

# New Jersey Law Journal

VOL. CLXXXIII – NO. 13 – INDEX 20

APRIL 3, 2006

ESTABLISHED 1878

## Unpack Your Generalizations For Greater Effect

Where possible, create images for the reader to visualize

By Kenneth F. Oettle

**A**s writers, we tend to forget that the reader isn't as familiar with the details of our case as we are. We are so intimate with the facts and the relationships among them that our recollection of fact patterns is easily triggered, even by superficial references.

Not so for the reader, who hasn't been working the case. Images of the litigants and their conduct don't take shape as readily in the reader's mind. Conceptual phrases that can remind the writer of entire gestalts may do nothing for the reader.

Suppose you represent a corporation in a proxy fight with dissident shareholders over the composition of the board of directors. Management and challengers both seek written authorization (proxies) to vote shares at the shareholders' meeting. The two sides compete for the right to stand in the place of (as proxies for) the shareholders.

Assume the dissidents have made false statements about the qualifications of the current directors in a draft "proxy statement" (position paper) filed with the Securities and Exchange Commission (SEC). You bring an action to compel the dissidents to correct their draft proxy statement, contending that the dissidents have to do more than just delete the

---

*The author is a partner and co-chair of the 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.*

offending material. They have to include a mea culpa, an acknowledgement that assertions in the draft proxy statement were false.

Your rationale is that draft proxy materials filed with the SEC are public documents, available on the Internet through EDGAR and scrutinized by shareholders, especially the large institutions. Because a bad first impression is difficult to overcome, the dissidents should not only remove but acknowledge earlier falsehoods.

You write the following in a brief supporting your request for an order compelling the dissidents to correct their proxy materials and include a mea culpa:

Proxy solicitation begins well before the definitive proxy statement is issued.

You argue that proxy solicitation begins not with the definitive proxy statement — the version mailed to shareholders — but much earlier, with the first draft of the proxy statement. You figure that you make your point about the need for mea culpas by establishing that proxy solicitation begins with the initial draft. If the court accepts that proposition, you believe, then the court will realize that corrective disclosure must include an acknowledgement of falsity.

Unfortunately, one conclusion does not compel the other. That proxy solicitation begins with the draft proxy statement does not require mea culpas. You have to make the court want to order a mea culpa. To do that, you need to trigger images in the court's mind.

The phrase "proxy solicitation" is difficult to visualize. Give it shape as follows:

*The stream of information dis-*

*seminated to shareholders to solicit their proxies* begins well before the definitive proxy statement is issued.

The added detail ("the stream of information disseminated to shareholders to solicit their proxies") is, in a sense, just another way of saying "proxy solicitation," but it creates an image of dissidents soliciting shareholder votes. The metaphorical word "stream" connotes both volume and flow, and flow connotes a source as well as a destination. The source is the draft proxy statement.

The phrase "disseminated to shareholders" is also helpful. It indicates that draft proxy materials are intentionally being made available to shareholders by way of the Internet to convince them how to vote. Together, "stream of information" and "disseminated to shareholders" paint a picture of dissidents intentionally placing false information in publicly available draft proxy materials to deceive shareholders. This mini-story is more likely to move the court than is the conceptual phrase "proxy solicitation."

Note: If the foregoing were a Puzzler, I would not tell you to delete "the stream of information disseminated to shareholders" even though it is implicit in the term "proxy solicitation." Useful words should be stripped only when the purpose they serve isn't worth the time needed to read them.

### A Second Example

The tactic of fleshing out a generalization applies to another sentence from the same brief:

Merely removing the offending language from a proxy statement

does not correct the problem.

“Correct the problem” is the underperforming generalization. It doesn’t say what the problem is.

The problem is the potentially indelible false impression created by the false statements in the draft proxy statement. Such impressions don’t disappear magically merely because they are false. They have to be neutralized. To make that point, begin as follows:

Merely removing the offending language from a draft proxy statement does not *neutralize false impressions created by the misstatements*.

By going deeper than the phrase “correct the problem,” you remind the reader that false statements, even in draft documents, create false impressions and that false impressions don’t disappear automatically. They have to be “neutralized,” meaning that the person who has formed the false impression may not change it until the person receives new information, and the new information may not override the old unless the reader is told that the earlier information was false. All this is implicit in the word “neutralize,” a powerful verb in this context because the poison of the early false-

hoods must be neutralized by later truths.

### A Third Example

Suppose you represent an investor suing a person who claimed to have \$50 million in certificates of deposit to serve as security for your client’s investment in a construction project. The project falls through; the certificates of deposit turn out not to exist; and your client’s investment is lost. A sentence in your motion brief reads as follows:

Mr. Big was presented as a man of means whose certificates of deposit totaling \$50 million would serve as collateral for the proposed project.

You don’t say what you mean by the certificates of deposit serving as collateral “for” the proposed project, namely, that the certificates would comfort investors by ensuring that the project would not fail. You can improve the sentence by putting a human face on the purpose of the collateral:

Smith was presented as a man of means whose certificates of deposit totaling \$50 million

would serve as collateral *to assure investors they could safely participate* in the proposed project.

The purpose of proffering collateral was to comfort investors, inducing them to invest. Showing the human side — the investors’ concerns — fleshes out the story and gains sympathy.

Usually, edits that unpack generalizations are made late in the process, if at all, because the writer has been focusing on theme, factual and legal support, organization and flow. Generalizations can remain unedited through several reviews as you continue to imagine, but fail to articulate, the embedded facts.

## Puzzler

How would you improve the following sentence?

The reports were factual rather than speculative.

To emphasize “factual,” insert a comma as an interim stop.

The new version:  
The reports were factual, not speculative. ■