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Do's, Don'ts & Maybes: Usage Controversies—Part I

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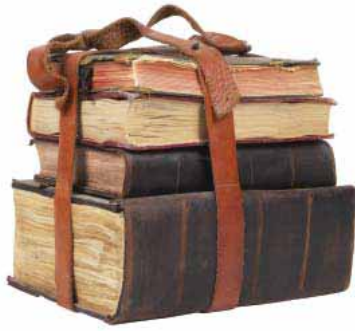
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opportunity*

by Jonathan Rosenberg and Kendall Burr

Also in this Issue

A Primer on Music Licensing
Independent Contractor
Status

2007 Insurance Law Update –
Part I



Do's, Don'ts, and Maybes: Usage Controversies — Part I

In the last nine of ten columns, the Legal Writer discussed legal writing's do's and don'ts. The series ends with a list of legal-writing maybes — the things about which experts disagree but about which the Legal Writer will take a position nevertheless. The answers to these maybes, or controversies, don't represent the most important aspects of legal writing. Far more important than resolving the controversies are getting law and fact right; using the right tone and format; adopting good large- and small-scale organization; and knowing your audience and the purpose of your document. But many lawyers, and all Law Review types, focus on the controversies. This two-part column resolves the controversies for the merely curious and especially the Law Review types who believe them important.

1. Starting sentences with transitions. Some legal writers believe that starting a sentence with "also," "and," "but," and "or" is bad style. They're wrong, but there's more to it than that.

Transitions link sentences, paragraphs, and ideas. The best way to move a reader forward is not to link with transitional words like "however" or "but." The best way is to use thesis paragraphs, topic sentences, and thesis sentences, and then to join sentences by ending them with a thought or word used in the beginning of the next sentence or paragraph. Sentences should go from old to new and from short to long. Sentences should end with emphasis.

A weak way to move a reader forward is with transitional words.

Writers use them lazily to substitute for the hard work of connecting ideas with ideas. Worse, writers use them in the false hope that they join sentences in logical progression.

Common, weighty, legalistic transitions include "accordingly," "again," "besides," "consequently," "finally," "for example," "furthermore," "however," "indeed," "moreover," "nevertheless," "on the other hand," "otherwise," "then," "therefore," and "thus." If you must begin with transitional words, at least prefer the plain English transitions: "also," "and," "because," "but," and "or." Despite what your sixth grade teacher incorrectly told you, it's better to start sentences with "and" and "but" than with "moreover" and "however." It's a myth that good sentences may not begin with "and" or "but." Conjunctive-adverb transitions like "moreover" and "however" are weak. "Also," "and," "but," and "or" are one-syllable words that start sentences quickly. "Because" is useful in legal writing to describe cause-and-effect relationships. But don't begin sentences with "because" too often. Your writing will be boring. The same is true for all transitions. Whichever transition you use, don't overuse it.

Example of starting sentence with "And": "The attorney cross-examined the witness for five hours. And then the court took a recess." *Example of starting a sentence with "Because":* "Because the parties drafted the contract poorly, they had to resolve their differences in court." *Example of starting a sentence with "But":* "The judge wasn't impressed with his trial techniques. But she was impressed with his writ-

ing skills." *Example of starting a sentence with "Or":* "The defendant might take a plea before trial. Or the People might have to try the case and call every witness to the stand."

Notice how the above sentences are stronger without the opening transitions. *No "And":* "The attorney cross-examined the witness for five hours. Then the court took a recess." *No "Because":* "The parties drafted the contract poorly. They had to resolve their differences in court." *No "But":* "The judge wasn't impressed with his trial techniques. She was impressed with his writing skills." *No "Or":* "The defendant might take a plea before trial. The People might have to try the case and call every witness to the stand."

If you must use weighty conjunctive adverbs, don't use them at the beginning of a sentence or paragraph, a point of emphasis. And almost never use them at the end of a sentence, the point of greatest emphasis. Move the conjunction one third into the sentence. *Correct:* "The attorney, however, conceded that the defendant fled the jurisdiction. He argued, nevertheless, that the defendant should not be remanded."

2. Ending sentence with prepositions. Some readers — the purists — are offended by phrases and sentences ending with prepositions like "at," "by," "for," "in," "under." They believe that ending sentences with prepositions is informal and ungrammatical.

Readers sometimes don't recognize the difference between ending a sen-

CONTINUED ON PAGE 60

tence with a preposition whose object (noun or pronoun) appears earlier in the sentence and ending a sentence with a preposition that has no object. Eliminate the preposition at the end of the sentence when it's ungrammatical. *Incorrect example:* "Where is my briefcase at?" In this example, the preposition "at" has no object. *Correct:* "Where is my briefcase?" Or: "My briefcase is where?" *Preposition at end of a sentence that has an object:* "What do you need to go to court for?" "Which courtroom is she in?"

Occasionally a sentence must end with a preposition. Otherwise, the sentence will be incomprehensible. Other sentences sound tortured or stilted without a preposition at the end. Here's an example attributed to Winston Churchill, who was talking about the alleged rule not to end sentences with prepositions: "This is the kind of tedious nonsense up with which I will not put."¹ Churchill's line is brilliant, partly because it makes no sense: The preposition is in the middle — not the end — of the sentence. The sentence has lost all meaning. *Correct:* "I will not put up with this kind of tedious nonsense."

Some words that function as prepositions can also function as adverbs, or what grammarians call a phrasal verb. Verbs change in meaning when the adverb is part of the phrasal verb. In Churchill's example above, the verb "to put up with" means "to tolerate," which is different from "to put," meaning "to set" or "to place." Sentences that end with these phrasal verbs appear to end with prepositions, but they really don't. *Examples:* "to get" versus "to get up" and "get by"; "to look" versus "to look up," "to look out," and "to look over"; "to break" versus "to break down" and "to break in"; "to check" versus "to check out" and "to check up on"; "to run" versus "to run over" and "to run down"; "to shake" versus "to shake up" and "to shake down"; and "to blow" versus "to blow up," "to blow over," "to blow out," "to blow

off," and "to blow away." *Used correctly in sentences:* "This evening I have four briefs to look over." "The attorney was worried that his witness would break down." "As soon as an attorney interrupted the testimony with an objec-

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tion, the judge blew up."

Ending sentences with prepositions helps eliminate formality. *Ending in a preposition:* "The attorney I spoke with on the telephone was the attorney I had written to." *Eliminating the preposition at the end:* "The attorney with whom I had spoken on the telephone was the attorney to whom I had written." Both examples are correct. The first one is clearer and less formal than the second example, which needs "with whom" to make sense. Eliminating the preposition from the end of sentences will cause you to add too many "with whoms," "to whoms," and "of welches."

The greatest emphasis in a sentence is at the end. That's where the sentence carries its weight. On a scale of one to ten, one being the lightest and ten being the heaviest, prepositions are a one: light and airy. Nouns are a five: just right. Adjectives and adverbs are an eight: heavy. Nominalizations (verbs turned into nouns) are a ten: the heaviest. *Example of ending a sentence with a noun:* "She saw the defendant once a month for a year." *Example of ending a sentence with an adjective:* "Of all the judges in New York, he's the one I like the most." *Ending a sentence with an adverb:* "The judge waited patiently." *Ending a sentence with a nominalization:* "After the judge listened to the arguments, she made a decision."

Readers want strong sentences that move them to emphatic climax. Aim to

end sentences with powerful words. Ending with a preposition is often a rather weak way to conclude. But from time to time ending a sentence or clause with a preposition will give readers a reprieve from an earlier sentence that ended with a powerful noun. Vary sentence endings. Use light and heavy words to emphasize or deemphasize. Do what's right for you.²

3. Using serial commas. Some writers believe it's pointless to insert the last comma in a series.

Serial commas, also known as Harvard or Oxford commas, refer to the commas that separate a series of three or more words or phrases.³ The last comma in the series — the serial comma — is optional. The goal is to be consistent. Use them always or never. But most legal-writing teachers prefer serial commas. *Examples:* "Before submitting the brief, Tom edited the brief, Marilyn printed the brief, and I prepared the appendix." "After work, Scott enjoys a drink at Reade Street, Lafayette Grill, or Brady's Pub." Don't add commas if you join all the words, phrases, or statements with "and." *Example:* "Before submitting the brief, Tom edited the brief and Marilyn printed the brief and I prepared the appendix."

Those who believe that serial commas are unnecessary contend that the "and" or "or" already separates the final two elements of a series. Others, such as newspapers and magazines, omit serial commas to save space.

Serial commas are helpful for two reasons. They reflect a natural pause in spoken English. Sound out this phrase: "Gavel, robe, and pen." You paused before the "and," didn't you? That's why you need the last comma. Serial commas also promote clarity. *Example:* "Yesterday the police arrested five criminals, two robbers and three burglars." Your reader won't know whether police arrested five or ten criminals.⁴ Without a serial comma, your reader might answer "five" or "ten." If you use serial commas, your reader will answer "ten": "Yesterday

the police arrested five criminals, two robbers, and three burglars.”

Serial commas are 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.”

Don’t use a serial comma before an ampersand. Correct: “Blake, Hall & Johnson.”

4. When to correctly split infinitives. H.W. Fowler, the great grammarian and stylist, once wrote the

may deserve to pitied be.” (Splitting “to be.”) The most famous example of splitting an infinitive comes from *Star Trek*: “To boldly go where no man has gone before.”⁷ The TV show would be different had the author written “Boldly to go where no man has gone before” or “To go boldly where no man has gone before.”

If you use verbs and nouns instead of adverbs and adjectives, you’ll rarely need to think about whether to split infinitives. Achieve power in language

splitting an infinitive to avoid confusion: “The law student decided to promptly return the library book.” Changing the sentence in the following ways leads to loss of meaning: “The law student promptly decided to return the library book.” “The law student decided to return the library book promptly.” This example is unclear. You can’t tell whether “promptly” goes with “decided” or “return”: “The law student decided promptly to return the library book.”

Never split an infinitive with a “not.” *Incorrect*: “Try to not ever split infinitives.”

In the next column, the Legal Writer will discuss more controversies. ■

Your language will be flabby and conclusory if you use weak words like adverbs and adjectives.

following about split infinitives: “The English-speaking world may be divided into (1) those who neither know nor care what a split infinitive is; (2) those who do not know, but care very much; (3) those who know and condemn; (4) those who know and approve; and (5) those who know and distinguish.”⁵

An infinitive is the basic form of a verb: “to cry,” “to eat,” “to read,” “to sleep.” To split an infinitive is to insert a word or phrase between the component parts of the infinitive. *Example of splitting “to finish”*: “She hopes to quickly finish the decision so that she can start another one.” *Not splitting*: “She hopes to finish the decision quickly so that she can start another one.”

George Bernard Shaw, who loved to split infinitives, once wrote the following note to the *Times* of London: “There is a busybody on your staff who devotes a lot of time to chasing split infinitives: I call for the immediate dismissal of this pedant. It is of no consequence whether he decides to go quickly or to quickly go or quickly to go. The important thing is that he should go at once.”⁶ The earliest example of splitting an infinitive is in Shakespeare’s Sonnet 142: “Root pity in thy heart, that when it grows thy pity

by using strong words like nouns and, better, verbs. Your language will be flabby and conclusory if you use weak words like adverbs and adjectives. Think of the adverb “boldly” in the *Star Trek* example. What’s “bold” to you is different from what’s “bold” to me. Write with power by explaining in a non-conclusory way what makes the going bold.

Splitting some infinitives creates emphasis, secures effective word order, and avoids confusion. *Example 1*: “The clerk is instructed periodically to check the computer.” *Example 2*: “The clerk is instructed to periodically check the computer.” *Example 3*: “The clerk is instructed to check the computer periodically.” *Example 1* avoids splitting the infinitive, but it’s possibly ambiguous: Is the clerk instructed periodically, or should the checking be done periodically? *Example 2* splits the infinitive but makes it clear that “periodically” modifies the verb “check.” *Example 3* doesn’t split the infinitive, but it’s ambiguous: Readers might understand that “instructed” rather than “to check” is modified. If you can maneuver the words to avoid splitting the infinitive, then do so.

If you want to split the infinitive and splitting it won’t hurt the writing, go ahead and split it. *Example of*

1. Famous Quotations/Stories of Winston Churchill, available at <http://www.winstonchurchill.org/i4a/pages/index.cfm?pageid=388> (last visited Apr. 20, 2008).

2. For more, see Gerald Lebovits, Legal Writer, *Do’s, Don’ts, and Maybes: Legal Writing Do’s — Part II*, 79 N.Y. St. B.J. 64 (June 2007).

3. For more, see Gerald Lebovits, Legal Writer, *Do’s, Don’ts, and Maybes: Legal Writing Punctuation — Part II*, 80 N.Y. St. B.J. 64 (April 2008).

4. Readers might answer “none.” Those arrested are alleged criminals until they’re convicted.

5. Excerpt from H.W. Fowler, *A Dictionary of Modern English Usage* (1965), available at <http://www-users.cs.york.ac.uk/susan/cyc/s/split.htm> (last visited Apr. 20, 2008).

6. Common Usage Dilemmas, available at <http://www.infoplease.com/cig/grammar-style/split-infinitives-boldly-go-everyone-else-goes.html> (last visited Apr. 20, 2008).

7. The Phrase Finder, available at <http://www.phrases.org.uk/meanings/385400.html> (last visited Apr. 20, 2008). This lead comes from the original *Star Trek* series. The sequel, *Star Trek: The Next Generation*, improved the lead somewhat by making it gender neutral. Instead of the “man,” the writers used a “one”: “To boldly go where no one has gone before.” The sequel retained the redundancy “before.” If no one has gone there, no one has gone there “before.”

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