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Skip the Unnecessary Tack-On Explanation

Stating the obvious slows the pace

By Kenneth F. Oettle

Developing an idea is good, but lawyers sometimes overdo it by tacking an explanation to the end of a sentence that has already made its point. Consider the following statement regarding the need to update document retention programs:

A company's document retention program should be reviewed regularly and should be updated to reflect changes in the law and changes in the company's business that may require adding or deleting document retention requirements.

The point of the sentence is that document retention programs should be regularly reviewed and revised ("updated") in light of changes in the law and changes in the company's business. The concluding clause — "that may require adding or deleting document retention requirements" — is unnecessary because revision of a document retention program implicitly involves adding or deleting document retention requirements. That is what "updated" means.

Writers sometimes extend a sentence unnecessarily because they sense they are making a point, and they figure, incorrectly, that the longer they keep the

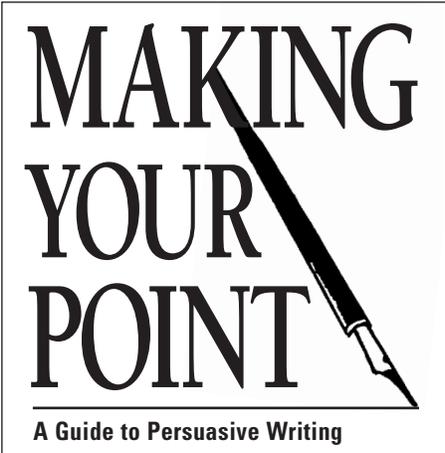
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sentence going, the more of a point they are making.

Additional Examples

The author of the following sentence did not have to state that on remand, a hearing must be held by the trial court:

For the foregoing reasons, the Appellate Division should deny



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A Guide to Persuasive Writing

the motion for reconsideration and not further delay the remand hearing which must be held by the trial court.

Of course the remand hearing must be held by the trial court. That's where jurisdiction resides on remand. The writer may have been thinking something like, "Please hurry up and deny this motion for reconsideration so the trial court can get down to business." But the writer couldn't say it, and fortunately, the tack-on clause did not convey it.

A grammatical note: Putting aside the redundancy issue, the concluding clause should have read "that must be held by the trial court" rather than "which must be held by the trial court."

If the reader is likely to draw a logical inference, you can leave a thought implied. In the following sentence (as in the above examples), the writer could have left out the concluding phrase because the thought is implicit.

The term "reasonable effort" is not defined in the contract and must therefore be interpreted.

If a contract doesn't define an important term, then the term has to be given definition by reference to custom in the industry, terms in the contract, the conduct of the parties, and other indicia of the parties' intent. In other words, the term has to be interpreted. Because lawyers know that, you don't have to say it. Drop the phrase "and must therefore be interpreted" and move on to the method of interpretation:

The term "reasonable efforts" is not defined in the contract. Its meaning can be found in the custom in the industry and in the conduct of the parties.

Where motive is obvious, you need not state it. Consider the following:

Parties may withhold privileged or confidential information if they identify it, but they are prohibited from destroying, altering or hiding information in an attempt to conceal potentially damaging evidence.

Because readers know that parties who destroy, alter or hide information

are attempting to conceal potentially damaging evidence, the above sentence should end with “hiding information.” The tack-on phrase “in an attempt to conceal potentially damaging evidence” is unnecessary.

The tack-on phrase should be dropped for the additional reason that it limits the idea. Destroying or altering information is prohibited whether the purpose is to conceal or not (“hiding” presumes intent to conceal). Even inadvertent destruction or alteration is likely to be prohibited.

You can sense what the writer had in mind. Attempting to destroy, alter, or otherwise conceal potentially damaging evidence manifests an ill motive, which gives the opposing party a “black hat.” That is, the party appears to have acted in a morally reprehensible manner. The writer sought to make sure the reader knew the opposing party wore a black hat. “Destroying, altering or hiding” was enough to convey that.

In Sum

The instinct to explain is good. You

are better off over-explaining than leaving the reader uncertain. But stating the obvious may add length without adding meaning. Tack-on explanations slow the pace, and they may offend readers because articulation of the obvious suggests that the reader isn’t sharp enough to draw an obvious conclusion without assistance.

Puzzler

How would you tighten and sharpen the following sentence?

There are four statements made by defendant to the press which are the basis for this defamation action.

“There are” is almost always unnecessary. Deleting it allows you to drop “which” as well.

“Which” is not only unnecessary but confusing. Initially, it seems to refer to “the press” (the press which) rather than to the four statements. The reader expects to see “the press which is ... ” rather than “the press which are,” perhaps with a comma before which (“the press, which is ...”).

But the reader is immediately redirected by the verb “are” and is momentarily confused by the apparent nonagreement of singular subject (press) and plural verb (are). Eventually, the reader will realize that “are” goes with “statements” and may realize that “which” — if such a word had to be there at all — should have been “that.”

“Made” is unnecessary because it is understood, and so is “by defendant” because the defendant always makes the statements that result in a defamation action. This solves the problem of whether to say “by defendant to the press” or “to the press by defendant.”

Finally, “are the basis for” can be shortened and converted to active voice as “underlie” or “led to.”

The revised version:

Four statements to the press underlie [led to] this defamation action.

Alternate version:

This defamation action is based on four statements to the press. ■