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'Less Is More' Is Often Wise Advice

Ask yourself if you need to say everything you are thinking

By Kenneth F. Oettle

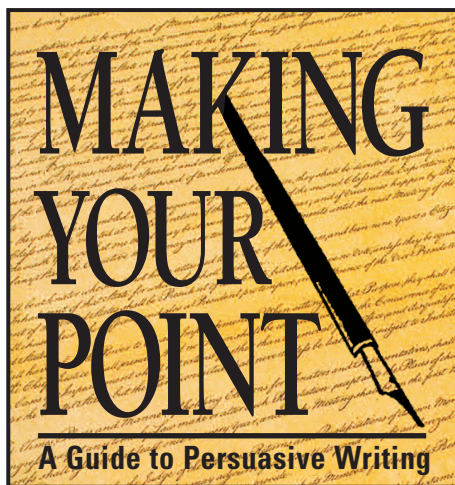
A guitar-playing friend likes to say that for accompanying a singer, “less is more”; that is, fewer notes better accent the vocals. The expression applies in other contexts as well, such as French cuisine, sweet perfume and keeping your mouth shut when you don’t know anything. In briefs, the principle “less is more” calls for omitting weak points, shortening string cites, trimming quotations, deleting what is obvious or implicit, and not rattling on.

In letters, the principle “less is more” is a reminder not to include everything that comes to mind. Take the following example from a draft letter to an adversary, complaining that a document production was deficient:

To date, we have not received the additional documents you promised. As you know, we are on a tight discovery schedule that requires the completion of fact witness depositions by December 4. *As such, our ability to complete fact discovery in accordance with the Case Management Order issued in this case would be hampered if we do not receive the docu-*

ments immediately. [Emphasis added].

The third sentence just complains (“our ability ... would be hampered”); it provides no specifics. It makes the writer seem at the effect of events



rather than in control. Because it adds bulk without adding value, it dilutes the point.

Be more specific and more direct. Drop the unnecessary “To date” and say what is already implicit — that more foot dragging will result in motion practice:

We have not received the additional documents you promised.

Further delay will force us to move for an extension of the December 4 deadline for deposing fact witnesses.

Depending on local rules regarding counsel fees and depending on the tenor of the litigation (what goes around comes around), you could threaten to seek fees:

If you force us to move, we will seek attorneys’ fees.

For greater focus, cite the justification for seeking fees — the added expense:

If we have to incur that expense, we will seek attorneys’ fees. [Emphasis added].

The foregoing involves no puffing and no posturing — just an expression of resolve. Because the writer also wished to accuse the other side of having been remiss in earlier production, the draft letter continued as follows:

Moreover, as we have discovered numerous deficiencies in defendants’ previous document production, our hope is that the additional documents will include many of the documents we believe defendants should have produced and that we can therefore avoid motion practice.

For starters, the substandard usage “as we have discovered” should be “because we have discovered ...,” but

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.

this passage is problematic in other respects. Alleging numerous deficiencies without saying what they are is merely blowing smoke; hoping that a box will contain missing documents highlights lack of control; and hoping to avoid motion practice suggests lack of stomach for the fight. "Hoping," in other words, gives away more than it accomplishes.

I asked the author why she included the following elements in the draft paragraphs:

- The statement in the first paragraph that our fact discovery would be hampered without the additional documents;
- Our hope that a box would contain missing documents; and
- Our hope that we could avoid motion practice.

She said she was concerned that if she didn't say that fact discovery would be hampered without the promised documents, the other side could respond that the document weren't important and that the depositions could proceed without them. She mentioned the Case Management Order to invoke the authority of the court, but she had no explanation for why she said, redundantly, "Case Management Order issued in this case." I suspect that this redundancy, like most, resulted from the misperception that the more words you use, the weightier your point.

I responded that the other side had already promised the documents, so the adversary didn't need to be reminded of their importance, and that in any case, she couldn't pre-empt the unimportance argument with a conclusory statement ("our ability ... would be hampered"). Without examples, the

conclusion is empty.

As an alternative to the leaner approach, the writer could have added an example of how our ability to take depositions would be hampered — something like: "For example, we can't fully examine the CEO about the terms of the prior contract unless we have a copy." Whether to be specific is a judgment call. It may suggest — or give the other side a basis on which to pretend — that you would be satisfied merely receiving the documents you identify.

The writer said she called attention to "numerous deficiencies" in defendant's earlier document production to press the attack. Aggression is good, but accusations without examples fall flat. Adding a parenthetical would help:

We have also discovered numerous deficiencies in defendants' earlier document production (e.g., no phone records, no personal diaries, no e-mails).

As for the comment that she hoped the tardy box of documents would contain what we needed and that perhaps we could avoid motion practice, she said she was just trying to be reasonable. Her intention was good, but her execution wasn't because "hope" signals weakness and lack of control.

This draft letter covered two subjects: promised documents and deficient production. I prefer single-purpose letters because they create a cleaner paper trail, but if you must bring the second subject into the letter (deficiencies in earlier production), at least suggest a course of action:

I will call to schedule a conference to discuss these outstanding issues.

Taking action is better than hoping.

In the end, the suggested deletions don't make a huge difference. Writing the letter to keep moving forward is paramount. Nevertheless, you create an impression with everything you write. In communications with the other side, look to convey a maximum of resolve and a minimum of the rest of what is in your mind.

Puzzler

What is wrong with the following sentence?

When using a check to make a purchase, a retailer cannot imprint the customer's credit card onto the check.

The retailer is not using a check to make a purchase. The customer is.

The writer is thinking of the customer using a check and thus imagines writing, "When *the customer* is using a check ..." But the sentence doesn't say this, and the reader doesn't automatically know it. The reader merely follows the signal delivered by the convention, "When using ...," as in, "When using a chain saw, he is careful."

The revised version:

When a customer uses a check to make a purchase, the retailer cannot imprint the customer's credit card onto the check. ■