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'However' Is Usually an Unnecessary Signal

Negation or limitation may be obvious without it

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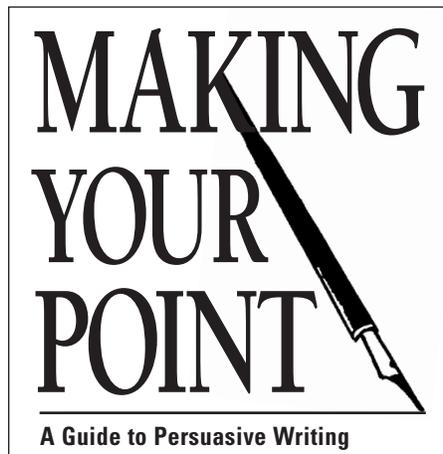
“**H**owever” is used more often in legal writing than it should be, usually to signal negation or limitation where the text already does so adequately. Consider the following however that appeared in a brief:

Plaintiff alleges that defendant missed a discovery deadline. The only discovery deadline in this case, however, is the April 25 deadline set by the Court, which has not even arrived.

Having graciously restated the plaintiff’s argument and continued seven words into a second sentence without having countered the contention that the defendant missed a discovery deadline, the writer may have felt that too much time had passed without an assertion or even a suggestion that the plaintiff was wrong. Unwilling to wait for the sentence to unfold, the writer inserted however to signal an intent to disagree. In this context, however meant, in essence, “Plaintiff is wrong. I haven’t told you why, but I will. Bear with me.”

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You don’t need the however. Even without it, a reader can easily deduce that the defendant could not have missed a discovery deadline that hasn’t arrived. In the revised version below, the second sentence has been restructured to eliminate the ambiguous “Court, which.” Otherwise, the reader may momentarily wonder what



hasn’t arrived – the deadline or the court:

Plaintiff alleges that defendant missed a discovery deadline. The only discovery deadline is the one set by the Court — April 25 — which hasn’t arrived.

Removing however serves at least two purposes. It eliminates a pause, bringing the reader more quickly to the point, and it eliminates a word of negation having no inherently persuasive value. Such words (and phrases like “plaintiff is wrong”) increase the chance that a reader will think, con-

sciously or unconsciously, that negation is being substituted for fact and law.

An even better solution is to combine the sentences to eliminate the flat restatement of the other side’s position:

Defendant missed no discovery deadline because the only deadline is the one set by the court — April 25 — which hasn’t arrived.

Instead of passively acknowledging that the defendant is accused of missing a discovery deadline, the writer pre-empts the accusation by saying the defendant missed no deadline. And by placing the “because” in the same sentence as the proposition, the writer ensures that the reader doesn’t reach the end of a sentence without having read something persuasive.

Always look for opportunities to challenge an opposing argument not after you state it but as you state it. You can use simple negation (“Defendant missed no discovery deadline because ...”), or, if the facts permit, you can state the adversary’s position so that its flaw, at least from your point of view, is manifest (e.g., “Plaintiff contends that defendant cannot pursue his profession anywhere on the Eastern Seaboard for the next ten years.”).

Unless you truly cannot think of anything better, don’t begin a refutation by restating the adversary’s position in the adversary’s terms.

Additional Examples

However is often rendered unnec-

essary by a negative (e.g., “no” or “not”) or a minimizer (e.g., “mere” or “only”). For example:

Rule 11 requires an objective belief that the complaint is based on well-grounded law and fact. This [, however,] does not imply that the rule is intended to abrogate an attorney’s pursuit of novel legal theories.

However is unnecessary because the phrase “does not imply” supplies the limiting parameter. In the following sentence, no suffices without however:

An individual must report direct campaign contributions exceeding \$100; [however,] no requirement exists to report direct expenditures of less than \$100.

In the next sentence, only performs a limiting function just as no and not did in the previous examples, making however unnecessary:

Plaintiff filed separate charges alleging racial and sexual discrimination; [however,] only the sexual discrimination charge was filed with the EEOC.

A better formulation might be: Though plaintiff filed separate charges alleging racial and sexual discrimination, she filed only the sexual discrimination charge with the EEOC.

“Though” lets the reader know that a limitation is coming and helps the writer achieve pace and balance by using the active voice and the same subject in both parts of the sentence (“plaintiff filed” and “she filed”).

Mere can also make however unnecessary:

Plaintiff argued that his complaint satisfied Rule 11 because he disagreed with existing precedent. The court ruled [, however,] that mere disagreement with existing precedent constituted neither an objectively reasonable nor a good faith basis for filing the complaint.

Punctuating However

If you use however, either precede it with a semicolon or set it off with commas:

For many years, he owned a store on the block; however, he never joined the retailers’ association.

For many years, he owned a store on the block. He did not, however, join the retailers’ association.

Never use however to splice independent clauses and create a run-on sentence:

For many years, he owned a store on the block, however, he

did not join the retailers’ association.

Nothing is grammatically wrong with beginning a sentence with however, but do it sparingly. Teachers of English have long considered it improper, and presumably they imbued some future judges with that belief. If a court deems the practice substandard, the court may, to some degree, deem your argument substandard as well.

Puzzler

How would you tighten and sharpen the following sentence?

Termination of the contract by ABC Corp. would not amount to a violation of the Telecom Act.

Conceptual nouns such as “termination” and “violation” have little grip because they create no images and convey no sense of action. Replace “amount to a violation of” with “violate” to shorten the sentence and provide more punch. Turn the sentence around to eliminate the other conceptual noun (termination). In the new structure, the alliteration of “Telecom” and “terminating” generates additional power.

The revised version:
ABC Corp. would not violate the Telecom Act by terminating the contract. ■