to state the point that is to be developed, and then to develop it. He notes that readers understand information better if they understand its significance when they encounter it.

A mathematical proposition might illustrate the point well:

> 0, 1, 1, 2, 3, 5, 8, 13, 21, 34, 55

The reader has to stop and think critically about why these numbers have been selected. Advocacy is at its most effective when the reader does not think critically, but rather takes in and trusts all of the information without thinking about it much. The mathematical proposition, above, is not effective advocacy.

Try this instead:

> Each number in the following sequence is the product of the two numbers that come before it. 0, 1, 1, 2, 3, 5, 8, 13, 21, 34, 55

After verifying the first few numbers, the reader may even accept the proposition as proven and will move on without finishing.

Consider adopting "point first" exposition through your facts section: at the beginning of each section and sub-section. Judges need to know at all times exactly where you've been in your submission, where you are presently, and where you are about to go. This instils confidence and reassurance, and allows judges to absorb the significance of what you are telling them as they encounter it.

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[3] David Stratas, "Walking on Thin Ice: Exploiting Strengths and Managing Weaknesses," in Hon. Thomas A. Cromwell (ed.), *Effective Written Advocacy* (2008).

[4] See generally Hon. John Laskin, "Forget the Windup and Make the Pitch: Some suggestions for writing more persuasive factums." See also Hon. David Stratas, Hon, Kathy Feldman and Hon. Janet Simmons, "Some Factum Suggestions," *The Advocates' Society Journal* (Jan. 2010).

The aim is to have the judge take in uncritically everything you are saying. When judges read your prose and mutter, "I don't know where this is going," they are wrestling with your prose rather than taking in the meaning that you are trying to express. Far from persuading the judges, you are putting them in a mental state of disengagement and, in extreme cases, just short of rebellion.

Headings and subheadings

Headings and subheadings are perhaps the best form of "point first" exposition. They alert readers to what they are going to encounter.

Consider headings as the equivalent of signs at the entrance to each room in the museum exhibit. Before you step in and grapple with the detail, you know what you are going to encounter.

Consider subheadings as the equivalent of signs at each display panel in a particular room. Before you read the particular detail on the display panel, you already know what you are about to encounter.

In the environmental case, above, the description of the five rooms suffices very well as five headings in the facts section. Further, the description of the subtopics in each room suffices very well as the subheadings.

Ordering the sections

After you have written the sections, look at them globally and reconsider their order. Thinking of what appeals to the judicial mind, what might persuade them best?

Looking at the example of the environmental case, consideration might be given to mentioning the damage caused by the spill near the beginning of the facts section, either in the opening section concerning the basic facts or in a stand-alone section near the beginning. In some cases, this might look less evasive and might enhance credibility. The damage done by mentioning the bad facts early might be lessened if the bad facts are managed with techniques like "juxtaposition," which I discuss below.

D. Within paragraphs and sentences

Here, in my view, it is best to emulate newspaper writers. Many short paragraphs, each confined to a discrete topic, help to achieve clarity. A good paragraph will also try to deploy information following "point first" exposition: the first sentence should give some idea about what the paragraph is going to talk about, and the remainder of the paragraph should develop that idea.

At the sentence level, the best writers shine. The best products are made with the finest basic ingredients. Sentences are the basic ingredients for a successful written submission. There are well-known ways to construct a clear, direct and brief

sentence, but few counsel know them. Fortunately, the instruction on how to accomplish this is available for just a few dollars, and a small investment of time.

The importance of clarity, directness and brevity at the sentence level cannot be overstated. It appeals to many portions of the judicial mind. It educates. It eliminates uncertainty. It comforts. It engenders confidence. It glues ideas to the brain. It impresses. If clear, direct and confident prose is supported by detailed, helpful and accurate citations, the client's case is well on the way to being maximized.

E. The style and tone

Here, considerations of what appeals to the judicial mind should hold sway. The style should be clear, direct, brief and confident – writing style will have much to influence that. The tone should be a clinical, matter of fact tone, not hectoring. Remember that judges, by nature, are practical problem solvers: adopt a tone that appeals to that orientation.

At all times, don't just assert propositions, demonstrate them. This can be done through supporting sentences in the facts section, careful, helpful and accurate citations, or both. This empowers the judge to make factual conclusions in your client's favour. A large element of persuasion is about empowering judges to find in your favour, not just telling them what to do.

The best writers try to achieve impact and emphasis through sentence construction and careful selection and arrangement of the facts. One thing that good writers do is to let the facts, skilfully arranged in beautifully written sentences, do the work and delete the colourful adjectives and adverbs. Colourful adjectives and adverbs are the equivalent of assertions without demonstration. Let judges think up the colourful adjectives and adverbs; your job is to empower them to think them up themselves and react consistently with them.

Lastly, but perhaps most importantly, remember that judicial minds are constantly analysing the submissions, knowing that they are commercial free speech. They are critical, cautious and wary. Do not lie, do not exaggerate, do not omit information that the judge will believe is important, and always be honest with the evidentiary record. Take no risks, even small ones. Judicial minds become very unhappy with counsel are less than candid and honest, and memories can be very long.

F. Special tools

Use lists

There is something about the use of lists that appeals to judicial minds. When counsel writes that there are four reasons for a particular factual finding and then lists the reasons in four sub-points from (a) through (d), judges seem to pay more attention.

Is it the attractiveness of the structure, which appeals to the judicial need for comfort and certainty? Is it the shortness of each sub-point, which appeals to the judicial preference for simplicity? Is it the resulting clarity, confidence and synthesis of a complex point into a tight package that reassures judicial minds? Is it just the creation of white space on the page, which is so much more easy and efficient to read?

Whatever the reason, lists work well. Don't overuse them. But consider using them for important factual points.

Invoking familiar images and themes

Sometimes the facts of a particular case will resemble fact situations that judges have encountered over and over again, or fact situations that are notorious in our culture, a culture in which the judges live. Judicial minds are more likely to embrace the familiar. When possible, good advocates – always acting within the limits of honesty – try to present the facts their particular case to reflect a familiar or culturally resonant fact situation.

For example, on the plaintiffs' side, there are many well-worn factual themes that can resonate with the judicial mind: the unruly outlaws threatening a small country town, the evil fraudster who tricks the vulnerable elderly people out of their money, a big business that is indifferent to customer complaints and so on. On the defendants' side, one might invoke the image of the generous service provider who has done everything possible for a customer who will never be satisfied, a government faced with a difficult choice in an urgent circumstance but has is forced to act for the public good, police officers in a violent, unpredictable situation who have to make instant judgment calls.

Diagrams and illustrations

In complex cases, particularly where difficult corporate structures have to be set out, diagrams and illustrations can be useful. Sometimes a picture is worth a thousand words! Again, this appeals to judges who value certainty, simplicity and efficiency.[5]

Context and juxtaposition

I commend to you a recent article by Benjamin Zarnett.[6] He writes about the power of context in advocacy. He observes that facts can take on an entirely different complexion when they are seen alongside other facts.

A particular tool exists for this. Over the years, I have called it "juxtaposition" – the placing of unrelated facts next to each other, either in the same sentence, a pair of sentences or in adjoining sections. This can affect judges at an emotional level,

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[5] For examples, see Stratas, "Walking on Thin Ice," *supra*.
[6] B. Zarnett, "The Power of Context" in *The Advocates' Journal*, Winter 2010.

making facts seem better or worse depending on what counsel is trying to achieve. Here are some examples:

- Plaintiff stole a loaf of bread, but defendant stole $100,000.
  (Plaintiff's bad fact, with defendant's worse fact.)

- Plaintiff stole a loaf of bread, but gave it to someone starving.
  (Plaintiff's bad fact, with plaintiff's good fact.)

- Plaintiff gave $5,000 to charity in 2010 – and followed it with $50,000 in 2011.
  (Plaintiff's good fact, with plaintiff's even better fact.)

- Plaintiff gave $5,000 to charity in 2010, but the defendant has never given a cent.
  (Plaintiff's good fact, with defendant's worse fact.)

Juxtaposition is one of the primary tools for managing good or bad facts in order to influence the judge emotionally. Note that the emotional effect in each case is achieved by the skilful juxtaposition of facts, not through the use of colourful adjectives or adverbs.

I hope that you find some of these suggestions helpful in your work.