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Shorthand References Should Guide, Not Divert

Use them discretely when necessary

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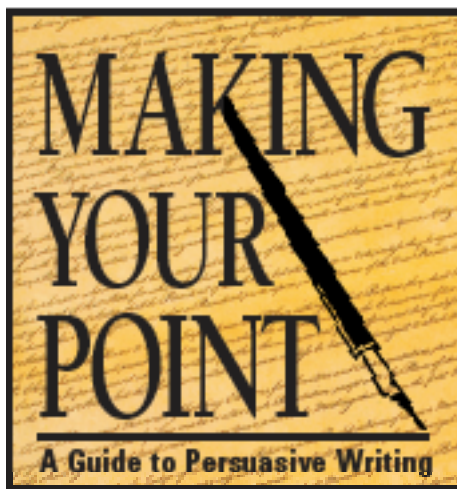
Briefs typically provide a shorthand reference at the first mention of a name, as in, “Defendant John Smith (‘Smith’) moved to dismiss the complaint.” Shorthand references can, for example, reduce an unwieldy name to one word (e.g., Consolidated American Cardboard Sheet and Box Company, Inc. to “Consolidated”) or acknowledge an acronym (e.g., “IANA” for International Association of Nanotechnology Assistants).

Recommendation: Don’t include “hereinafter” in the shorthand reference, as in “John Smith (hereinafter ‘Smith’),” unless the rhythm of the prose, or your perception of the reader’s preferences, absolutely demands it. Because the function of the parenthetical is clear from the placement, no verbal signal is necessary, and readers may find it pretentious — an example of “legalese.”

Shorthand references can also distinguish among corporate affiliates having confusingly similar names,

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like ABC Investment Capital, LLC



(“Capital”), ABC Capital Holdings, Inc. (“Holdings”), and ABC Enterprise Capital, Inc. (“Enterprise”). Proper names such as “Enterprise” or “Consolidated” are a better choice for shorthand references than hard-to-remember “alphabet soup” concoctions like CASC, NCRE, or UMLX, which usually send the reader searching back through the brief for an antecedent.

Where the first appearance of a name is a possessive, writers sometimes create an awkward juxtaposition of possessive and nonpossessive as follows:

Neither Jane Doe’s (“Doe”) departmental transfer nor her negative evaluation materially affected the terms of her employment.

To the trained ear and even the untrained ear, this sequence doesn’t sound good. “Doe” doesn’t comfort-

ably follow “Doe’s.” The writer created the inconsistency because he was thinking ahead to later, nonpossessive appearances of “Doe.” To prepare for those, he deleted the possessive from the shorthand reference. He could sense that the juxtaposition of “Smith’s” and “Smith” was awkward, but he felt that using a possessive within the parentheses would be taking liberties with the convention and might offend the court.

When it comes to conventions (e.g., placing a comma inside rather than outside the quotation marks, as in “*He spoke*,”), readers can be fussy. If you flout a convention they favor, upsetting their world in a small way, they may get upset with you. If they are upset, they have less patience for you and, derivatively, for your argument.

Ironically, the writer overlooked the breach of a more deeply embedded convention: consistency. Though he deserves credit for having thought the problem through, he gets a demerit for judgment. His concern with future appearance of “Doe” and his desire not to offend a convention caused him to overlook the risk of annoying the reader with different forms for the name and its shorthand reference. Because the writer improperly weighed the relevant factors, he made a “bad judgment,” that is, he incorrectly balanced benefits and detriments.

The writer’s concern about having to use another shorthand reference later for a nonpossessive was misguided because such repetition wouldn’t help the reader in the least. His concern about offending the reader by placing a possessive inside the parentheses was likewise misguided because it’s only a minor break with convention, and it’s

counterbalanced by the gift to the reader — of which some readers will actually take note — of consistency between the form of the name and the form of the shorthand reference. The risk of bringing the reader up short with the awkward juxtaposition of possessive and nonpossessive far outweighs the other perceived risks.

The negative impact of the awkwardness is exacerbated because the reference comes at the beginning of the brief, making a poor impression that can affect the reader's perception of the rest of the brief. The reader senses that if the writer's form is off the mark, the writer's analysis may be off the mark as well. If the writer thinks that a possessive (Doe's) and a nonpossessive (Doe) make a match, then maybe the writer thinks distinguishable cases also match. Maybe the writer is too liberal in drawing comparisons and thinks that apples look like oranges.

If the first mention of a name is possessive, the shorthand reference — if you use one — should be possessive:

Neither Jane Doe's ("Doe's") departmental transfer nor her negative evaluation materially affected the terms of her employment.

This sounds better and shows that you can match a square peg with a square hole. It's better than an inconsistency. But it's not the traditional convention for a shorthand reference (nonpossessive); and in the sample sentence, it is interruptive.

You have two solutions to the dilemma of the possessive and the shorthand reference. One is to eliminate the potential conflict by eliminating the posses-

sive altogether:

Neither *the departmental transfer of Jane Doe* ("Doe") nor her negative evaluation materially affected the terms or conditions of her employment.

Generally, we look to substitute possessives for prepositional phrases ("e.g., "Jane Doe's" for "of Jane Doe") to save words and improve the pace. But here, the slight benefit of added pace is outweighed by the greater benefit of avoiding an inconsistency and a deviation from the convention (the convention being no possessive, just "Doe").

A second solution is not to use a shorthand reference at all. If the reference is obvious, it merely clogs the text. Unless you have more than one Doe, a reader can easily deduce that "Doe" refers to Jane Doe. One doesn't have to provide a parenthetical for names whose shorthand forms can't refer to anyone else.

Many writers consider shorthand references obligatory — a belief that is perpetuated as assigning attorneys continue to add shorthand references when associates forget them or, having been trained by enlightened instructors, purposely omit them. Theoretically, I suppose, a judge might consider shorthand references de rigueur and might see their absence as sloppiness, even if the references are unnecessary. But my poll of judges and clerks suggests otherwise.

Most courts aren't stuffy. They want prose to be quick and fluid. To quote one judge: "Not only am I comfortable with the omission, but I applaud it. I favor anything that is reasonably designed to streamline prose."

In the end, shorthand references are handled like any other convention. You consider whether the presence or absence of the shorthand reference will assist or irritate the reader and to what degree. You weigh the pluses and the minuses and proceed accordingly.

Puzzler

Which is better, Version A or B?

Version A: Our client holds more than half the stock.

Version B: Our client holds in excess of a majority of the stock.

We all wish we had more gravitas. But we can't get it by substituting weighty words for shorter words that serve just as well or better. "More than half" is not only shorter and less ponderous, but it focuses on the concept of half, which presumably is important to the case (e.g., 50 percent of the vote).

Its lengthier replacement, "in excess of a majority," introduces ambiguity. A majority is already more than half. But how much in excess of a majority is the client's position? Now the focus isn't on half. It is on some unmeasured amount greater than half.

Whether to say "more than half the stock" or "more than half of the stock" is, in my view, largely a matter of taste. The recommended usage is "more than half," but "half of" has a comfortable sound and plays to the ear of some readers. I suggest you omit it if your reader is a stickler for grammar and usage. ■