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Keep The References in A Sequence Consistent

Variety isn't the spice of life if it is counterproductive

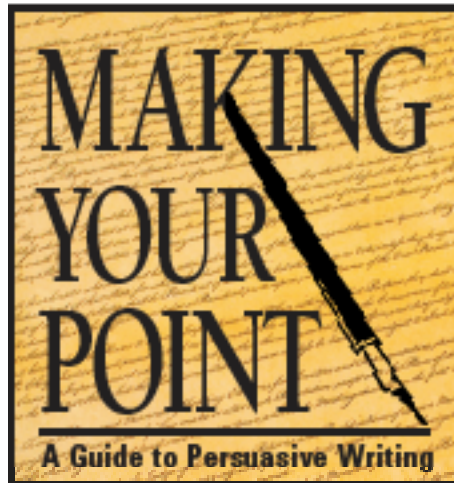
By Kenneth F. Oettle

Variety combats tedium. In writing, it keeps prose from becoming rigid, simplistic and dull. For example, a writer usually doesn't begin five sentences in a row with "The." But variety, like any rule of thumb, has exceptions. It may subtract more than it adds if the reader expects repetition, not variation, as in a compact sequence, where using a synonym in an attempt to introduce variation may suggest a switch in subject that the writer does not intend.

Suppose that in a sentence identifying issues in a contract dispute, a writer refers first to the "contract," switches to a synonym for contract such as "agreement" or "pact," and then returns to contract:

The issues include whether ABC Corp. procured the contract through fraud, or ABC Corp. breached the agreement, and whether the contract was rescinded or otherwise unenforceable.

The writer intended that "contract"



and "agreement" refer to the same instrument, but the reader does not know that. The reader isn't working the case. Consequently, the reader is likely to stop absorbing information at "agreement" and to backtrack to determine whether agreement signals a change in subject or is just a synonym for contract.

Readers expect that in a sequence of three, a noun will be repeated three times, possibly replaced in its second and perhaps third appearances by a pronoun (e.g., "The contract was long, *it* was ambiguous, and predictably *it* led to litigation."), or stated once at the beginning of the sequence (e.g., "The contract was fraudulently obtained, unfairly drawn, and ultimately breached."). Substituting

"agreement" for "contract" breaks this pattern.

The writer felt that the substitution of agreement for contract made the writing less repetitive, less predictable (!), and therefore less tedious. Because the writer knew from familiarity with the material that "agreement" referred to the same instrument as did "contract," the writer saw no problem with the variation and viewed it as a net plus.

The intention was good, but the judgment was faulty. The minimal aesthetic value added by the synonym was far outweighed by the burden placed on the reader to determine the role of "agreement." Using "contract" three times would have been better:

Common issues include whether ABC Corp. procured the contract through fraud, whether ABC Corp. breached the contract, and whether the contract was rescinded or was otherwise unenforceable.

The edited sentence now has parallel construction as well. Each segment begins with "whether." I also added "was" before "otherwise unenforceable" for balance and clarity.

If repeating "contract" three times seems monotonous, you can replace the second "contract" (the one that used to be "agreement"), and even the third, with "it":

Common issues include whether ABC Corp. procured the contract through fraud, whether ABC Corp. breached it, and whether it was rescinded or was otherwise unenforceable.

The reader's mind is hard-wired to understand that the pronoun "it" refers to its antecedent, "contract," but the reader

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is not as well-programmed to assume that “agreement” refers to the previously mentioned contract. A new noun signals not only a possible synonym but also a possible change in subject. The pronoun “it” can refer only to its antecedent, “contract,” “agreement” could refer to something else.

Always Look for Grouping Opportunities

The sentence can be further tightened by reducing the number of categories and linking them. You have natural groupings around two subjects — ABC Corp. and the contract — and around the compound verb, “was rescinded or...unenforceable.” The actions of ABC Corp. are described by the verbs “procured” and “breached.” The actions (or states of being) of the other subject, the contract, are described by the compound “to be” verb (“was rescinded or...unenforceable”):

The legal issues include whether ABC Corp. procured the contract through fraud or breached it and whether the contract was rescinded or was otherwise unenforceable.

Now you have two “whethers” rather than a series of three. This grouping makes the reader’s job easier by reducing the size, and tightening the weave, of the matrix necessary to comprehend and retain the sentence. Compare this version to the original sentence and recall how many mental processes were required — how many

choices we made — to sharpen it. Editing is far from easy.

Puzzler

The following is a sentence from an appellant’s brief challenging a change of venue. Which is best, Version A, Version B or Version C?

Version A: The trial court acknowledged that most of the witnesses live and work in this jurisdiction.

Version B: The trial court conceded that most of the witnesses live and work in this jurisdiction.

Version C: The trial court admitted that most of the witnesses live and work in this jurisdiction.

Even though “admit” is a synonym for “acknowledge,” its connotations are significantly different. It has connotations of conceding the truth of an accusation of wrongdoing. It’s what criminals do. Trying to paint the court with a black hat by grouping it with persons who “admit” things (i.e., criminals) casts you as a whiner. Show the trial court greater respect.

“Concede” and “acknowledge” are close in tone and meaning. Thesauruses present them as interchangeable, but concede is more aggressive. It has connotations

of giving up (i.e., “to acknowledge grudgingly or hesitantly <conceded that it might be a good idea>” . . . “to make concession:”; Merriam-Webster’s Collegiate Dictionary, 11th Ed. [“Merriam-Webster”]).

“Acknowledge,” on the other hand, is more forgiving. One who acknowledges a point recognizes it but does not necessarily concede it. In fact, one of the dictionary definitions of acknowledge, hardly concessionary, is “to take notice of” (Merriam-Webster). This alternate meaning may be triggered here, thus lessening the degree to which the word represents a concession.

As counsel who is challenging the venue transfer, you probably wish to be aggressive with “concede,” depending on what persona you wish to present to the appellate court and what degree of respect seems appropriate for the trial court. For an appellant, both Version A and Version B are in play. Only Version C (“admitted”) is taboo.

The respondent, in contrast, supports the venue transfer and would therefore probably go with “acknowledge,” Version A, to convey the sense that the trial court was fully aware of the facts that cut against venue transfer and after thorough analysis ordered the transfer anyway.

For **extra credit:** Which is better, “The trial court” or “Judge Smith”?

Generally, but with plenty of exceptions, appellants favor “The trial court” to create distance. Respondents favor “Judge Smith” to humanize the trial court. The preferences are likely to be reversed if the judge has a reputation of being weak or arbitrary. ■