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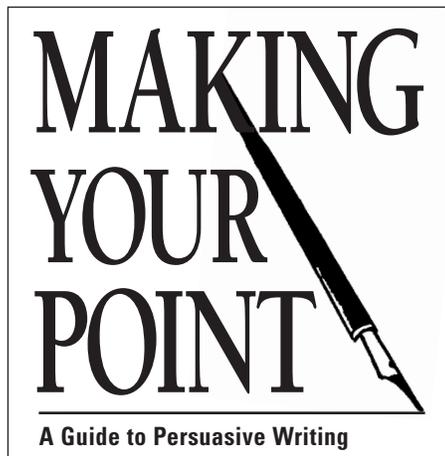
## Trim the Facts To Bring Out The Essence of Your Case

You may not need marginal facts to make your point

By Kenneth F. Oettle

**C**andor is essential to persuasion. A reader who doesn't trust you won't trust your argument. Nearly all legal writers sense the need for candor, but they deal with it in different ways.

Some think that candor requires comprehensiveness. They include almost everything lest they be accused



of hiding something. Though their concern is sound, their exhaustive approach may force the reader to wade through irrelevancies.

Consider how the comprehensive approach might affect a factual exposition, as in an affidavit, a statement of facts or a preliminary statement. Suppose you represent Smith, a vice

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president of sales and minority shareholder who has been frozen out of a closely held corporation by Jones, the chief executive officer and majority shareholder.

To demote and embarrass Smith, Jones moved him from his executive office to an office half the size and reassigned all the employees who reported to him. Jones defends the office relocation as incident to a consolidation of facilities and the staff reassignments as part of an internal restructuring.

Your draft of a preliminary statement supporting an application to enjoin the freeze-out includes the following sentence:

Jones evicted Smith from the executive office he maintained in a separate company building that also housed the company's accounting offices, closed the building, moved Smith to a much smaller office, and transferred the sales employees who had reported to Smith to a location where they would no longer report to Smith.

The good facts — not good for Smith but good in the sense that they help make your case — are that Smith was moved from an executive office to a hole-in-the-wall and that his employees were reassigned.

The potentially bad fact is that Smith's office was in a separate company building that was closed down. This supports Jones' point about consolidation. The marginal facts are that the building also housed accounting offices and that the employees who reported to

Smith were transferred to a location away from Smith.

The easiest fact to discard is the accounting offices. Because Smith was in sales, your reader doesn't need to know that the building where Smith worked also had accounting offices. Without increasing the egregiousness of what Jones did, the fact diverts attention from your key facts — that Smith's office shrank and that his employees disappeared.

You may have to acknowledge that Smith's office was in a building that was closed down because you expect Jones to argue that the company wasn't picking on Smith; it was just consolidating offices by closing the satellite building. Though this fact is of no use to you, you may have to include it so you don't lose credibility. If Jones brings it up first, he gets to suggest that you omitted the fact because it is bad for your case.

Should you say that Smith's employees were transferred to a location away from Smith? This is a closer call. The connotation you seek by including that fact is that Jones wanted to humiliate Smith so badly that not only did he reassign Smith's employees, but he moved them where Smith couldn't even interact with, let alone supervise them.

This is good flavor, but it may subtract more than it adds. The essence of the humiliation wasn't in the relocation of the employees; it was in the reassignment. Smith would no longer supervise the employees because they were reassigned, not because they were moved away. The employees had to move to another building anyway because their building was closed down.

So the geographic element is merely tangential. Because it elevates a

minor fact to major status, it may dilute the fact pattern more than it augments it, and it may suggest to the reader that you gild the lily.

Revised, your original sentence might read as follows:

Jones evicted Smith from his executive office, relegated him to a room half the size and reassigned all the sales employees who reported to him.

This presents the story in a short, vigorous sentence propelled — after changing “moved Smith to a much smaller office” to “relegated him to a room half the size” — by the alliteration of four “r’s” (relegated, room, reassigned and reported).

If you want to anticipate Jones’ argument about consolidation, you can highlight the transparency of his excuse:

Claiming that he was just consolidating facilities and restructuring staff, Jones evicted Smith from his executive office, relegated him to a room half the size and reassigned all the sales employees who reported to him.

No matter what Jones says about

consolidation, his intent is clear — to demote and degrade Smith. Jones may have had reasons to close the building, but halving the size of Smith’s office cannot be excused.

By juxtaposing Jones’ purported rationale against the severe consequences of his acts, you suggest that Jones is not only a bully (by stripping Smith of office and employees) but also a liar (by making a bogus excuse). Parties who deny responsibility for their actions generate little sympathy with the court.

### Conclusion

Marginal facts can occlude key facts or bury them. By stripping away the tangential, you improve the odds that your good facts will trigger the reader’s outrage.

Compare how you feel about what Jones did to Smith after you read the slow-moving original sentence with how you feel after reading the versions stripped of the accounting offices and the geographical move of the employees. All the versions get to the point, but the shorter ones get there faster and with greater impact.

### ***Puzzler***

Which ending to the following sentence do you prefer, A or B, and why?

The dissenting shareholder’s accusations had an obvious purpose — to discredit the existing Board so that shareholders would: (A) vote for the dissenter’s nominees; or (B) elect the directors nominated by the dissenter.

The shorter version has more speed and grip. “Vote” is stronger than “elect” because vote describes a physical act, which can be visualized. Readers are engaged by what they can see in their mind’s eye. “Elect,” in contrast, describes not what the shareholder does but what happens as a result of it. You cannot visualize a person “electing,” but you can visualize a person voting (e.g., checking a box or pulling a handle).

Everything after vote is denouement and should end as quickly as possible. Prepositional phrases (“by the dissenter”) tend to drag. The possessive “dissenter’s nominees” also adds the subtle suggestion that the dissenter “owns” the nominees. ■