Don't Cobble A List From Loosely Related Items

Take a moment to make sure your categories are consistent

By Kenneth F. Oettle

"**A**pples and oranges" is an appropriate cliché for lawyers because they continually compare and contrast, reconcile and distinguish. They sort facts into categories just as grocers sort fruit for display.

If facts are sorted poorly, the reader's job is made harder, and the writer's message is clouded. Consider the following sentence from an article on electronic discovery:

> The Bar Association recommends retention of various forms of data, including networks, software, back-up systems, deleted data that can be restored, and even hand-held personal devices.

As they say on Sesame Street, which of these items doesn't belong?

The sentence purports to be about "forms of data." Therefore, the reader expects to see forms of data. This expectation is based on the tacit agreement between reader and writer that the reader will continue to pay attention if the writer remains coherent and, among other things, accurately tells the reader what is coming. If the promised material doesn't arrive, or if something else turns up instead, the agreement is breached.

The consequences of this breach are like the consequences of any contractual breach: The nonbreaching party is offended and loses faith. In a commercial context, the breach

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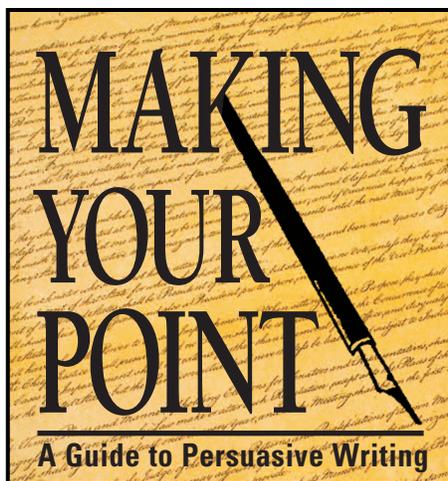
results in economic damages. In a rhetorical context, the breach results in confusion, irritation and disbelief. The reaction to a breach may be fleeting, or it may linger. The reaction to multiple breaches is cumulative.

Given that the sample sentence purports to be about forms of data, anything that isn't data shouldn't be in the sentence, which means that only

"deleted data" belongs. Everything else is either a repository of data (networks, back-up systems and hand-held devices) or a tool for manipulating data (software). (I know that a network is an amalgam of repositories and tools, but for this exercise, consider it a repository, which is how the writer viewed it.)

Not only do you have apples and oranges here (data and data repositories), but you also have a pear (a tool for manipulating data). Such compotes are often served up where the subcategories are loosely related. All the items in the series have something to do with data, just as apples, oranges and pears are all fruit. The writer sensed this loose relationship, used it as a rallying point, and ended up with a jumbled list.

The presentation can be improved by creating subsets:

> **The Bar Association recommends retention of data *in various forms*, such as deleted data that can be restored, *and in diverse repositories*, such as networks, back-up systems, and even hand-held personal devices. It also recommends *retention of the programs* that manipulate data — the "software."**

Because the series is divided into subsets of uniform subject matter, the reader doesn't have to mentally rearrange the material to understand and retain it. The information could, theoretically, be presented in one long sentence, as in the original example, by placing a comma after "devices" and changing "It also" to "and it," but the break aids comprehension and pace.

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A Second Example

The failure to subdivide a series can create a stumbling block even if the introduction to the series is broad enough to cover all the included examples. Consider the following passage regarding the difficulties in preserving and recovering electronic data:

> Discovery of electronic data involves a special set of problems. Hard drives of former employees are frequently erased to be reused; e-mail communications are regularly deleted; and back-up tapes can be nearly impossible to search.

The first and third items in the series are repositories of electronic data (hard drives and back-up tapes). The second item, e-mail communications, is the data itself. Two items in the series are vulnerable to deletion (hard drives and e-mails), but one of these items involves deletion *from* something (hard drives), whereas the other involves deletion *of* something (e-mails).

The unifying thread of the mini-paragraph can't be repositories of data, even though hard drives and back-up tapes are both repositories, because e-mails are not a repository. The unifying thread can't be the ease or frequency with which electronic data can be erased, either. Hard drives are erased when employees leave, and e-mails are deleted regularly, but the data on back-up tapes is not erased. It is just hard to find.

The introductory sentence is correct though very general. Discovery of electronic data does involve a special set of problems. It's problematic because data is frequently erased, and it's problematic because even retained data can be hard to recover.

Assuming we keep the generalization that discovery of electronic data can be problematic, the presentation of the supporting information can be improved by articulating subsets (subcategories) as follows:

> Discovery of electronic evidence involves a special set of problems. *Data preservation* is uncertain because hard drives of former employees are frequently erased to be reused, and e-mails are regularly deleted. *Data recovery* can also be uncertain because back-up tapes can be nearly impossible to search.

With minimal labeling, the information is thus sorted and made more accessible.

Puzzler

How would you trim the following sentence from a letter advising an impatient court of the status of discovery, which has lagged because of fruitless settlement talks?

The parties have served each other with document requests and interrogatories and are currently preparing their respective responses thereto.

Looking to mollify the court, the writer lathered on words, hoping to suggest by volume that the parties had accomplished much in discovery (i.e., to hide that little had been accomplished in discovery). Consequently, the sentence is bloated. Delete "each other with," "currently," "their respective" and "thereto," all of which are implicit. Change "requests" to "demands" because the latter connotes greater vigor.

Service of discovery demands is also implicit, obviating any need for the word "served," but some writers would retain the reference to service to show that the parties had done something assertive to advance the case — they *served* discovery demands. But beware of the backlash connotation — that you need to invoke service, which is only the first step in discovery, just to have something to say.

> The revised version:
> The parties are preparing responses to document demands and interrogatories.

> Alternate version:
> The parties served document demands and interrogatories and are preparing responses. ∎