

New Jersey Law Journal

VOL. CLXXX—NO. 1—INDEX 20

APRIL 4, 2005

ESTABLISHED 1878

Typos Undermine Your Credibility and Your Case

To catch mistakes, let your product sit or find a second set of eyes

By Kenneth F. Oettle

Old-timers are dismayed at the sloppiness of today's written work. They say people were more careful when mistakes had to be corrected by hand, not only on originals but on carbon copies. They say (as they have said forever) that the younger generation shows no respect.

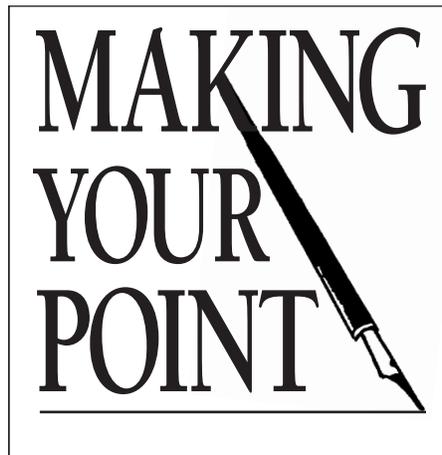
Old-timers are not wrong to be dismayed. A sloppy presentation makes a bad impression. Misspellings, omitted words, random punctuation and other typographical errors (collectively, "typos") reflect lack of effort, which suggests your case isn't worth the effort. They also reflect lack of care, which suggests you lack respect. Typos are the spot on the blouse or the dust bunny on the floor. They stand out.

Most courts will tolerate a few typos. In fact, a former appellate law clerk told me that the occasional typo actually humanized the larger firms. (Now that's a soft heart.) But the same clerk also told me that if a brief was riddled with mistakes, "You sort of assumed that the substance would be equally haphazard." This echoes what a sitting judge told me: "Carelessness of form implies carelessness of thought."

The author is a partner and co-chair of the writing and mentor programs at Sills Cummis Epstein & Gross. He invites questions and suggestions for future columns to koettle@sillscummis.com. "Making Your Point" appears every other week.

Sloppiness will mar not only submissions to a court but also submissions in draft to a supervising attorney. You may be "among friends" within the firm, but you are still making an impression on persons who control your fate. Be careful.

If courts and supervising attorneys are irritated by typos, clients are enraged. They expect a well-packaged



product for the generous fee they pay. Typos suggest the firm doesn't care enough about the client to be attentive.

I asked my informal polling group about the causes of typos and their cures. One person said that typos occur because "I think faster than my fingers can type." Another blames the vagaries of dictation. When the writer reviews the draft, he sees what he remembers dictating. "My mind compensates for mistakes in the text." In subsequent drafts, he doesn't reread passages — especially quotations — that he doesn't plan to change.

Ironically, the spell-check programs that prevent mistakes in spelling cause different problems. Spell-check highlights non words (like "answr") but not wrong words (as in "he has more money than she"). Relying on spell-check, typists don't read for meaning. Writers do read for meaning, and as a consequence, they unconsciously fill in gaps and read right past mistakes.

One associate says that mistakes don't get corrected "if I am pressed for time." In his universe, neatness receives low priority as the deadline looms. I would reallocate those priorities. One rarely improves core arguments in the hour before a brief goes out, but one can irritate a lot of people with missed typos.

One way to catch typos is to bring in a fresh pair of eyes, either your own — by putting the document aside and coming back to it — or someone else's. Law review editors read aloud to each other, cross-checking as they go. Probably, you won't have this luxury. At best, you will have a proofreader.

Some writers perform a final review just for misspellings and other typos, not for substance. This reduces the chance that the sense of a passage will carry the reader right past a mistake.

Unfortunately, some lawyers proof indifferently. Some are impatient, and some consider their time too valuable for this task. They rationalize, "It's the secretary's job to avoid typos, not mine. If the firm wants perfection, it should give me help."

My advice is this: Include proofing on the list of tasks for which you will do what it takes to get the job done. Either delegate proofing to a person on whom you can rely implicitly, or rely on yourself. In the words of one writer, "You need to do old-fashioned, finger-tracing-of-each-word proofreading."

Comic Relief

The following errors resulted from dictation and were caught, several of them after passing through spell-check:

- You have asked for a budget for attorneys fees for pursuing a separate depilatory judgment action in the trial court.
- Section 92 of the Casino Control Act names only those service industries that traditionally were more likely to harbor organized crime, such as Garbor Chandler's [garbage handlers], vending machine providers ... [and so forth].
- This is a public document request under New Jersey's Right-2-No-Laws.
- I knew I was doing something wrong, but I did not realize that the man would shrude up my era [the magnitude of my error].
- Desperate treatment wherever it appears presents a naughty problem.
- In this case, the gain just does not seem worth the scandal.
- The absence of evidence to the contrary casts dispersion on the jury's verdict.
- The trial court did not even pay

lift service to the analytical framework for evaluating a retaliatory discharge claim.

- The Supreme Court reversed, adopting the Appellate Division's descending opinion.
- Please read the letter and mole over your response.
- If an employee rats on a co-worker and breeds dissection, the employer can fire him or her for that.
- The locust of power is always subject to change.
- That statement is a known sequitur.

The following errors escaped scrutiny and went out, to the embarrassment of one party and the amusement of the other:

- The United States Supreme Court is the final orbiter on questions of federal constitutional law.
- This permit super seeds permit #45443.
- In a form of order submitted to the court: It appearing that such relief is in the best interests of the estate, and for good insufficient cause appearing therefore...
- Letter to the judge: We would appreciate your stamping one of the copies of the Affidavit "received" and returning to our office with our messenger.
- To a job candidate: We are deferring (check spelling) a decision on the paralegal position for six to eight weeks.
- Section heading in an answer to a complaint: Twelevth Separate

Dedfense

- Concluding a letter: Thank you for your corporation.

Mistakes may be funny when others make them, but not when the assigning attorney appears at your door with the tainted document in hand. Make diligent proofreading part of your prefiling routine.

Puzzler

Which is better, Version A or Version B?

Version A: XYZ Corp.'s argument blurs the distinction between breaching express terms of a contract and breaching the implied covenant of good faith.

Version B: XYZ Corp.'s argument blurs the distinction between breaching an express covenant and breaching the implied covenant of good faith.

Version A focuses on four variables, two of which are adjectives and two of which are nouns: (1) express; (2) term; (3) implied; and (4) covenant. More variables mean more work for the reader. To help the reader, reduce the variables.

You can eliminate a variable by bringing both the express and the implied elements under the rubric "covenant," as in Version B. You are concerned with the substantive distinction between express and implied terms, not the semantic distinction, if one exists, between terms and covenants. ■