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## Characterize Your Time Intervals To Take Control of the Facts

By Kenneth F. Oettle

Statements of facts are usually arranged chronologically, and they inevitably provide dates. They should also characterize the intervals between dates, for example, “a month later,” “after two years” or “less than 10 hours after the meeting.” Describing a time interval as long or short, whichever supports the writer’s position, is a way to take control of the facts.

Suppose parties negotiating a contract met on June 27 and August 8 but had no communications in between. If you wish to make this interval seem long, you may describe it as “nearly a month and a half” or “six weeks.” If you wish to make the interval seem short, you may describe it as “less than a month and a half.”

In either case, characterizing the interval aids the reader, who would otherwise have to gauge the gap. Without help, the reader might think, “Let’s see — the period runs from June to August, which covers about two months. But June 27 is later in June than August 8 is in August, so it can’t be a full two months. It is something less.”

Calculating time intervals across months is, for some readers, like trying to add 77 and 17 — it has to be reasoned through.

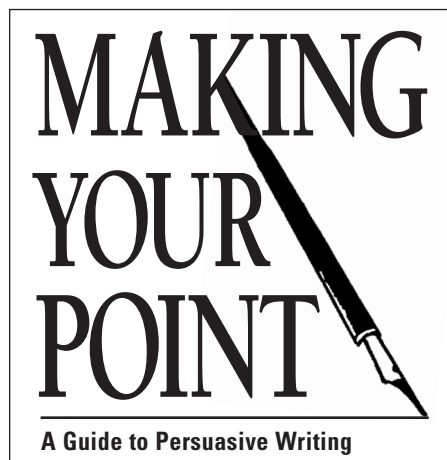
Don’t let the reader sink into an internal dialog and drift away. Decide

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whether you want the time interval to appear long or short and then decide how much leeway you have to “spin” (characterize) the interval. You cannot, after all, sell a donkey as a horse.

You could characterize the June 27 to August 8 interval in strictly neutral fashion, such as “about a month and a half.” This has a downside and an upside. The downside is that you forfeit the opportunity to color the facts favorably to your case. Advocates not only



gather facts but shape them.

The upside is that you can gain credibility. Like an umpire in a sporting event, you call it fair and square.

The nature of your audience may weigh in the balance. Some judges resent counsel trying to “put one over on them,” and they have a hair trigger for spin. Other judges tolerate a more partisan approach. But even they don’t want it overdone.

How do you know how much to spin? The answer, like many answers in the law, is that you need to strike a balance between the need to control the facts and the need to maintain credibili-

ty. When you spin, you perform your job as advocate by shaping the facts in your favor. But you lose credibility if the reader thinks you are spinning too much. You almost always lose more by overspinning than by not spinning at all because overspinning is a form of deception. If you are caught in a deception, your credibility takes a body blow.

Never exaggerate. If a time interval is about six weeks, and you want to make it seem long, say “almost six weeks,” “more than six weeks” or “almost a month and a half.” Don’t say “almost two months.” You gain nothing by exaggeration, and you lose credibility in chunks.

On the other hand, even neutrality can be overdone. If the reader senses that you should be advocating when you are not, the reader may conclude either (a) that you don’t have a strong case and are trying, in lieu thereof, to win points through evenhandedness, or (b) that you are less an advocate than an “academic” in the sense that you present not one side in its best light but both sides with equal vigor.

### How To Use Dates

You will inevitably have to choose whether to set forth the date before you characterize the time interval, or vice versa. For example, depending on the context, you might begin a sentence, “On June 6, more than two months later,” or you might say, “More than two months later, on June 6.”

Consider the following example:

Smith left XYZ Corp’s employment on March 25 to begin working for ABC Co.

On June 6, more than two months later, XYZ Corp. sued Smith and ABC Co., claiming breach of a non-compete agreement and seeking injunctive relief.

You contend that injunctive relief should be denied because the plaintiff waited almost two months after Smith joined another firm before seeking to enforce the non-compete agreement. In other words, the plaintiff sat on its rights.

Because delay weakens the plaintiff's case, you want to bring the time interval to the reader's attention as soon as possible. You accomplish that by saying, "More than two months later, on June 6," rather than "On June 6, more than two months later," as in the example above. The first words the reader sees after learning that Smith left XYZ Corp. on March 25 should be "More than two months later" because you want to emphasize the tardiness of plaintiff XYZ Corp.'s action.

Writers like to begin sentences with dates (not unlike the tendency to begin paragraphs with case names, such as "In *Smith v. Jones* ..."). Dates are comfortable and concrete. But beginning a sentence with the date may not serve your rhetorical purpose.

In the above example, you characterize the time interval ("More than two months later") before you provide the date ("June 6") so the reader does not have even a short gap in which the significance of June 6 is unclear. The phrase "more than" emphasizes the significant time that passed without XYZ Corp. doing anything about Smith having switched loy-

alties. If the matter wasn't important enough to XYZ Corp. to take immediate action, then perhaps injunctive relief is inappropriate.

### *Puzzler*

How would you tighten and sharpen the following sentence?

There is nothing in the court's opinion to suggest that it found that defendant owed plaintiff any duty whatsoever.

Drop "There is" because it is passive and ponderous. Drop "it found" because it is implicit. Drop "any" and "whatsoever" because they are exaggerations.

The alternate version below would be viable if the court made an affirmative ruling that the defendant owed the plaintiff no duty.

The revised version:

Nothing in the court's opinion suggests that defendant owed plaintiff a duty.

Alternate version:

The court ruled that defendant owed plaintiff no duty. ■