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Use Adjectives Sparingly But For Maximum Effect

Look for modifiers that reinforce your theme

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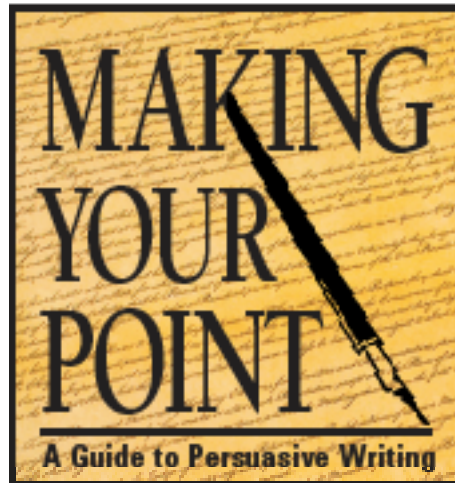
Instructors in legal writing tell us to feature nouns, which identify actors and actees, and verbs, which represent action. This is good advice because nouns and verbs are the essential components of a good story. They answer the question, “Who did what to whom?”

Conversely, writing instructors tell us to curb our use of adjectives and adverbs so as not to over-editorialize. Each adjective or adverb “modifies” (ascribes a quality to; adds information to) a noun or verb. With each such qualification, we tell the reader how to think. If overdone, such directives undermine our overarching purpose, which is to help the reader form a judgment independently and thus embrace it willingly.

Intensifying adjectives (e.g., egregious, extraordinary) and adverbs (e.g., outrageously, simply) embody editorial judgments. The more we editorialize, the more we impinge on the reader’s freedom to form an independent judgment, and the likelier it is that the reader will resist our message. In contrast, descrip-

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tive adjectives and adverbs are closer to fact than to opinion and, assuming they are well-chosen, can be used to remind



the reader of our theme.

Suppose you move to amend a complaint a year into litigation because of newly discovered facts. In a responding brief, defendant contends that if amendment is permitted, discovery should be thrown open for more interrogatories, more document demands, and more depositions. The defendant is looking to pile on the expense and thus punish you for amending your complaint and possibly intimidate you into settling cheaply.

Because some additional discovery is appropriate, you decide that in your reply brief, you will make a tactical concession to that effect, phrased as follows:

Plaintiff does not dispute defendant’s right to take additional discovery regarding newly-pled matters.

Your purpose in acknowledging the defendant’s right to take additional discovery is to avoid appearing unreason-

able. You figure that after this concession, you can argue for discovery limits. Thus, your proposed opening is dominated by the phrase “does not dispute,” and your argument begins in concessionary mode.

By changing one adjective, you can give the sentence offensive as well as defensive capabilities:

Plaintiff does not dispute defendant’s right to take limited_discovery regarding newly-pled matters.

“Additional” has become “limited.” Both are grammatically correct, but limited has constrictive connotations whereas additional has expansive connotations. A constrictive characterization is better for you because you want to minimize discovery.

As used here, “limited” is a subset of additional. It means, essentially, “limited additional (discovery).” The defendant is entitled only to limited discovery, not to all the discovery it wants.

A Second Example

Suppose you represent an oppressed minority shareholder who claims a right to share in the increased value of a closely-held corporation after the date on which the shareholder filed a complaint seeking a buy-out and protection from the majority’s freeze-out tactics, such as reducing the minority shareholder’s office space and transferring his employees. Even after he filed his complaint, the minority shareholder continued to add value to the corporation by vigorously promoting sales in other states. He was able to do so because the trial court appointed a provisional director and, in

effect, imposed a truce that lasted until just before the bench trial on the issue of oppression.

The court has now ordered that the majority buy out the minority, subject to a valuation hearing. Assume the presumptive rule for valuing a closely-held corporation in an oppression context is that the selling shareholder is entitled to a proportionate share of the value of the corporation as of the date he filed his action. If the presumption is rebutted, the seller can share in the growth of the company after that date. You expect to rebut the presumption because the minority shareholder continued to add value after filing his action.

In a draft of your valuation brief, you touch on the minority shareholder's continuing connection with the corporation:

Smith's relationship with the Company continued almost until trial.

The continuation of the relationship is important, but you can flesh out the description with an adjective that reminds the reader of the nature as well as the duration of the relationship:

Smith's close relationship with the Company continued almost until trial.

Smith had more than just a relationship with the Company. He had a "close" relationship

because his sales efforts added value. (Notice that the noun "efforts" is modified by the adjective "sales" to remind the reader [you] of the services Smith continued to perform.)

"Close" improves the sentence, but we can do better. Smith's personal interactions with the majority shareholders weren't "close" in the sense of being intimate or friendly (e.g., "The two friends were close."). The interactions were antagonistic. Thus, the word "close" is at odds with itself. It provides helpful denotations but conflicting connotations.

It also requires an extra step of reasoning. The reader has to think, "Close in what way?" The reader will deduce that "close" means productive, but the extra step slows the reading process and saps energy.

"Productive" would be a better adjective:

Smith's productive relationship with the Company continued almost until trial.

"Productive" reflects our theme — that Smith's services increased the Company's value. The word adds value without creating extra work. Let's try one more enhancement:

Smith's active and productive role with the Company con-

tinued almost until trial.

Smith had more of a "role" (a business-oriented term) than a "relationship" (a word that has strong interpersonal connotations). "Active" works in synergy with "productive" to justify Smith's sharing in the increased value he helped create.

This constant mining for the right word can be maddening. For some writers, it is intimidating. The editing seems never to end. When you think it is finally over, another lawyer supplies just the right adjective to reinforce your theme, and you feel like a beginner. Nevertheless, it's better to attack the challenge than shy from it. Include an adjective scan as part of your editing checklist.

Puzzler

What is the problem with the following sentence?

This case should be properly venued in New Jersey.

"Should" and "properly" carry the same moral judgment — that the case belongs in New Jersey. Therefore, using both is duplicative.

The revised version: This case should be venued in New Jersey.

Alternate version: This case is properly venued in New Jersey. ■