

# New Jersey Law Journal

VOL. CLXXVIII – NO. 11 – INDEX 1032

DECEMBER 13, 2004

ESTABLISHED 1878

## Though Detail Is Usually Helpful, It Can Be Overdone

Include what the reader needs to know and trim the rest

By Kenneth F. Oettle

**T**he porridge that Goldilocks ate was neither too hot nor too cold; it was just right. Persuasive writing is like the porridge—it should convey just enough information and not too much. If the information falls short, the reader will be confused. If it exceeds what the reader needs to know, the reader will become impatient. Too little information sends the reader on a quest without a map, and too much information throws obstacles in the reader's path.

Generally, detail is good. It fills out the story, and it helps show the court which way the scales of justice should tip. But details can get in the way. They can retard the pace, and they can create the appearance that you are using detail to obscure the point.

Suppose, for example, that you have to explain to gaming regulators why the compliance committee of a parent company of a casino licensee failed to uncover a mob affiliation of one of the parent company's vendors. The committee is charged with ascertaining that persons with whom the parent company does business have good character, or more accurately, given the practicalities, that they

appear to have good character.

Figuring that diligence is the antithesis of negligence, you intend to advise the regulators that the committee conscientiously checked every item in the personal history disclosure form that the vendor submitted to the committee. In the introductory portion of your draft report to the regulators, you write as follows:



MAKING  
YOUR  
POINT

The Committee followed its usual practice of confirming prior jobs, college attendance and army service, verifying gaming licenses and professional licenses, and sending inquiries to personal references and local police. [Emphasis added].

You list all the information confirmed by the committee—prior jobs, college attendance, army service, gaming licenses and professional licenses—because you feel this show of diligence will earn points with the regula-

tors. To make the list seem longer and the diligence greater, you even create two categories of validation—"confirming" and "verifying"—where one would suffice.

Presenting the detail isn't a foolish strategy. Diligence is commendable, and it does tend to disprove negligence, though not in direct proportion. But the regulators' principal concern is why the company missed the mob affiliation. They want you to get to that issue.

They understand that the personal items were checked and showed nothing amiss, but they are thinking, "Fine, fine. You dutifully went through the list, but you let the most important item slip by. The guy was tight with a mob lieutenant. Tell us about that."

You are itching to tell the regulators about your client's assiduousness, but you are better served to pull back, lest you cause the regulators to think you are raising a smoke screen of diligence to hide the absence of a meaningful response on the key issue—why the company overlooked the vendor's relationship with the mobster.

You can acknowledge the diligence without appearing to rely on it by gathering the items under one term: "information in the disclosure form." The revised sentence regarding confirmation would read as follows:

The Committee followed its usual practice of confirming information in the disclosure form and sending inquiries to personal references and local police. [Emphasis added].

You lose little by bypassing the detail because none of the checks per-

---

*The author is a partner and co-chair of the Appellate Group and writing and mentor programs at Sills Cummis Epstein & Gross. He invites questions and suggestions for future columns to [koettle@sillscummis.com](mailto:koettle@sillscummis.com). "Making Your Point" appears every other week.*

formed by the committee would have revealed that the vendor had a relationship with a mob lieutenant—not prior jobs, college attendance, army service, gaming licenses or professional licenses. Because none of the confirmations should have revealed the mob connection, none of them will excuse missing it.

You may later wish to bring in the specifics of the committee's efforts in mitigation of the offense, but in your opening section, the burning question in the reader's mind is, "Why did you miss this fact?" The details will slow the reader down and may suggest that you are trying to use diligence to mask negligence. By shortening the response, you fall in line with the regulators' thinking, namely, that diligence is fine but isn't an excuse when something important is overlooked.

#### Additional Examples

Later in the presentation, you plan to tell the regulators that a person named by the vendor as a reference responded favorably on his behalf. You write:

The reference who responded, Steven A. \_\_\_\_\_, of \_\_\_\_\_, New Jersey, wrote that Mr. X [the vendor] was "a reputable, responsible citizen."

Unless the person providing the reference is particularly notable, such

as a clergyman, law enforcement official or CEO of a substantial company, omit the person's name and personal data, in this case the place of residence. The extra facts are irrelevant and may create the appearance that you are invoking the false weight of irrelevant detail. For this particular reference, just say:

The reference who responded wrote that Mr. X was "a reputable, responsible citizen."

Similarly, when you point out that the vendor registered his company with the United States Department of Justice as a seller of coin-operated gaming machines, which is yet another reason why he did not appear to be a mob affiliate, you do not have to say he did so "in a letter to the United States Department of Justice, Organized Crime and Racketeering Section, Criminal Division, Attention: Mr. So-and-So."

This official-sounding language may be impressive in another context, but here, anything beyond "United States Department of Justice" is unnecessary and is subject to the same concerns as above. At a minimum, it would slow the reader down, and at worst, it could create the suspicion that you were using detail to obfuscate.

In the end, the strategy is the same whether you have a good explanation for the company's missing the mob connection or not. If you have a good

explanation, you don't want to divert attention from it. If you lack a good explanation, you don't want to compromise the necessary mea culpa by suggesting, in essence, "It wasn't really our fault," in other words, that your client had no culpa. If you detail how careful the committee was, make sure the reader knows that the diligence goes to mitigation, not to exculpation.

## Puzzler

How would you fix the following sentence?

The State Penal Code prohibits, with the intent to further gambling, knowingly owning, manufacturing, transferring, or possession of any gambling device.

Not only is the phrase "With the intent to further gambling" interruptive, but it suggests that the intent of the Penal Code is to further gambling. Move it to the end of the sentence. Change "possession of" to "possessing" to achieve parallel construction.

I drop the comma before the "and" or the "or" at the end of a series unless clarity requires it.

The revised version:

The State Penal Code prohibits knowingly owning, manufacturing, transferring or possessing any gambling device with the intent to further gambling. ■