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Replace Neutrality With Advocacy

Choose words that aid your cause

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When you select from your internal menu of nouns and verbs, you tend to choose the general first (the set) and then to home in on the specific (the subset). For nouns, you might think “horse” and then “thoroughbred”; “sailboat” then “ketch”; or “house” then “colonial” (or, if a brand name is available, “orange” then “Valencia”; “wrist-watch” then “Tourneau”; or “pistol” then “Glock”).

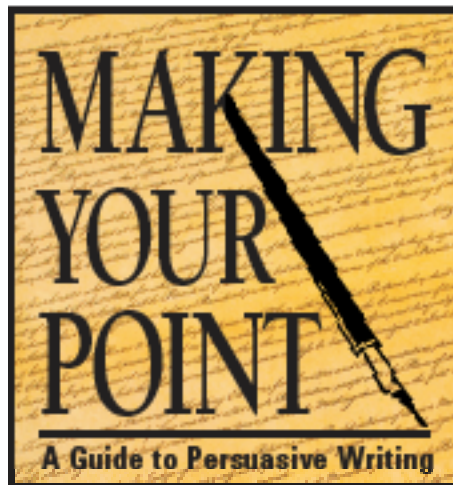
For verbs, you might think “get” and then, sensing the colloquial, refine it to “secure.” “Walk” may become “amble,” and “say” may become “acknowledge.”

Precision typically adds color, but it can enhance advocacy as well. Look for opportunities to use words that not only carry the narrative but make a point. Be precise to good effect.

Do you remember using “thing” in grade school and being told to be more specific? That was frustrating because “thing” was all you could think of. You have long since graduated past “thing,” but that doesn’t mean your word choices are as precise as they can be.

Sometimes we settle for the equivalent of “thing” in our persuasive writing. We use a serviceable but bland word that first comes to mind, rationalizing that we don’t have time to search for a better word or surmising that we can gain credibility

by taking our foot off the advocacy pedal and allowing our presentation to coast in



neutral.

Suppose you discover at the deposition of the opposing expert that he wasn’t asked to review the methodology of your expert’s damages calculation. In your brief in support of a motion for summary judgment, you introduce a deposition excerpt by stating, as many would, that the scope of Mr. Smith’s assignment “appears” in the following exchange at the deposition:

Q. Mr. Smith, were you engaged to render an opinion on behalf of defendant?

A. Yes.

Q. On what subjects were you asked to render an opinion?

A. I was asked to review the damages calculation prepared by Mr. Jones.

Q. Were you asked to review his methodology?

A. No.

This testimony limits the usefulness of the opposing expert’s report. As an advocate, you want to emphasize that fact. “Appears” doesn’t do that. It takes no position on what the excerpt shows, good or bad. It says only, “Here comes the scope of Mr. Smith’s assignment. See for yourself.”

Generally, being neutral is good for winning the reader’s trust, but you have to advocate some time, and you pay a high price for neutrality if you forfeit an opportunity to score points. To use a hockey analogy, instead of taking a shot at the net, you keep passing, looking to set up a better shot. With this strategy, you may never score a goal.

The above deposition excerpt contains your best fact regarding the strength of the opposing expert’s report. If you are going to win this aspect of the argument, it will be with this fact. Therefore, you should highlight the fact, using as much advocacy as you can muster. At this critical juncture, forget about building credibility by remaining neutral (“appears” doesn’t count for much in that regard anyway). Earn credibility points elsewhere and drive the point home.

How do you “drive the point home” in a simple introduction to a deposition excerpt?

Instead of “appears,” say the scope of Mr. Smith’s assignment “is revealed” in the following deposition exchange.

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“Reveal” connotes the exposure of a fact that the other side would prefer not to share. The truth doesn’t merely appear; it is revealed.

A Second Example

A supervisor who was terminated by a casino after turning himself in along with two other employees for knowingly using an unlicensed temporary employee sues as a whistleblower, waives a jury, and loses a bench trial. A draft of the employer’s appellate brief reads as follows:

Plaintiff conceded that he did not think his boss was wrong to fire him. As the Trial Court *said*: I don’t think that any rational person could possibly conclude that his job would not be at jeopardy if he does something that breaks the law.

This is a powerful statement by the trial court. It deserves emphasis.

The next version of the brief improved to, “As the Trial Court *observed*.” This gives the trial court an air of thoughtfulness, adding credibility to the court’s

statement, but it is still weak.

The final version introduced the quotation with, “The Trial Court *agreed*: [with plaintiff’s concession],” dropping the introductory “As.”

“The Trial Court *agreed*” adds value in several ways: (1) By previewing the quotation, it guides the reader and builds trust when the reader sees that the introduction to the quotation was correct; (2) It adds emphasis through repetition. First the plaintiff admits that he deserved to be fired (your statement); then the court agrees (introduction to quotation); and then the court explains why it agrees (the quotation itself); and (3) It links the quotation to the text of the brief (“agreement” is a form of link), tightening the narrative.

Good writers make dozens of word choices in a brief. Potentially, every well-chosen noun or verb, even in the most unassuming places, not only keeps the narrative going but adds persuasive value.

Puzzler

How would you tighten and sharpen the following sentence?

After construction is complete, the hotel can begin the process of

installing computer systems and can begin training employees in how to use them.

The phrase “the process of” almost never adds value. The same information is conveyed by “begin installing” as by “begin *the process* of installing.” Moreover, the former phrase is shorter and clearer. “Process” is amorphous.

Unless something in your case is tied to the beginning of computer installation, you don’t even need “begin installing.” All you need is “install,” which conveys the same information. *rue*, you envision the hotel beginning the installation, so you write “begin installing,” but you need not convey everything you envision — only what the reader needs to know to get your point.

Apply the same reasoning to “begin training employees” and drop “in how” as it is unnecessary. You might also change “After” to “When” to tighten the time frame.

The revised version: When construction is complete, the hotel can install computer systems and train employees to use them. ■