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Where Else Would a Court Rule But 'In Its Opinion'?

In stating the obvious, you may be sidestepping the point

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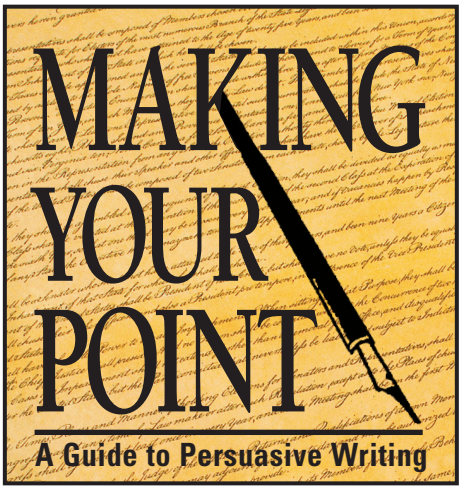
One of the comedy channels on satellite radio features a fellow who mocks people for asking questions that he considers stupid because the answer is so obvious, for example, a person who sees you jacking up your car to remove a deflated tire and asks, "Got a flat?" The question is well-intentioned, even neighborly, but it irritates.

Perhaps I am too quick to draw analogies (a habit developed through years of comparing and contrasting sets of facts), but I see a similarity between that kind of unnecessary question and the unnecessary warm-up phrase, "In its opinion, the court held (ruled or reasoned)…" The phrase "In its opinion" is unnecessary because the only place a court would hold (rule or reason) is, almost by definition, in its opinion.

A court might rule from the bench, as opposed to "in its opinion," but the context would make that clear without the phrase "in its opinion." For reported opinions, where no bench is involved, no such confusion is possible.

A closely related transition, just as



unnecessary, is an expression frequently used to introduce a court's rationale: "In reaching its decision, the court reasoned…" The phrase states the obvious.

Why else would a court engage in reasoning other than to reach a decision? And when else would the court do this reasoning — after reaching its decision? We hope not. Implicitly, a court goes through a reasoning process in reaching a decision. Therefore, the phrase "in reaching its decision" is superfluous.

That phrase appeared in a memo addressing whether a municipality's decision to transfer a police officer from detective work to patrol duty was arbitrable:

> The New Jersey Public Employment Relations Commission (PERC) held that the decision to transfer or reassign a police officer is not arbitrable. *In reaching this decision*, the Commission noted that no statute or regulation preempts negotiations. The Commission focused on whether the arbitration would place limitations on the policy-making powers of the employer. [Emphasis added.]

In the above example, "In reaching this decision" purports to be helpful because it repeats the word "decision" from the prior sentence and thus links the sentences, superficially creating a sense of flow. The connecting phrase lulls the reader into thinking that the logical chain is intact.

But the second sentence does not flow logically from the first. The nonarbitrability of a decision to transfer a police officer has no apparent connection to the phrase "no statute or regulation preempts negotiations." In other words, you can't tell from the memo what the preemption of negotiations by statute or regulation has to do with nonarbitrability. A better segue after "arbitrable" would be something like, "PERC's rationale for this holding was that…"

Not only is the phrase "In reaching this decision" unnecessary, but it may signal deeper trouble. The phrase often precedes a tedious recitation of the court's reasoning process, which means at best that the reader will have to wait for the point and at worst that the reader will get

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lost in a non sequitur, as in the example here.

This writer of this memo knew that a decision to transfer a police officer within the department is considered nonarbitrable because arbitration of such decisions would interfere with the governmental prerogative. But the writer didn't say that clearly or directly. Using the phrase "In reaching this decision" as an introduction, the writer provided, out of context and without warning, a disembodied slice of the series of questions that PERC must answer in determining if a matter is arbitrable:

• Does a statute or regulation determine if an item is eligible for negotiation between union and municipality and thus eligible for the arbitration of grievances?

• If not, does the item intimately and directly affect the work and welfare of the employees and not significantly interfere with the exercise of express management prerogatives?

• If so, the item is mandatorily negotiable, and grievances regarding the negotiated item are arbitrable.

In the example above, the memo writer mentioned the first item in this reasoning process — preemption by statute or regulation — but provided no context for it, leaving the reader at sea. The memo writer said only that PERC "noted" the absence of preemption, which is true, but as far as the reader can tell, the idea connects to nothing.

Weak transitions like "in reaching its decision" or "in its opinion" often precede a recitation of what a court noted rather than what the court held and why. Sometimes, the weak transition precedes a non sequitur — an interval of illogic. In short, "In reaching its decision" is more than just four unnecessary words. It's a signal that the writer isn't getting to the point and may not understand the point.

Lawyers often use "In its opinion" and "In reaching its decision" to avoid the challenge of drafting an effective transition. If you are tempted to begin a sentence this way, ask yourself what task you are avoiding. It may be the task of formulating a helpful transition.

A Related Offense

The phrase "In its brief, plaintiff argues…" is a similar space holder. The brief is the only place plaintiff would argue. Even if the courts in your state permit argument in affidavits, the context would make clear which document embodied plaintiff's argument — the brief or the affidavit. Thus, the phrase "In its brief" has nothing but mild rhythmic value. Don't use it.

Puzzler

How would you shorten the following point heading?

> FACT ISSUES REGARDING THE AMOUNT OF DAMAGES ALLEGEDLY OWED TO ABC CORP BY THE DEFENDANTS DO NOT PRECLUDE THE GRANT OF SUMMARY JUDGMENT AS TO THE LIABILITY OF THE DEFENDANTS ON THE CLAIM FOR TORTIOUS INTERFERENCE

You have one point — that fact issues regarding damages do not prevent the court from resolving liability issues as a matter of law. Let's see why you can say it pretty much that way.

The following phrases can be dropped as implicit:

• "The amount of" (The amount of damages doesn't matter; we assume fact issues on damages.)

• "Owed to ABC CORP" (To whom besides plaintiff ABC CORP would damages be owed?)

Note: If you use "owed," you need "allegedly" to defuse the phrase "damages owed" because smoke (damages owed) suggests fire (liability). If you drop "owed," you don't need "alleged."

• "By the defendants" (By whom else would damages be owed?)

• "The grant of" (Does summary judgment ever occur without its being granted?)

• "Of the defendants" (Who else would be liable?)

• "On the claim for tortious interference" (The court knows what claim is the subject of the motion for summary judgment. As counsel for the defendants, don't reiterate the nasty phrase "tortious interference" if you can help it.)

> The new version: FACT ISSUES REGARDING DAMAGES DO NOT PRECLUDE SUMMARY JUDGMENT ON LIABILITY ■