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You Need to Sweat the Small Stuff

Minor usage mistakes can be major blemishes

By Kenneth F. Oettle

Just as you shouldn't wear a shirt showing food spots, you shouldn't submit a brief with usage mistakes. They create a bad impression.

Usage conventions such as dropping the "of" from "all of" are not, in the larger scheme, as important as organization, analysis or theme. But adherence to such conventions may be more important than you realize because violating them can irritate a reader who believes that adherence to the rules is a virtue, and that non-adherence is a vice. Such readers often view writers who fail to follow usage conventions as sloppy, ignorant or both.

Treat the following usage mistakes like spots on clothing and clean them out.

CATEGORY I: Excess words that offend the ear.

"Off of." Delete "of" as unnecessary. Do not say "off of the work site." Say "off the work site." To the trained writer — which includes nearly all judges — "off of" sounds bad.

"All of." "All" is sufficient.

BAD: Plaintiff satisfied all of the elements of the test.

BETTER: Plaintiff satisfied all the

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elements of the test.

You can retain the "of" where it serves another word, as in "some or all of the cost."

"As to whether." Delete "as to."

BAD: Smith was unsure as to whether Jones made the promise.

BETTER: Smith was unsure whether Jones made the promise.



A Guide to Persuasive Writing

CATEGORY II: Words that drag but probably don't offend the ear.

Even writers who never use "off of" or "all of" can be seduced by the following:

"Whether or not." "Or not" is understood.

BAD: He debated whether or not to exercise the option.

BETTER: He debated whether to exercise the option.

"The fact that." "That" is usually enough. "Fact" is understood.

BAD: He was aware of the fact that...

BETTER: He was aware that...

"In order to." "To" is generally sufficient.

BAD: In order to make a prima facie case...

BETTER: To make a prima facie case...

CATEGORY III: Words with Rogue Connotations.

Several words are substandard where their use creates ambiguity.

"Due to." Say "because of." "Due to" not only sounds bad, but it can mislead the reader — albeit momentarily — because it has connotations not only of causation but of owing, as a debt.

BAD: He was unable to process the application due to a clerical backlog.

BETTER: He was unable to process the application because of a clerical backlog.

"While" for "although."

BAD: While the case law is clear that...

BETTER: Although the case law is clear that...

The temporal connotations of "while" create an ambiguity that the reader has to solve before proceeding. The task may be minimal, but it is a diversion, and, like "due to," it could trigger a prejudice, causing the reader to perceive your writing and your argument as substandard.

"Over" for "more than." "Over" is spatial. Use "more than" for quantity.

BAD: The house has over 4,000 square feet.

BETTER: The house has more than 4,000 square feet.

“As” for “because.” “As” is principally a temporal word. In a causative role, it grates on the traditionally trained ear even more than “due to.” Actually, “grates on the ear” is being kind. When you breach a usage rule, you risk being viewed not only as inattentive to form but as inattentive to the substance of your argument. If your language is deemed substandard, your argument may be deemed substandard as well.

BAD: He could not attend the meeting as he was out of town.

BETTER: He could not attend the meeting because he was out of town.

I say that a phrase grates on the “traditionally trained ear” because such phrases do not seem to grate on the ears of those who use them. Much to the distress of writing teachers and assigning attorneys, “as” in a causative role sounds fine to those who use it. In fact, one former “as user” considered me a fuddy duddy for insisting that she use “because” rather than “as” in the causative role.

Really, I’m just trying to be helpful. As long as because — rather than as — is standard in a causative role, you have to use because. (Query how long “as” will remain substandard in a causative

role with business answering machines urging, “Please listen closely as our prompts have changed.”)

“*Since vs. because*” — a classic conflict. Our English teachers admonished us not to use “since” in lieu of “because,” given the temporal connotations of since. Consequently, many readers react poorly to since in a causative role. For some readers, it is a pet peeve.

Yet scholars say that since has deep causative roots and should be perfectly fine for such use, e.g., “Since the company’s debts far exceed its liquid assets, bankruptcy may be imminent.”

I suggest you favor “because” over “since” in a causative role because you never know where prejudice may lurk. Because people in this business care about words, you have to be careful with them. Ideas are more important than word choice, but subtle influences can have significant effect in a close contest. Don’t give the other side an edge.

Puzzler

How would you tighten and sharpen the following sentence?

The cases hold that, to the extent that electronic data is inaccessible, there may be good reason to shift some or all of the cost of retrieval to the requesting party.

Remove the interruptive phrase beginning “to the extent that” to get more quickly to the point that cost may be shifted. Replace the qualifying phrases “to the extent that” and “some or all of” with “in whole or in part.” The expression “there may be good reason” is implicit and can be dropped.

Pausing after the word “shifted” in the revised version doesn’t weaken the powerful phrase “may be shifted.” It provides dramatic buildup for the concluding phrase, “to the requesting party.”

The revised version:

The cases hold that the cost of retrieving inaccessible electronic data may be shifted, in whole or in part, to the requesting party.

Alternate version:

The cases hold that some or all of the cost of retrieving inaccessible electronic data may be shifted to the requesting party. ■