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You Don't Need Intensifiers To Mark the Absence of Evidence

Emphatics such as 'whatsoever' tend not to persuade

By Kenneth F. Oettle

Brief writers are drawn to “whatsoever” like fruit flies to an open melon. They seem to think that “Plaintiff presented no proof whatsoever” is better than the shorter, crisper, “Plaintiff presented no proof,” as if “no proof” meant “almost no proof,” and “no proof whatsoever” meant “no proof at all.”

Intensifiers such as whatsoever are used by experienced attorneys as well as novices to express partisan zest — to say, as it were, “Not only did these guys fall short, but they fell really short.”

A member of my informal polling group feels that whatsoever adds emphasis and has “a certain flow to it.” He believes it is acceptable if backed by reasons. (I would say it is “forgivable” if backed by reasons.)

Another writer uses whatsoever to “flag the point like a billboard in Times Square.” She likes to “hit the court over the head with it.” A third writer uses the word because she feels that “no” is very short, and she is afraid the court may skip over it.

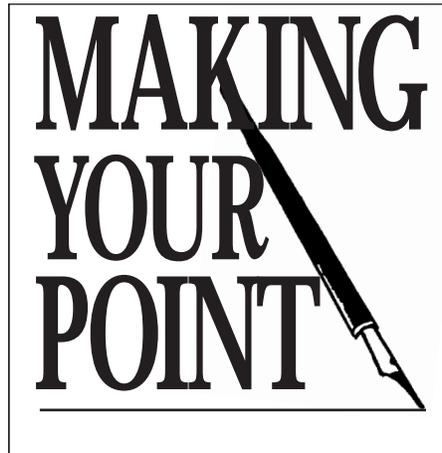
The intention of these writers is good — to drive their point home — but using intensifiers such as whatsoever is counterproductive. Often, the amplified sound merely covers a shortfall of sense.

Intensifiers are not inherently persua-

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sive. They represent neither fact nor logic; they are frequently used by advocates with weak cases or weak points, which means that you and your case may be identified with weakness; and they are intrusive, purporting to declare a conclusion that readers may prefer to reach on their own. In balance, they subtract more than they add.

Writers looking to call attention to an absence of evidence also use “devoid,” “in any way,” and “ever” or “never.” They



say the record is “devoid of evidence” (or contains “not a single shred of evidence”), just as they would say a party “presented no evidence whatsoever.” Instead of intensifying “evidence” (no evidence whatsoever), the writer intensifies “record” (the record is devoid).

A similar function is performed by “in any way,” which sometimes appears as “in any way whatsoever.” In the brief where I found the following, the issue was whether Jones had apparent authority to act on behalf of Smith:

Jones did not represent that he

was acting on behalf of Smith in any way.

The writer seemed to fear that the court wouldn't believe Jones lacked apparent authority to act for Smith if the writer said only that Jones “did not represent that he was acting on behalf of Smith.”

The concern was, I suppose, that the court might think Jones made some other representation, less direct, that could be taken as a declaration of apparent authority. Perhaps the writer added “in any way” to preclude the perception that he was splitting hairs.

This was wrong psychology. A court does not suspect hair splitting from the absence of intensifiers. To the contrary, a court may distrust the advocate who uses them because lawyers who misrepresent, mischaracterize, or omit facts or law often hide behind intensifiers.

If you dress up your prose as those lawyers dress up theirs, you may become aligned with them in the court's mind. Worse, you may incorrectly think you have made a point where you haven't. As a consequence, you may overvalue your argument and your case.

Yet another intensifier is “ever” or “never.” Suppose that in an action against an insurance company, the claimant's lawyer alleges that his client received no communications from the insurer in response to his claim:

No one from ABC Insurance Company ever communicated with Plaintiff regarding his claim.

“Ever” is unnecessary. “No one ... communicated” is definitive enough. A good brief would use details to establish

that no one from the insurance company communicated with plaintiff:

Plaintiff received no letters, faxes, e-mails, instant messages or telephone calls from the defendant insurer, either acknowledging his claim or inquiring about it.

Naming each medium in which the insurer failed to communicate obviates the need for “ever.” Were the writer to use “ever” instead of the details, the presentation would be much weaker.

Could the writer use both “ever” and the details? I recommend against it. The intensifier would divert attention from the details.

As used here, “ever” is a kind of editorial — as much opinion as fact. Not only does it smack of exaggeration, but it may insult the reader by declaring a conclusion that the reader feels fully capable of reaching from the facts. Let the facts speak for themselves.

As suggested above, writers are sometimes concerned that if they don’t use an intensifier (e.g., whatsoever, in any way, ever), the reader may suspect that the writer truncated the details to include only good ones, omitting what might be harmful to the writer’s case. After all, lawyers in our contentious adversary system tend to be tricky.

The reader won’t suspect trickery if the details are complete and well-conceived. For example, if you say the insurance company failed to communicate with plaintiff by letter, fax, e-mail, instant message or telephone, you have covered the field. What is left — pigeon?

As with gratuitous editorials such as “clearly” and “obviously,” intensifiers such as “whatsoever” are less offensive, and may be forgiven (though they still add nothing), if they appear after you have presented good facts and strong law. In contrast, if you use them before you earn the right to indulge — in other words, before you present good facts and strong law — you are likely to undermine your

credibility and your case.

Puzzler

How would you tighten and sharpen the following sentence?

There are no cases that provide any insight into the meaning of the definition of “instrument.”

Delete “there are,” losing “that” as well. Drop “any” as an unnecessary intensifier and drop “the definition” as duplicative of, and less precise than, “the meaning.”

The revised version:

No cases provide insight into the meaning of “instrument.”

Alternate versions:

No cases [illuminate; address] the meaning of “instrument.” ■