Persuasive Writing

January 30, 2006

Unpersuasive Writing Techniques

- Underlining, boldface, or italics
- Unnecessary introductory phrases
  - It is important to bear in mind …
  - It is to be noted that . . .
  - We should like to point out that . . .
- Intensifying qualifiers
  - Clearly, obviously, certainly
  - Very, absolutely, utterly, completely, perfectly

Persuasive Writing Techniques

- Focus on Main Arguments
- Logical Organization
- Word Choice
  - Clear Straightforward Prose
- Make Positive Statements:
  - "He breached the contract."
  - "They failed in their duty…"

Organization

- Make your organization readily apparent.
- Use roadmaps.
- State your argument at the end of the intro paragraph.
- Use topic sentences!!!!
- When appropriate, restate your position at the end of the section.
- Put your best arguments first and more fully develop them.

Be an Advocate

- Be assertive but reasoned -- even a bit understated. Too strong language loses its persuasiveness because the reader either consciously or unconsciously resists it; also you may lose credibility.
- Yet, you want to be an advocate for your client and you have an ethical obligation to do so.

Word Choice -- Examples

- The defendant broke into the house by smashing a window.
- The defendant gained entry into the house.

- The defendant conned the young woman into selling her house.
- The young woman was influenced to sell her house.

- Harvey Woodley threw the snowball.
- Harvey Woodley tossed a snowball.

Bolster your Argument with Facts

- "The railroad had actual and constructive knowledge of the defect. First, it should have known that the spot was frequently the scene of accidents. Second, it had an engineering report giving notice of the bridge's condition."

- "The railroad had actual and constructive knowledge of the defect. First, it should have known that the spot was frequently the scene of accidents. Three serious accidents occurred in the preceding five months. Second, an internal engineering report placed the bridge on a list of bridges needing maintenance or repair. "

But don't go too far???

- "The railroad showed callous disregard for the public because it had clear and unmistakable notice of this serious problem in at least two ways. First, the railroad should have known that the spot was the scene of many tragic accidents. For it to deny such knowledge is inconceivable. Second, the railroad had in its possession its own internal engineering report that clearly reported the bridge's life-threatening condition."

Active v. Passive Voice

- "The defendant's embezzlement of company funds in 2005 is an example of his untrustworthiness."
- "The defendant embezzled funds from the company in 2005; this act shows that he cannot be trusted."

- "Harvey struck the dog with a snowball."
- "The dog was struck with a snowball."

Emphasis -- Sentence

- Put information you want to emphasize at the end or beginning of sentences.
- Bury information you want to de-emphasize in the middle of your sentences.
  - "Harvey Johnson obtained his driver's license at age sixteen, maintained a perfect driving record until age thirty-three, lost his license on a charge of reckless endangerment, had his license reinstated, and drove without incident for the next six years."

Emphasis -- Sentence

- Deemphasize by placing language in a dependent clause
  - "Although Jon is sometimes lazy and is tardy to class, he performs well in contracts."
  - "Although Jon performs well in contracts, he is sometimes lazy and tardy to class. "

Emphasis - Paragraph and Section Structure

- Put information you want to emphasize at the end and beginning of paragraphs, each section, and the document.
- Bury information you want to de-emphasize in the middle of paragraphs, each section, and the document.

Frame Persuasive Rules

- "One who is viciously attacked by a dog that he approaches in a nonconfrontational manner has not provoked the attack. Messa, Rather, a victim provokes a dog's attack when he hurts or antagonizes the dog, particularly when the dog indicates its displeasure. Siewerth v. Charleston."
- "Physical contact with a dog, even without any intent to hurt the dog, constitutes provocation of the dog's natural response. Nelson v. Lewis; Messa v. Sullivan."

Homes v. Zion

Set-Up of Overall Issue

- Overall Point Heading
- Persuasive Thesis Statement
- Rule
  - Title IX statutory language
  - Elements for student-on-student harassment Title IX claim, re: Davis, other authority - persuasively framed
    - The U.S. Supreme Court has recognized that a high school student may have a cause of action against a school board under Title IX in cases of student-on-student sexual harassment when…(Homes)
    - In cases involving student sexual harassment, a claim for private damages under Title IX is available only in certain limited circumstances, where a claimant can show…(Zion)
- Dispose of uncontested elements
- Transition Roadmap to arguments (sub-headings)

Deliberate Indifference

Deliberate Indifference

- Minor Point Heading
- Thesis Statement
  - Homes: Appellee's failure to (persuasive framing of relevant facts/actions)...was clearly unreasonable and shows its deliberate indifference to known acts of repeated sexual harassment against Ms. Homes.
  - Zion: Zion County School District's responses to the interactions (persuasive framing of relevant facts/actions) were not clearly unreasonable under the circumstances and thus appellant cannot show deliberate indifference as required under Title IX.

Deliberate Indifference

- Argumentative, synthesized rule that incorporates Davis and other relevant authority
  - Define deliberate indifference in a way that is most favorable to your side
    - Homes: A school district acts with deliberate indifference when…..(rule tailored to focus on Homes facts that support a finding of deliberate indifference under the law)
    - Zion: To establish deliberate indifference, appellant must show that… (rule can be framed to emphasize burden or standard is a high one, limited to certain factual instances, emphasize policy)
- Transition Roadmap to arguments (sub-headings)

Deliberate Indifference

- Sub-sub Heading
- Transition sentence (optional)
- Rule – framed favorably
- Rule Proof on sub-sub point
- Argument/Counterargument

Davis

We stress that our conclusion here--that recipients may be liable for their deliberate indifference to known acts of peer sexual harassment--does not mean that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular action. We thus disagree with respondents' contention that, if Title IX provides a cause of action for student-on-student harassment, "nothing short of expulsion of every student accused of misconduct involving sexual overtones would protect school systems from liability or damages." ("[A] school must immediately suspend or expel a student accused of sexual harassment"). Likewise, the dissent erroneously imagines that victims of peer harassment now have a Title IX right to make particular remedial demands. See *post,* at 1691 (contemplating that victim could demand new desk assignment). In fact, as we have previously noted, courts should refrain from second-guessing the disciplinary decisions made by school administrators. School administrators will continue to enjoy the flexibility they require so long as funding recipients are deemed "deliberately indifferent" to acts of student-on-student harassment only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances. The dissent consistently mischaracterizes this standard to require funding recipients to "remedy" peer harassment, and to "ensur[e] that ... students conform their conduct to" certain rules, Title IX imposes no such requirements. On the contrary, the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable. This is not a mere "reasonableness" standard, as the dissent assumes.

Davis

Like the dissent, we acknowledge that school administrators shoulder substantial burdens as a result of legal constraints on their disciplinary authority. To the extent that these restrictions arise from federal statutes, Congress can review these burdens with attention to the difficult position in which such legislation may place our Nation's schools. We believe, however, that the standard set out here is sufficiently flexible to account both for the level of disciplinary authority available to the school and for the potential liability arising from certain forms of disciplinary action. A university might not, for example, be expected to exercise the same degree of control over its students that a grade school would enjoy, see *post,* and it would be entirely reasonable for a school to refrain from a form of disciplinary action that would expose it to constitutional or statutory claims.
While it remains to be seen whether petitioner can show that the Board's response to reports of G.F.'s misconduct was clearly unreasonable in light of the known circumstances, petitioner may be able to show that the Board "subject [ed]" LaShonda to discrimination by failing to respond in any way over a period of five months to complaints of G.F.'s in-school misconduct from LaShonda and other female students.

Vance

The recipient is not required to "remedy" sexual harassment nor ensure that students conform their conduct to certain rules, but rather, "the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable." *Davis,*. The deliberate indifference standard "does not mean that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular disciplinary action." *Id.*. The standard does not mean that recipients must expel every student accused of misconduct. *See id.* Victims do not have a right to particular remedial demands. *See id.* Furthermore, courts should not second guess the disciplinary decisions that school administrators make. *See id.*

Vance

The standard announced by the Supreme Court is a "clearly unreasonable response in light of the known circumstances." *Davis,*. If this Court were to accept Spencer's argument, a school district could satisfy its obligation where a student has been raped by merely investigating and absolutely nothing more. Such minimalist response is not within the contemplation of a reasonable response. Although no particular * response is required, and although the school district is not required to eradicate all sexual harassment, the school district must respond and must do so reasonably in light of the known circumstances. Thus, where a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior. Where a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of the known circumstances.

Making use of favorable language or interpretations (Vance)

- Homes: A school district acts with deliberate indifference when its remedial action is inadequate and ineffective. "Where a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of known circumstances."

Making use of favorable language or interpretations (Vance)

- Zion: A school district is not required to "remedy" sexual harassment, and no particular response is required. It "must merely respond to known peer harassment in a manner that is not clearly unreasonable." Thus, only where a plaintiff can clearly establish that a school district had knowledge that its efforts to remediate had no effect…

Vance -- Application

YES

- No response to complaints
- No discipline
- Verbal rebuke insufficient
- Failed to separate
- Failed to investigate
- Failed to remove as director
- Aware that efforts were unsuccessful

NO

- Some response
- Verbal rebuke to verbal incident
- Settle down was effective
- Minimized contact after kiss
- Not second guess school
- No right to specific remedy
- Administrative burdens to remove Crews