

The Power of Connectivity

The Science and Art of Transitions

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I. Introduction

“I think, therefore I am.”¹ Just imagine if “therefore” had been replaced with “however” or omitted entirely. Descartes’s thought would be forever changed, and some lawyer or legal writing professor might have commented that this was an improper fragment. Transitions matter.

This article explores why transitions matter and how to use them. It does so from three different perspectives: First, the science behind transitions is addressed, proving that transitions can speed processing time and improve comprehension, and that some transitions are better than others. Second, the art of transitions is addressed through a song and a stand-up comedy act to explore whether these genres can teach legal writers lessons about transitions—specifically point headings and rhetorical questions. Third, the use of transitions in legal writing is addressed with a special emphasis on the magic of three and the use of first, second, and third as transitions.

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¹ RENÉ DESCARTES, DISCOURSE ON METHOD (1637).

II. The science behind transitions

While lawyers have been busy writing briefs using transitions, psycholinguists and cognitive psychologists, among others, have been studying the effects of “connectives”² on comprehension and reading times.³ Indeed, the literature reveals that the use of transitions improves processing time and assists in comprehension.⁴ Any lawyer trying to convince a judge that an argument should be understood quickly and then adopted should care about this.⁵

For example, in one study, the authors found that two sentences that were connected to each other using the word “because” led to faster recognition times than the same two sentences without that word.⁶ The experiment was designed to test aspects of the “Connective Integration Model.” Under this model, when there are two clauses of a sentence that contain a word like “because,” the reader first places the first clause in working memory. When the reader encounters the word connecting the clauses, the reader knows the clauses must be integrated. When the reader then reads the second clause and puts that in the reader’s memory, the reader then combines both clauses into an integrated representation. If

2 Scientists use the word “connectives”; legal writers use the word “transitions.” Keith K. Millis & Marcel A. Just, *The Influence of Connectives on Sentence Comprehension*, 33 J. MEMORY & LANGUAGE 128, 128–29 (1994) (using the word “connective” to refer to the word “because”); Judith Kamalski, Len Lentz & Ted Sanders, *Effects of Coherence Marking on the Comprehension and Appraisal of Discourse* (2006), https://www.academia.edu/18329261/Effects_of_Coherence_Marking_on_the_Comprehension_and_Appraisal_of_Discourse (referring to the importance of connectives such as “because” and “therefore”). Compare, e.g., CHRISTINE COUGHLIN, JOAN ROCKLIN & SANDY PATRICK, *A LAWYER WRITES* 271 (3d ed. 2018) (listing “because” as a transition) (citation omitted); BRYAN GARNER, *THE REDBOOK, A MANUAL ON LEGAL STYLE* 235–37 (4th ed. 2013) (defining a conjunction as joining “two or more words, phrases, clauses or sentences” and listing “because” as a subordinating conjunction that shows a logical connection to the main clause). Further, the word transitions, as used in this article, should be interpreted broadly to include words such as “and,” “because,” “including,” “but,” and “so,” and transitional devices such as point headings and rhetorical questions. In fact, legal writing expert Ross Guberman lists all of these words and 85 other transition words and phrases in one of the top blogs on legal writing. Ross Guberman, *90 Transition Words and Phrases*, LEGAL WRITING PRO, <https://legalwritingpro.com/pdf/transition-words.pdf> (last visited Mar. 20, 2021). Further, because the intended audience for this article is lawyers and not psycholinguists or cognitive psychologists, the word transition will be used instead of words such as “connectives” or “coherence markers.” Interestingly, however, Bryan Garner has referred to transition words and phrases as “explicit connectives.” BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* 83–85 (2d ed. 2013).

3 See generally Jean Caron, Hans C. Micko & Manfred Thüring, *Conjunctions and the Recall of Composite Sentences*, 27 J. MEMORY & LANGUAGE 309 (1988); Kamalski et al., *supra* note 2; Millis & Just, *supra* note 2, at 130; Ted J. M. Sanders & Leo G.M. Noordman, *The Role of Coherence Relations and Their Linguistic Markers in Text Processing*, 29: 1 DISCOURSE PROCESSES 37 (2000); Jan H. Spyridakis & Timothy C. Standal, *Signals in Expository Prose: Effects on Reading Comprehension*, 22 READING RES. Q. 285 (1987).

4 See the authorities cited *supra* note 3.

5 At first blush, it might seem like the less time and effort it takes to read something, the less the reader will absorb the information. The opposite is true. “Relevance theory” is a theory that posits that perceptions of relevance vary with effort, and if more effort (and, in theory, time) is taken to process information, the reader will find the information less relevant and less worthy of attention. Elizabeth R. Baldwin, *Beyond Contrastive Rhetoric: Helping International Lawyers Use Cohesive Devices in U.S. Legal Writing*, 26 FLA. J. INT’L L. 399, 424 (2014). In contrast, if information is easy to interpret, that information has an “initial degree of plausibility.” *Id.* (citation omitted).

6 Millis & Just, *supra* note 2, at 134.

there is no connecting word, however, there is no explicit cue to integrate the statements, leading to a possible inability to integrate and comprehend the two clauses.⁷

In one of three experiments, subjects read two pairs of statements—one pair not joined by a transition and another pair joined by the word “because.”⁸ The sentence pairs were all the same length; the only difference was in the use of the connecting word.⁹ Here is an example:

Version One: The elderly parents toasted their only daughter at the dinner. Jill had passed the exams at the prestigious university.

Version Two: The elderly parents toasted their only daughter at the dinner *because* Jill had passed the exams at the prestigious university.¹⁰

In each sentence pair, the first statement of the pair conveyed a possible consequence of the action or event expressed in the second statement.¹¹ The subjects were provided with 72 pairs of sentences.¹² The subjects were presented with the sentence pairs on a fast moving computer screen, and then a “probe word” would appear; in the example above, the probe word would have been the word “toasted.”¹³ They were then told to press “true” if the word had appeared in the sentence pairs and “false” if it had not.¹⁴ The authors of the study then measured word reading times, probe word recognition times, and the time to answer.¹⁵ Timing was measured in milliseconds.¹⁶

The result was as hypothesized—the versions of the statements with the word “because” led to faster recognition times of the probe word than the statements without that connection.¹⁷ In addition to being faster, the answers were more accurate.¹⁸

Unlike the study above where the researchers used *related* sentences, in another experiment, the researchers used *unrelated* sentence pairs to assess recall performance comparing, among other conjunctions, “because” and “and” inserted between the clauses.¹⁹ Sentence pairs were also used without any connection. The sentences had a single subject and predicate and were all in past tense.²⁰ Subjects were provided with

7 *Id.*

8 *Id.* at 130.

9 *Id.* at 131.

10 *Id.* at 128.

11 *Id.*

12 *Id.*

13 *Id.* at 131–32.

14 *Id.* at 131.

15 *Id.* at 132.

16 *Id.* While the difference of a few milliseconds might not seem significant for lawyers (or any other person for that matter), in this area of research, that is the unit of measurement.

17 *Id.* at 134.

18 *Id.*

19 Caron et al., *supra* note 3, at 311.

20 *Id.*

a booklet of the sentence pairs, one pair on each page, and were told to turn the page every 7.5 seconds.²¹ Subsequently, they were told to write down what they could remember of the second clause or sentence.²² Recall performance was better for the “because” sentences than the “and” sentences or unconnected sentences.²³

Finally, when scientists studied the impact of transitions on readers’ comprehension of longer passages, they found that when transitions were added, students scored higher on tests designed to test their understanding of the materials.²⁴ The materials consisted of four essays on technical topics, such as nitrates, corrosion, and algae control.²⁵ After reading the passages, students took a ten-question multiple choice test.²⁶ Although the results were dependent on the content of the material, the use of the transitions helped readers “retain more subordinate and superordinate content and make inferences from that content.”²⁷ The authors thus concluded that “logical connectives” appear to aid readers in understanding “expository prose.”²⁸

Thus, there is a scientific basis for using transitions in writing, as they improve processing times and comprehension. And some transitions work better than others.

III. From science to the art: Justin Timberlake’s “SexyBack” and Brian Regan’s Walk on the Moon

It is not only scientists that can help legal writers understand why transitions improve reader comprehension. Artists too can help inform legal writers about their own use of transitions. With the help of singer-songwriter Justin Timberlake, and stand-up comedian Brian Regan, legal writers can learn about point headings, the importance of variety, and the use of rhetorical questions as transitions.

21 *Id.* at 312.

22 *Id.*

23 *Id.* at 315. Similarly, in a study comparing a “problem-solution” format with a “list relation,” the authors found that the problem-solution format caused a stronger link in the representation than a list structure. Sanders & Noordman, *supra* note 3, at 51.

24 Spyridakis & Standal, *supra* note 3, at 290–92. For this study, different methods were used to help signal or preview comprehension: headings, previews of the material, and “logical connectives” in the form of transitions such as “for example,” “therefore,” “also,” “additionally,” and “in the meantime.” *Id.* at 288–89. Because the focus of this article is on transitions, only that part of the study is addressed.

25 *Id.* at 288.

26 *Id.* at 289.

27 *Id.* at 292. In one passage that was long and at a relatively low reading level (Grade 9), the signals used had less value, leading the authors to conclude that if the passage is easy enough to understand, signals may be of less value. *Id.* at 293.

28 *Id.*

A. What Justin Timberlake can tell us about point headings

The link between music and the law is known to be strong.²⁹ Music has even impacted how legal writing is taught to law students: professors have used flamenco rhythm and music to get law students thinking about legal writing³⁰ and the beats and rhythm of hip hop to teach plagiarism and citation.³¹

Even the word used to describe transitions in writing and music is the same—“bridge.”³² While the word “bridge” in legal writing refers to transitions in general, the word in music is used to refer to a specific type of transition in a song.³³ Regardless, both legal writing and music use transitions to move from one section to another and assure continuity of the whole.

Let’s take the song “SexyBack”³⁴ by Justin Timberlake, a singer-songwriter, actor, dancer, and record producer.³⁵ He has been the recipient of many Grammy, Emmy, and other awards and is well known throughout the world.³⁶ “SexyBack” was his first number-one single on the Billboard Hot 100 and was certified three-times platinum.³⁷ In that song, not only does he *make* effective transitions between different parts of the song, but he also actually *announces* each one, as in this excerpt:

²⁹ E.g., Charles R. Calleros, *Reading, Writing, and Rhythm: A Whimsical, Musical Way of Thinking about Teaching Legal Method and Writing*, 5 LEGAL WRITING 1 (1999); Kim D. Chanbonpin, *Legal Writing, the Remix: Plagiarism and Hip Hop Ethics*, 63 MERCER L. REV. 597 (2012); Karl Johnson & Ann Scales, *An Absolutely Positively True Story: Seven Reasons Why We Sing*, 16 N.M. L. REV. 433, 444–45 (1986) (discussing the use of song to increase the scope of a legal education); Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531 (2007); Bret Rappaport, *Using the Elements of Rhythm, Flow, and Tone to Create a More Effective and Persuasive Acoustic Experience in Legal Writing*, 16 LEGAL WRITING 65 (2010). On using flamenco music to understand the process of legal writing, the undersigned author was fortunate enough to have been a participant in Professor Calleros’s flamenco demonstration at the plenary session at the Nineteenth Annual Rocky Mountain Writing Conference in March of 2019 entitled “Reading, Writing, and Rhythm: Thinking about Teaching and Learning in a Collaborative Exercise.” It was truly inspiring and memorable.

³⁰ Calleros, *supra* note 29, at 3, 5.

³¹ Chanbonpin, *supra* note 29.

³² E.g., TERESA J. REID RAMBO & LEANNE J. PFLAUM, LEGAL WRITING BY DESIGN: A GUIDE TO GREAT BRIEFS AND MEMOS 219 (2d ed. 2013) (legal writing); Beth McCormack, *Moving Beyond Furthermore and Additionally: Ways to Brighten Your Transitions and Paragraph Bridges*, VT. B. J. 20 (Winter 2017) (legal writing); Rappaport, *supra* note 29, at 15 (legal writing). In music, the bridge is a contrasting section that prepares for the “return of the original material section.” *Bridge (music)*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Bridge> (last visited Mar. 20, 2021).

³³ See authorities cited *supra* note 29; Jason Blume, *The How and Why of Building Bridges in Your Songs*, MUSICWORLD (Feb. 23, 2017), <https://www.bmi.com/news/entry/the-how-and-why-of-building-bridges-in-your-songs> (explaining that like “bridges constructed with concrete and steel, bridges made of melody and lyric are links intended to connect one element to another”).

³⁴ JUSTIN TIMBERLAKE, SEXYBACK (Jive Records 2006).

³⁵ *List of Awards and Nominations Received by Justin Timberlake*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_awards_and_nominations_received_by_Justin_Timberlake (last visited June 14, 2020).

³⁶ *Id.*

³⁷ *SexyBack*, WIKIPEDIA, <https://en.wikipedia.org/wiki/SexyBack> (last visited June 14, 2020).

I'm bringing sexy back
 Them other boys don't know how to act
 I think you're special, what's behind your back?
 So turn around and I'll pick up the slack
Take 'em to the bridge
 Dirty babe
 You see these shackles
 Baby I'm your slave
 I'll let you whip me if I misbehave
 It's just that no one makes me feel this way
Take 'em to the chorus
 Come here girl
 Go ahead, be gone with it
 Come to the back
 Go ahead, be gone with it³⁸

Letting the listeners know what is coming up, Justin Timberlake spells out the relationship between one part of the song and the next explicitly. While he might have disregarded the preference of legal writers for the seamless transition,³⁹ in this song, spelling out the transitions clearly for the listener apparently works, judging by its success (although its success is no doubt attributable to factors beyond the explicit transitions).

Just as Timberlake announces where he is heading, legal writers announce their organization through point headings—a common type of transitional device.⁴⁰ Indeed, point headings serve as “transition points” to alert judges to arguments coming up.⁴¹ Point headings also help advocates organize their arguments.⁴² One analogy often used about the purpose of point headings is that they are key signposts to help navigate difficult twists and turns in the road.⁴³ Thus, while Timberlake’s announcement that the chorus is coming up is rare in musical lyrics, it is very much like

³⁸ *SexyBack Lyrics*, GENIUS LYRICS, <https://genius.com/Justin-timberlake-sexyback-lyrics> (last visited June 14, 2020).

³⁹ See *infra* notes 73–79 and accompanying text.

⁴⁰ Gerald Lebovitz, *Getting to the Point: Pointers About Point Headings*, 82 N.Y. ST. B. ASS'N J. 64, 50 (2010) (pinpoint pages from Westlaw version); see also Marie Buckley, A LAWYER'S GUIDE TO WRITING (Nov. 7, 2011), <https://mariebuckley.com/category/legal-memoslegal-writing/transitions-in-legal-writing/> (explaining that the transition in legal writing goes after the heading because “the heading itself is a form of transition”).

⁴¹ Lebovitz, *supra* note 40, at 49.

⁴² *Id.*

⁴³ *Making Connections between Sections of Your Argument: Road Maps and Signposts*, STUDENT LEARNING CTR., <https://slc.berkeley.edu/writing-worksheets-and-other-writing-resources/making-connections-between-sections-your-argument> (last visited Dec. 27, 2020); see also KIMBERLY Y.W. HOLST & CHARLES R. CALLEROS, LEGAL METHOD & WRITING II, TRIAL AND APPELLATE ADVOCACY 19 (2018) (noting that the bold letters and indentation in headings provide “conspicuous road signs for the reader”); Sylvia H. Walbolt & D. Matthew Allen, *The Ten Commandments of Writing an Effective Appellate Brief*, CARLTON FIELDS, www.carltonfields.com/appellate (last visited Mar. 20, 2021) (explaining that headings provide both transitions and “mapping”).

a lawyer’s announcement, in a point heading, that “[t]he motion to quash the subpoena duces tecum should be granted because Defendant has standing to assert privileges over decedent’s medical records.”⁴⁴

B. What Brian Regan can tell us about variety and rhetorical questions

Another genre that can help inform a legal writer about the use of effective transitions is stand-up comedy.⁴⁵ In contrast to the close relationship between music and the law, there appears to be no expert in legal writing who has written an article comparing the tools used by successful stand-up comedians to those used by effective legal writers. Nonetheless, as anyone who has seen stand-up comedy knows, successful comedians move seamlessly from one topic to another. In comedy, what we call transitions are described as “short conversational bridges that connect one joke to the next,”⁴⁶ or a “segue” giving the audience time to “catch their breath, while guiding them to the next subject.”⁴⁷

To illustrate how effective transitioning can allow a listener to move from topic to topic without even realizing it, listen to a clip of a bit called “I Walked on the Moon,” by comedian Brian Regan.⁴⁸ Regan is a stand-up comic who uses observational and self-deprecating humor.⁴⁹ What stands out about him is that his performances are clean: he does not use profanity, and he does not use off-color humor.⁵⁰

If you listen to the clip, you probably will not notice the transitions. Because of Regan’s comic timing, facial expressions, and bodily movements, the listener does not even realize that she has been transported from a tooth extraction to a trip on the moon. But if you read a portion of a transcript of Regan’s bit, you can identify the transitions. Because so much of humor is about delivery, my guess is you might not laugh when you read it on the following page:

44 Lebovitz, *supra* note 40, at 50.

45 Judd Apatow, *How to Write Stand-Up Comedy in 6 Easy Steps*, MASTERCLASS (July 2, 2019), <https://www.masterclass.com/articles/how-to-write-stand-up-comedy-in-6-easy-steps#what-is-a-standup-comedy-set>; John Greathouse, *Public Speaking Secrets from the World of Stand-up Comedy*, FORBES (June 23, 2019), <https://www.forbes.com/sites/johngreathouse/2019/06/23/public-speaking-secrets-from-the-world-of-stand-up-comedy/#3e9fe62c2664>.

46 Apatow, *supra* note 45.

47 Greathouse, *supra* note 45.

48 Brian Regan, *I Walked on the Moon*, YOUTUBE, <https://www.youtube.com/watch?v=f713tLbdlu4> (last visited Mar. 20, 2021); *The Greatest Brian Regan Classic Bits as Decided by New York Comedians*, THE INTERROBANG (Sept. 20, 2015), <https://theinterrobang.com/the-greatest-brian-regan-classic-bits-as-decided-by-new-york-comedians>. Brian Regan is well known. He has won many awards, has appeared with Jerry Seinfeld, and has done specials on the show “Comedy Central.” Patrick Bromley, *A Biography of Brian Regan* (Mar. 24, 2017), <https://www.liveabout.com/brian-regan-biography-801497>.

49 *Brian Regan (comedian)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Brian_Regan_\(comedian\)](https://en.wikipedia.org/wiki/Brian_Regan_(comedian)) (last visited Mar. 20, 2021).

50 *Id.*

I'm actually kind of quiet offstage. A lot of people don't realize that. I was at a dinner party recently with a bunch of people I don't know. One guy talking plenty for everybody, "me, myself, right and then I and then myself and me, me."

I couldn't tell this one about I because I was talking about myself and then me. "Me! Me! Me! Me! Me!"

Beware the me monster.

So I tried to jump in with a little story I don't want to just sit there the whole night. Right when I'm done with my story this guy goes "*that ain't nothing*." Oh, well, I didn't mean to waste everybody's time telling my *nothing story*. . . .

My story ain't nothing.

[here, he tells a story about getting two wisdom teeth out and then gets one-upped by someone who tells a worse story about getting four wisdom teeth out]

Why do people need to top other people?

I've never understood it, and I see it all the time. Obviously people get something out of it

What is it about the human condition [that] people get something out of that?

That's why I have a social fantasy: I wish I was one of the twelve astronauts who have been on our moon. They must love knowing they can beat anybody's story, whenever they want. They can sit back quietly at a dinner party while some other person, some me monster's doing his thing and let him go let him run with the line. While you be quiet. . . . Let him have his moment

[Pause]

"I walked on the moon." [Applause]⁵¹

Exploring this excerpt, Regan uses a variety of techniques, and variety is the spice of life, even when it comes transitions. As legal writing professors have put it, "Try for variety both in the transitions you choose and when you place them. Your reader will be hypnotized and lose interest in your journey if you constantly use typical repetitive transition words in a monotonous pattern."⁵²

One type of transition Regan uses is the "repetition transition," where he repeats a word or words to connect two points.⁵³ For example, after saying "me, me, me," he then says, "Beware the me monster." He repeats

⁵¹ Brian Regan, *Dinner Party*, YouTube (Feb. 1, 2011), <https://www.youtube.com/watch?v=cRdJDTMSTtY> (transcript on file with author).

⁵² Ellen B. Zwiebel & Virginia McRae, POINT FIRST LEGAL WRITING ACAD., <http://pointfirstwriting.com/edit-your-own-work/transition-words.html> (last visited Dec. 27, 2020). In one of his blog posts entitled, "25 Ways to Write Like John Roberts," Guberman advises to use interesting and "varied" transitions. Ross Guberman, *25 Ways to Write Like John Roberts*, LEGAL WRITING PRO (Dec. 3, 2017), <https://www.legalwritingpro.com/blog/25-ways-write-like-john-roberts/>.

⁵³ See *infra* notes 79–81.

the word “me.” He uses this same device later in the bit when, after talking about his “nothing story,” he then says, “My story ain’t nothing.” Legal writers applaud these types of transitions, as they are seamless, and, as a result, the reader (or in this case, the listener) never notices them.⁵⁴

He also uses rhetorical questions, almost like point headings, to transition the reader. He first asks, “Why do people need to top other people?” And later, he asks, “What is it about the human condition [that] people get something out of that?”

While it may be prevalent in comedy, the use of rhetorical questions to transition your reader in legal writing is generally discouraged. As legal writing expert Ross Guberman has pointed out, rhetorical questions in briefs are “pompous, if not offensive.”⁵⁵ In general, a rhetorical question is a question asked not as an actual question but rather to suggest something or make a point.⁵⁶ As a legal writing professor for over 25 years, I have often told students who try to use rhetorical questions in a brief that “you might not like the answer to your question.” Another reason not to use them is that a declarative statement, as opposed to a question, is a more concise and effective way to state a point.⁵⁷

However, attitudes seem to be changing slowly, and some experts now advise using rhetorical questions, especially in the courtroom. For example, Mr. Guberman, who used to eschew them as mentioned above, has done an “about-face,” and has seen advocates use rhetorical questions effectively in briefs.⁵⁸ Similarly, a jury trial and strategy consultant has opined that a rhetorical question, which “in the spirit of Hansel and Gretel” can lay breadcrumbs along the way for the jury, can be used effectively to persuade in both oral *and* written communications.⁵⁹ In fact, she says, “[H]eads up appellate lawyers: don’t be afraid to use a couple in your briefs now and then.”⁶⁰ And, in oral argument, using rhetorical questions is perfectly acceptable.⁶¹ As one senior litigation consultant has advised,

54 See *infra* notes 71–78 and accompanying text.

55 Ross Guberman, *Talk to Yourself: The Rhetorical Question*, LEGAL WRITING PRO, <https://www.legalwritingpro.com/articles/talk-rhetorical-question> (last visited Mar. 21, 2021); see also *infra* note 61 and accompanying text (stating that rhetorical questions are better suited to oral argument than written arguments).

56 *Rhetorical Question*, WIKIPEDIA, https://en.wikipedia.org/wiki/Rhetorical_question (last visited Dec. 27, 2020); Shane Bryson, *Avoid Rhetorical Questions*, SCRIBBR (Mar. 27, 2017), <https://www.scribbr.com/academic-writing/avoid-rhetorical-questions/>.

57 Bryson, *supra* note 56.

58 Guberman, *supra* note 55.

59 Kacy Miller, *Are Rhetorical Questions Effective?*, COURTROOM LOGIC (Apr. 23, 2019), <https://courtroomlogic.com/2019/04/23/rhetorical-questions/>.

60 *Id.*

61 In the blog Law Prose, another leading legal writing blog and a key provider of training for legal writing (headed up by Bryan Garner), one lesson entitled “A rhetorical stratagem for oral presentations,” states that the “posing and answering of

rhetorical questions should be used in an opening statement because they are like “argumentative headings,” and it is more engaging to make those headings questions.⁶² He also recommends the device for oral arguments because it activates the “frame of inquiry” rather than the “frame of advocacy.”⁶³ They also serve as a framework for organizing information into chunks or chapters.⁶⁴

Brian Regan’s use of rhetorical questions works well because he is a comedian, not a legal writer, and a stand-up routine is more like an oral argument than a brief. For legal writers, rhetorical questions might help lay breadcrumbs much like point headings, but they should be used sparingly.

In conclusion, Justin Timberlake can teach legal writers about the use of point headings to effectively transition an audience, and Brian Regan can teach legal writers about the benefit of using a variety of techniques to transition your audience, as well as the use of rhetorical questions.

IV. Transitions in legal writing

While some of us may harbor fantasies about writing hit songs or being successful stand-up comics, sadly, most of us must settle for writing briefs. And using transitions thoughtfully to achieve that purpose is probably why legal writing experts have devoted so much time and space to addressing that topic.⁶⁵ There are many kinds of transitions, and some are better than others.

A. Linking and substantive transitions

Transitions have been categorized into two species: *linking* transitions and *substantive* transitions.⁶⁶ A linking transition links one thought to the next and shows a causal relationship.⁶⁷ This would include using

questions can be especially effective in oral argument before a cold bench” but is “better suited to oral advocacy than written arguments.” Bryan Garner, *LawProse Lesson #250: A rhetorical stratagem for oral presentations*, LAWPROSE, <https://www.lawprose.org/lawprose-lesson-250-a-rhetorical-stratagem-for-oral-presentations> (last visited Mar. 21, 2021).

⁶² Ken Broda-Bahm, *Should You Ask Rhetorical Questions? Yes, You Should*, PERSUASIVE LITIGATOR (Aug. 4, 2016), <https://www.persuasivelitigator.com/2016/08/should-you-ask-rhetorical-questions-yes-you-should.html>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See, e.g., LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS* 280–81 (4th ed. 2015); RICHARD K. NEUMANN, JR., ELLIE MARGOLIS & KATHRYN M. STANCHI, *LEGAL REASONING AND LEGAL WRITING* 205–07 (8th ed. 2017); LAUREL OATES, ANNE ENQUIST & JEREMY FRANCIS, *THE LEGAL WRITING HANDBOOK*, § 27.3.1 (7th ed. 2018); RAMBO & PFLAUM, *supra* note 32, at 219–25.

⁶⁶ RAMBO & PFLAUM, *supra* note 32, at 221–24. Substantive transitions are also called “echo links.” BRYAN GARNER, *LEGAL WRITING IN PLAIN ENGLISH* 83–85 (2d ed. 2013). In addition to these more technical terms, one legal writing author described them aptly as “the cream in between the two sides of an Oreo cookie that makes the whole thing work.” Maureen B. Collins, *A Time of Transition: Logical Links to Move the Reader Forward*, 17 PERSPS. 185 (Spring 2009).

⁶⁷ RAMBO & PFLAUM, *supra* note 32, at 222.

words such as “because” and “therefore.”⁶⁸ Linking transitions can advance the discussion through words and phrases such as “further,” “in contrast,” or “for example.”⁶⁹ They can also show a sequence of events through words such as “first,” “second,” and “third.”⁷⁰

Substantive transitions are substantive links between ideas.⁷¹ Legal writing experts show a strong preference for the substantive transition, calling such transitions the “Golden Gate Bridge,”⁷² the “heavy-lifters” of transitions,⁷³ and “dovetailing transitions,”⁷⁴ among other labels.

Substantive transitions have been called dovetail transitions because carpenters use dovetail joints to fasten wood without nails or screws, allowing them to fit together seamlessly, just like a substantive transition is designed to hold ideas together seamlessly.⁷⁵ “Dovetailing” is a concept often used in legal writing, and it is a simple one.⁷⁶ Essentially, it is a method of joining “old information” in a sentence to “new information” that follows.⁷⁷ In other words, there is overlap of some language and points between sentences.⁷⁸

Within the category of substantive transitions, there are various sub-categories, such as the “repetition” transition, the “restatement” transition, and the “roadmap” transition.⁷⁹ Legal writers use repetition frequently, as when citing a case for a proposition and then following that up with, “in [case name].”⁸⁰ In other words, a repetition transition repeats either the same or a similar term to connect two sentences.⁸¹

The restatement transition, instead of repeating information, puts an idea in a similar light.⁸² For example, read these statements from a case

68 *Id.* at 502.

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 Tenielle Fordyce-Ruff, *Connections Count Part II: Orienting and Substantive Transitions*, THE ADVOCATE 48 (Sept. 2017).

74 OATES ET AL., *supra* note 65, at 288; Fordyce-Ruff, *supra* note 73, at 48.

75 Fordyce-Ruff, *supra* note 73, at 26; see also Greg Johnson, *Write On, Assessing the Legal Writing Style of Brett Kavanaugh*, 44 VT. B. J., Fall 2018, at 30 (assessing Judge Kavanaugh’s writing style and, using examples, commending him for using substantive transitions effectively).

76 OATES ET AL., *supra* note 65, at 288, 562–65; Anne Enquist, *Dovetailing: The Key to Flow in Legal Writing*, 8 THE SECOND DRAFT 3 (Nov. 1992); see, e.g., Collins, *supra* note 66, at 187 (referring to a more sophisticated transition when phrases mentioned in one sentence reverberate in another, called “dovetailing”); Fordyce-Ruff, *supra* note 73, at 48.

77 Enquist, *supra* note 76, at 3.

78 *Id.*

79 RAMBO & PFLAUM, *supra* note 32, at 221–29.

80 *Id.* at 503.

81 *Id.* at 502.

82 *Id.* at 504.

illustration involving the sufficiency of a notice of claim made against a public entity:

The claimant also demanded “[a]ll economic damages . . . [of] approximately \$35,000.00 per year or more going forward over the next 18 years” and “[g]eneral damages . . . in an amount of no less than \$200,000.”

Based upon the claimant’s *use of qualifying language*, the Court concluded that the claimant failed to identify any specific amount.

The words, “use of qualifying language,” summarize the specific wording of the notice of claim letter into one manageable topic.⁸³

Finally, the roadmap transition is used to introduce an idea or alert the reader to a shift in thought, such as in these examples:

Preview idea: The final reason Defendant’s claim for fraud should be dismissed is that the element of reliance is missing.

Shift in thought: The Defendant argues that there was no contract because there was fraud in the inducement. *This argument is flawed* for several reasons.

Thus, there are two main categories of transitions—substantive and linking. While substantive transitions are preferred, both types improve flow and readability.⁸⁴

B. The magic of three—sequencing using first, second, and third

There seems to be some magic associated with the number three when advocating,⁸⁵ and interestingly, the magic of three is a recurring theme in culture in general.⁸⁶ From the story of “Goldilocks and the Three Bears,” to ad slogans such as “snap, crackle, and pop,” to the Holy Trinity,

⁸³ *Id.* at 505. This illustration is from the Arizona Supreme Court’s decision in *Deer Valley Unified School District Number 97 v. Houser*, 152 P.3d 490, 491–93 (Ariz. 2007).

⁸⁴ Of course, transitions can be overused (or misused), and the result is that, instead of clarifying ideas, they can interrupt the flow and result in poor writing. *E.g.*, Baldwin, *supra* note 5, at 425–26 (noting that where cohesive devices are misused, overused or underused, “they risk causing readers this extra effort, annoyance, or frustration, which can result in a reader’s assessment that the writing is irrelevant”); Collins, *supra* note 66, at 186.

⁸⁵ See Patrick Barry, *The Rule of Three*, 15 LEGAL COMM. & RHETORIC 247, 247–48 (2018) (“Judges use the Rule of Three, Practitioners use the Rule of Three. And so do all manner of legal academics.”); Bryan A. Garner, *Good Headings Show You’ve Thought Out Your Arguments Well in Advance*, ABA J. (2015), https://www.abajournal.com/magazine/article/good_headings_show_youve_thought_out_your_arguments_well_in_advance/ (“Arguments come in threes. . . . A mathematician once told me that there are really only four numbers in the world: one, two, three and many.”); Suzanne B. Shu & Kurt A. Carlson, *When Three Charms but Four Alarms: Identifying the Optimal Number of Claims in Persuasion Settings*, 78 J. MARKETING 127 (2014).

⁸⁶ *E.g.*, DAVID TROTTER, *THE SCREENWRITER’S BIBLE* 5–7 (1998); Kurt A. Carlson & Suzanne B. Shu, *The Rule of Three: How the Third Event Signals the Emergence of a Streak*, 104(1) ORG. BEHAV. & HUM. DECISION PROCESSES 113 (2007); Andy Newman, *Blessed in Triplicate*, N.Y. TIMES (Oct. 10, 2008), <https://www.nytimes.com/2008/10/12/fashion/sundaystyles/12three.html>; *Three-act Structure*, WIKIPEDIA (last visited May 4, 2020), <https://en.wikipedia.org/wiki/>

to lucky number three,⁸⁷ to “life, liberty, and the pursuit of happiness,”⁸⁸ the number three is magical.⁸⁹

But the three reasons approach is not just magical; it is backed by science, as the number three is important in “human learning and cognition.”⁹⁰ For example, when learning a new word, people can generalize its definition to new objects after three examples of the word.⁹¹ As another example, in an interesting study on persuasion in marketing messages, the authors concluded that three is optimal, while four is less positive in persuading.⁹² In one of the experiments, the authors studied the relationship between the number of positive claims made about a person and the impression others had about that person.⁹³ In that experiment, a friend was talking up her rekindled relationship with an old boyfriend.⁹⁴ Each message had as few as one or as many as six reasons to buy in to the rekindled relationship.⁹⁵ On the four reasons scenario, the hypothetical friend says, about her old boyfriend, “He’s intelligent, kind, funny, and cute.”⁹⁶ At the fourth word, the subjects’ eyebrows popped upward, indicating their skepticism.⁹⁷ Given four reasons, the subjects were more likely to answer that the friend was “kidding herself about how great John is,” than they were to conclude, at three reasons, that “John is a real catch.”⁹⁸ Based on this and other experiments in the study, the authors consistently

Three-act_structure. In an interview that Bryan Garner conducted of writer David Foster Wallace about how to argue persuasively, Mr. Wallace referenced the three-part structure of argumentative writing as “three tragic acts.” Bryan A. Garner, *David Foster Wallace’s Advice on Arguing Persuasively*, ABA J. (Dec. 1, 2013), https://www.abajournal.com/magazine/article/david_foster_wallace_gives_advice_on_arguing_persuasively.

87 In China, three is a lucky number because it sounds like the word that means life, while the word four is unlucky because it sounds like the word for death. Newman, *supra* note 86.

88 Interestingly, although the first draft of the Declaration of Independence was heavily edited, no one ever tried to rework those words, sticking to the “Rule of Three.” Barry, *supra* note 85, at 252.

89 E.g., Marie Jones, *The Perfect Number—Trinity Symbolism in World Religious Traditions* (Feb. 25, 2016), <https://www.ancient-origins.net/human-origins-religions/3-perfect-number-trinity-symbolism-world-religious-traditions-005411>; Newman, *supra* note 86.

90 Carlson & Shu, *supra* note 86, at 114, 120 (finding that the third repeat event in a sequence is pivotal to the subjective belief that a streak has emerged); Shu & Carlson, *supra* note 85, at 137 (finding that impressions conformed to the “charm of three” because consumers viewed three claims as positive but four or more as less positive).

91 Shu & Carlson, *supra* note 85, at 137 (citing J.B. Tenenbaum & F. Xu, *Word Learning as Bayesian Inference*, *PSYCHOL. REV.*, 114(2), 245–72 (2000)).

92 *Id.* at 137–38.

93 *Id.* at 130.

94 Susannah Jacob, *The Power of Three*, *N.Y. TIMES* (Jan. 3, 2014), <https://www.nytimes.com/2014/01/05/fashion/Three-Persuasion-The-Power-of-Three.html>; Shu & Carlson, *supra* note 85. Note that some of the information about this study comes directly from the study itself, but some of the details come instead from a *New York Times* article reporting on the study in which the authors were interviewed. Some of the information in the article is not in the published study itself, so both sources are listed here.

95 Jacob, *supra* note 94.

96 Shu & Carlson, *supra* note 85, at 139.

97 Jacob, *supra* note 94.

98 *Id.*

found that when making positive claims, “the optimal number of claims is three, a result we refer to as the charm of three.”⁹⁹ Of course, advertisers are not bound by the same code of ethics as lawyers trying to persuade a court, but the same techniques can be used to persuade.

The magic of three, reflected in the use of *first*, *second*, and *third*, is a powerful and prevalent transitional device used in legal writing by judges and lawyers alike. In fact, in my 25 years of writing briefs and arguing cases, it seems as if first, second, and third have always been in the standard arsenal of transitions, while fourth, fifth, and beyond are rarely used.

One recent example is *Nielsen v. Preap*,¹⁰⁰ a Supreme Court case dealing with the detention of legal immigrants with criminal histories, where the device appears in both the concurring and dissenting opinions.¹⁰¹ The Court ruled that the government has the power to detain immigrants at any time that have committed certain crimes that could lead to their deportation, even if those crimes occurred long in the past.¹⁰² Interestingly, in the majority opinion, the justices use the transition “first” in two different parts of the opinion but never follow that up with a second or third.¹⁰³ In their concurrence, however, Justices Thomas and Gorsuch use first, second, and third as a means to transition their points.¹⁰⁴ Below are the statements which include the transitions:

First, [the statute] bars judicial review of “all questions of law and fact . . .”

Second, [the statute] provides that “[n]o court may set aside any action or decision . . . under this section . . .”

Third, [the statute] deprives district courts of “jurisdiction or authority to enjoin or restrain the operation of [the statute] . . .”¹⁰⁵

Similarly, Justices Breyer, Ginsburg, Sotomayor, and Kagan, who dissented, not only used these linking transitions, but they also emphasized them with italics as follows:

⁹⁹ Shu & Carlson, *supra* note 85, at 138.

¹⁰⁰ 139 S. Ct. 954 (2019); *see also, e.g.*, *Dep’t of Rev. v. Ass’n of Wash. Stevedoring Cos.*, 435 U.S. 734, 746–47 (noting that “[f]irst *Puget Sound* invalidated the Washington tax on stevedoring,” “[s]econd,” *Carter & Weekes* supported its reaffirmance of *Puget Sound*, and “[t]hird,” *Carter & Weekes* reaffirmed *Puget Sound*).

¹⁰¹ *Nielsen*, 139 S. Ct. at 964, 974.

¹⁰² *Id.* at 959.

¹⁰³ *Id.* at 964, 969.

¹⁰⁴ *Id.* at 974–75 (Thomas, J., concurring in part).

¹⁰⁵ *Id.*

First, “Congress often drafts statutes with hierarchical schemes . . .”

Second, consider the structural similarities between [subsections] . . .

. . .

Third, Congress’ enactment of a special “transition” statute strengthens the point.¹⁰⁶

Likewise, in dissent in *Parents Involved in Community Schools v. Seattle School District Number 1*,¹⁰⁷ Justices Breyer, Stevens, Souter, and Ginsburg also used only the three linking transitions:

First, there is a historical and remedial element: an interest in setting right the consequences of prior conditions of segregation.

Second, there is an educational element: an interest in overcoming the adverse educational effects produced by and associated with highly segregated schools.

. . .

Third, there is a democratic element: an interest in producing an educational environment that reflects the “pluralistic society” in which our children will live.¹⁰⁸

This pattern is not limited to judicial opinions. Brief writers also follow this pattern. For example, in a brief co-authored by the Attorney General and Solicitor General for the State of Vermont submitted to the Supreme Court, the three linking transitions are used as follows:¹⁰⁹

First, and crucially, the Solicitor General recognizes that “the Vermont reporting requirements” have “an entirely different focus” from ERISA’s . . . requirements. . . .

Second, the Solicitor General agrees that the “mere fact that a state-law reporting obligation encompasses information about the operation of an ERISA plan does not suffice for preemption.” . . .

¹⁰⁶ *Id.* at 980–81 (Breyer, J., dissenting) (emphasis in original).

¹⁰⁷ 551 U.S. 701 (2007).

¹⁰⁸ *Id.* at 838–40 (Breyer, J., dissenting).

¹⁰⁹ *Gobeille v. Liberty Mut. Ins. Co.*, 2015 WL 3486603 (June 1, 2015); see also *CMC Heartland Partners v. Union Pac. R.R. Co.*, 1997 WL 33557885 (Jan. 3, 1997) (brief submitted to the Supreme Court using first, second, and third as linking transitions). Interestingly, this use of three points seems to extend to advice given on oral arguments as well. See Mike Skotnicki, *Make Your Argument Stronger with the “Power of Three,”* BRIEFLY WRITING (Dec. 5, 2013), <https://brieflywriting.com/2013/12/05/make-your-argument-stronger-with-the-power-of-three/> (noting that the human mind quickly recalls no more than three things from a list, and so when making oral arguments to a court, make sure to include only three arguments or reasons for the ruling); Duke Law, *Tips on Oral Advocacy*, <https://law.duke.edu/life/mootcourt/tips/> (last visited Mar. 29, 2021) (instructing moot court participants to identify two or three but *no more than three* issues she will discuss). Similarly, when Bryan Garner wrote an article giving advice on persuasive point headings, he recommended that advocates try to distill arguments down to three main points. Garner, *supra* note 85. Obviously, however, it is not always possible to make three main points. For example, if a claim has only two elements or has four elements, there would probably be no reason to divide those arguments into three parts.

Third, the Solicitor General, like the dissenting judge below, finds no basis in this record to hold that Vermont's law is preempted.¹¹⁰

Thus, if you can distill your arguments down to three main points, use first, second, and third, and, if possible, eliminate arguments after that point if you want your audience to fully absorb your points.¹¹¹

V. Conclusion

As a lawyer for 25 years, I did not pay enough attention to transitions, and, as a legal writing professor, I have seen students struggle with transitioning their reader between sentences, between paragraphs, and between sections. Like my students, lawyers know what information they are trying to convey, but they are not always able to make the connections between those ideas transparent for their audience. If lawyers realized that the use of transitions could help busy judges process information faster and more accurately, perhaps we would pay more attention to this facet of legal writing and improve the quality of our writing. While we might not win any awards like Justin Timberlake, we can nonetheless take a small step toward improving our chances of making our briefs sing and, in the process, win in court where it counts.

¹¹⁰ *Gobeille*, 2015 WL 3486603, at *4–6.

¹¹¹ This advice might seem contrary to the suggestion made earlier to use a variety of transitions instead of sticking to the same old, same old. *See supra* note 52 and accompanying text. However, like the law in general, where exceptions abound, this is one such exception.