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The Pause That Refreshes: Commas—Part 2

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The Pause That Refreshes: Commas—Part 2

BY GERALD LEBOVITS

Part I of this column, in the *Journal's* March-April edition, discussed comma-induced comas. Having paused for a month, punctuating *The Legal Writer* by 30 days, we continue.

Go which hunting. That vs. which? Is it "I am enveloped by litigation that troubles me" or "I am enveloped by litigation, which troubles me"? If all your litigation troubles you, use the nonrestrictive *which*, adding a comma before *which*. If one aspect of your litigation troubles you, replace the *which* with the restrictive *that*.

Restrictives define. Nonrestrictives don't. Because not everyone lives in a glass house, it is, "People who live in glass houses should not throw stones," *not* "People, who live in glass houses, should not throw stones." Conversely, because every person is sentient, it is, "People, who are sentient, appreciate being treated with dignity," *not* "People who are sentient appreciate being treated with dignity." *More restrictions.* Do not use commas to separate nouns from restrictive terms of identification: "Alexander the Great."

Are you independent? Use commas to set off independent clauses from preceding dependent clauses and to set off all but the shortest prefatory phrases. Add a comma after *up*: "After the oven blew up Bill sued. Without the comma, the oven is a homicide bomber that blew Bill up."

Runaway commas. Use semicolons or periods, not commas, to set off two independent clauses joined by conjunctive adverbs used as transitions: *accordingly, again, also, besides, consequently, finally, for example, furthermore, hence, however, moreover, nevertheless, on the other hand, other-*

wise, rather, similarly, then, therefore, thus. It is a comma-splice run-on sentence if you do not do so. *Incorrect:* "The motion is frivolous, however, sanctions will not be awarded." *Correct:* "The motion is frivolous. However, sanctions will not be awarded." Or: "The motion is frivolous; however, sanctions will not be awarded."

Are you coordinated? Place a comma before a coordinating conjunction (*and, but, for, or, nor, so, yet*) when the coordinating conjunction precedes a second independent clause, unless the two independent clauses are short. If they are short, no comma is necessary unless you wish to emphasize the second clause. Correct use of comma before the two *ands*, from Justice Frankfurter: "Certainly courts are not, and cannot be, immune from criticism, and lawyers, of course, may indulge in criticism. Indeed, they are under a special responsibility to exercise fearlessness in doing so."¹ *Comma prohibited:* "The court attorney studied in the law library and drafted an opinion there." (One independent clause.) *Correct:* "[A] legal system is not what it says but what it does."² (One independent clause.) *Comma optional:* "He wrote and she researched." (Two short independent clauses joined by a coordinating conjunction.)

You can quote me on this. Commas can be used to introduce quotations. Use a comma before a quotation only (1) when the quotation is an independent clause and (2) when what precedes the quotation is inapposite to the quotation or to replace a *that* or a *whether* before the quotation.

An innie or an outie? In American usage, commas always go inside the quotation mark. It's not a matter of logic. It's a matter of usage.

Because I said so. Do not use a comma before *because* unless the sentence is long or complex.

Verbal hesitation. Do not use a comma before a verb. *Incorrect:* "When to use a comma, [omit the comma] befuddles law students." Do not use a comma between subjects and their verbs or between verbs and their objects. *Incorrect:* "The view that trial judges have agendas, [omit the comma] is not supported by case law."³

Use commas to set off independent clauses from preceding dependent clauses.

Compounding the felony. Do not use a comma after a compound subject. *Incorrect:* "Many court attorneys use e-mail, fax machines, and telephones, [omit the comma] nearly every day."

Doubly subjective. No commas between parts of a double subject. *Incorrect:* "The District Court, [omit the comma] and the Civil Court will be merged if the Unified Court System's proposal succeeds."

Serial killers. As with much in written English, the key is consistency. Always or never use serial commas before the final *and* or *or* in a series of three items or more. For serial commas, there is no "it depends." But the better practice is to use them. Forget what your sixth-grade teacher told you. Many believe that serial commas are unnecessary because, they contend, the *and* or *or* already separates the final two elements of a series. Others, like newspapers and

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magazines, omit serial commas to save space. But serial commas are helpful. They reflect a natural pause in spoken English. Sound out this sentence: "Apples, oranges, and bananas." Did you pause before the *and* that preceded *bananas*? Of course you did.

Serial commas also promote clarity: "Yesterday the police arrested five criminals, two robbers and three burglars." How many people did the police arrest, five or ten? If you use serial commas, your reader will answer *ten*. If the reader knows that you never use serial commas, your reader will answer *five*. No ambiguity.

Serial commas are also required to divide elements from sub-elements: "Juice, fruits and nuts, and dairy"; or "Juice, fruits, and nuts and dairy"; or "Juice, fruits and nuts and dairy"?

An example of correct serial-comma usage: The legal-writing "process incorporates five stages: prewriting, writing, rewriting, revising, and polishing."⁴ Exception: Do not use a serial comma before an ampersand: "Gatsby, Howe & Hummel."

Signal to the right. In the earlier editions of the *New York State Official Reports Style Manual*, affectionately called the *Tanbook*, commas appeared after signals (*id.*, *see.*). As of March 1, 2002, the *Tanbook* directs writers not to use commas after signals. Commas never go after signals, according to the *Bluebook*.

A defining moment. Use commas to define or explain terms. "Respondent moved for legal, or attorney, fees." "Fight noun banging, or noun plagues."

Don't supply information. Use commas to omit elliptical words, words a reader can immediately supply: "He chose a word processor; she, dictation." The comma replaces *chose*.

Don't let parentheses throw you a curve. Commas go after parentheses, not before them: "I went to New York University School of Law (NYU), graduating in 1986."

Cite the sites. In *Bluebook* format, commas go after citations when citing in text: "The court in *X v. Y*, 99 F.4th 99 (14th Cir. 2002), held that . . ." This issue does not arise under *Tanbook*, which requires that parentheses, not commas, enclose textual citations: "The court in *X v. Y*

(99 F.4th 99 [14th Cir. 2002]) held that . . ."

Learning to use commas can stop you in your tracks. Commas punctuate your thinking. But if you don't want cereal—er, *serial*—commas to eat you up alive, you'll pause to learn all about them. Maybe the pause will even be refreshing.

1. *In re Sawyer*, 360 U.S. 622, 669 (1959) (Frankfurter, J., dissenting).
2. *United States v. Antonelli Fireworks Co.*, 155 F.2d 631, 662 (2d Cir. 1946) (Frank, J., dissenting).
3. Also note the passive. The sentence should read: "Case law does not support the view that trial judges have agendas."
4. Mary Barnard Ray & Jill J. Ramsfield, *Legal Writing: Getting it Right and Getting it Written* 416 (3d ed. 2000) (capitals deleted).

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