## New Jersey Law Journal

VOL. CXCI - NO. 3 - INDEX 172

JANUARY 21, 2008

## ESTABLISHED 1878

## **Precision Requires Careful Evaluation**

Choose the best word to deliver each component of your message

## By Kenneth F. Oettle

ach word in a brief or memo is a mini-messenger for delivering a portion of an idea from your mind to the mind of the reader. Ideally, each word you use is necessary to the message, and all the words together deliver the entire message, nothing more. For each element of the idea, you need the right messenger.

Many writers spend less time selecting messengers than they should. They write the first word that comes to mind, maybe the second, and they don't revisit their choice. They terminate the homing-in process too soon.

Take the following sentence from a memo on the question whether our retail client could legally sell refurbished Japanese slot machines, called "Pachislo machines." The refurbished machines are activated by tokens and no longer take cash.

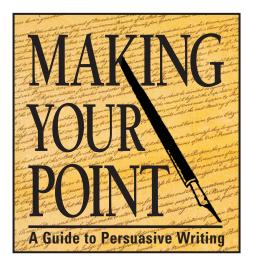
> Slot machine tokens make playing fun when they noisily drop out of the bottom of the machine.

Because the machines won't accept cash, one can argue that they are merely amusement devices, not illegal "slot machines." The writer was heading in that direction with the word "fun."

The first problem with this sentence is the phrase "slot machine." It immedi-

ately places the refurbished machines into an illegal category — gambling devices. Though the phrase modifies only "tokens," it invites the reader to attribute guilt by association.

The writer apparently modified



(described) the tokens with the first concept that came to mind – slot machines – failing to test the phrase against a question that should be asked of every word in a brief or memo: "Are any of the connotations of this phrase bad for my argument?"

Testing words for negative connotations is crucial because an argument can easily be undermined by one's own words, just as a witness' testimony can be undermined by an inconsistent statement. The reader knows the writer is

The author is a partner and co-chair of the writing and mentor programs at Sills Cummis Epstein & Gross. Making Your Point, a Practical Guide to Persuasive Legal Writing, a compilation of these columns published in 2007 by ALM Publishing, is available at LawCatalog.com. He invites questions and suggestions for future columns to koettle@sillscummis.com. "Making Your Point" appears every other week. making every effort to be persuasive, so a bad fact that slips through becomes particularly powerful.

The writer also appears not to have asked two questions by which all words, phrases, and sentences should be tested: "Is my statement correct?" and "Is my statement precise?" The writer wasn't entirely accurate or precise in describing the machine. For example, he viewed the top portion of the device – the reels and other components within the housing — as the "machine." Consequently, the writer saw the tokens as dropping "out of the bottom of the machine."

But the payout tray is connected to the housing, as in all slot machines, and is thus part of the machine. Therefore, the tokens don't drop "out of the bottom of the machine"; they drop from one portion of the machine into another. And they don't "drop" noisily. They land noisily.

Land is more precise than drop, but it may not be the best word for the job. The tokens "splatter" into the payout tray — a vibrant word that together with "into the payout tray" sports a nicely alliterative succession of t's. In fact, "splatter" is so strong that we probably don't need "noisily."

As revised thus far, the sample sentence could read as follows:

Tokens make playing fun as they splatter into the payout tray.

I prefer "as they splatter" to "when they splatter" because "as" suggests continuing excitement.

Now let's examine the phrase "make playing fun." The writer is trying to color the machines as amusement devices, but the word "fun" is notoriously vague and doesn't hold up against the question, "Is my statement precise?" ("Fun" doesn't really differentiate amusement devices from gambling devices because gambling devices are also fun, but let's pursue the strategy anyway.)

Instead of "make playing fun," try "create excitement." Create is a subset of "make," but more vigorous. It means, essentially, to make something for the first time. The word connotes newness and freshness, birth and rebirth.

"Excitement" is also an improvement. It's almost onomatopoeic, and it animates itself. Thus, it is stronger and more precise than "fun."

The revised sentence would now read as follows:

The tokens create excitement as they splatter into the payout tray.

I would make one more adjustment because the excitement isn't really created by the tokens; it's created by the splatter. To accommodate this wrinkle, any of the following would work, whether as an independent sentence or a tack-on:

The splatter of tokens into the payout tray creates excitement. ... the excitement created by the

splatter of tokens into the payout tray.

... the excitement created by the tokens' splattering into the payout tray.

Writers constantly make word choices. Sometimes, because of time pressure or lack of focus, we don't make the best choice, and we don't edit enough. Someone reviewing our draft replaces our words with better ones, and we lament, "Why didn't I think of that?"

You could have. For each word, ask yourself whether it is correct (accuracy), says exactly what you mean (precision), is the strongest one possible (emphasis) and invokes no undesirable connotations. Ask whether each sentence flows from the one before it and into the next (transition); whether it sounds good (rhythm, tone and balance); and whether it is free of unnecessary words (brevity).

If you evaluate each word and each sentence against all these standards, you will, on the whole, do well. Your writing will be clear, sharp, and, to the degree possible, forceful. Careful editing can't rescue a weak idea, but it can help you maximize your good points and, by clearing away the clutter, expose your weak ones before you make the mistake of relying on them.

Puzzler

Which version is better, A or B?

A. The market reacts to this news typically by bidding up the shares.

B. The market typically reacts to this news by bidding up the shares.

You can probably hear the difference. If you can, it's a no-brainer, and you agree with me that B is the better choice. If you can't hear it, then perhaps I can convince you with the following reasoning.

Version B is better because the reader wants to know how the market typically reacts (by bidding up the shares), not merely that it reacts typically, which is the initial message of Version A. Eventually, Version A catches up to Version B as the reader processes the rest of the sentence, but a tempo is lost as the reader discards the false message and digests the real one.