

CHAPTER FIVE

SENTENCES

The building blocks of all legal writing are sentences. To write effective sentences, pay close attention to the role of subjects, verbs, and objects. But close attention to those roles is not enough; readers must be able to recognize the relationship of what they are reading to what has already been said.

1. Transitions

The writer must start with what the reader likely knows already, then advance the argument through transitions.

1.1 THE FUNCTION OF TRANSITIONS

The function of transitions is frequently misunderstood. Writers often think that they have effectively transitioned between sentences by inserting a single word, such as “But,” “And,” “Further,” or “Furthermore.” These words tell the reader that the writer is going to say something else, but the reader already knows that. The function of a transition is to inform the reader, showing how the new sentence will relate to the prior one.

1.2 PUTTING OLD INFORMATION BEFORE NEW INFORMATION

One effective device is to use old information before new information. Every sentence will hopefully convey new information. But readers tend to relate new material to what they already know,¹ expecting the start of a sentence to link to the prior sentence.² This tendency causes most readers to process familiar information before new information,³ so it is sometimes jarring to move directly between new pieces of information, masking how the information interrelates. The writer should ease the reader’s burden and show the interrelation by conveying old information before new information. One can do so by referring to the key part of the prior sentence before expressing the new content of the sentence.⁴

This technique appears in Peter Keisler’s petition for certiorari:

Federal law requires airlines to report to the Transportation Security Administration (TSA) any and all potential security threats to civil aviation. 49 U.S.C. § 44905(a). To encourage such reports, the Aviation and Transportation Security Act (ATSA) provides airlines with a broad grant of immunity, shielding them from all civil liability, including liability for state-law defamation, for disclosing potential threats to aircraft or passenger safety. Id. § 44941(a). The

1. See Elizabeth Fajans & Mary R. Falk, *Linguistics and the Composition of Legal Documents: Border Crossings*, 22 *Legal Stud. F.* 697, 717 (1998) (“Generally, readers tend to relate what they are reading to what they already know about the subject matter.”).

2. See George D. Gopen, *The Sense of Structure: Writing from the Reader’s Perspective* 65 (2004) (“Readers expect the material at the beginning of a sentence to provide a connection backward to the previous sentence.”); see also Murray Singer, *Psychology of Language: An Introduction to Sentence and Discourse Processes* 117 (1990) (“[S]entence interpretation is usually interpreted as given if it appears in the initial sentence position.”).

3. Yellowlees Douglas, *The Reader’s Brain: How Neuroscience Can Make You a Better Writer* 76 (2015); see also Murray Singer, *Psychology of Language: An Introduction to Sentence and Discourse Practices* 121 (1990) (“[I]t has been shown that, although given information is processed more superficially than new information, it is processed before the new information.”).

4. See Elizabeth Fajans & Mary R. Falk, *Linguistics and the Composition of Legal Documents: Border Crossings*, 22 *Legal Stud. F.* 697, 717 (1998) (stating that because of readers’ general method of processing new information, “it is helpful to put old information at the beginning of a sentence and new information at the end”).

only exception to this immunity is for disclosures made “with actual knowledge that the disclosure was false, inaccurate, or misleading” or “with reckless disregard as to the truth or falsity of that disclosure.” *Id.* § 44941(b).⁵

Examining the italicized phrases, you can easily see how Mr. Keisler begins each new sentence with language from the prior sentence, making the paragraph easy to read and helping the reader see how each bit of new information relates to what has already been said.

Effective speechwriters use transitions this way. Take President Franklin D. Roosevelt’s first inaugural address. President Roosevelt was speaking to a nation consumed by the Great Depression. In introducing himself as the newly elected president, he wanted to convey his focus on creating new jobs. As you read an excerpt from this speech, think about how President Roosevelt uses transitions to advance the point he is making. Each time, he begins by incorporating parts of what he has just said:

Our greatest primary task is to put people to work. *This is no unsolvable problem* if we face it wisely and courageously. *It can be accomplished* in part by direct recruiting by the government itself, treating the task as we would treat the emergency of a war, but at the same time, through this employment, accomplishing greatly needed projects to stimulate and reorganize the use of our natural resources.

Hand in hand *with this* we must frankly recognize the overbalance of population in our industrial centers and, by engaging on a national scale in a redistribution, endeavor to provide a better use of the land for those best fitted for the land. *The task* can be helped by definite efforts to raise the values of agricultural products and with this the power to purchase the output of our cities. *It can be helped* by preventing realistically the tragedy of the growing loss through foreclosure of our small homes and our farms. *It can be helped* by insistence that the federal, state, and local governments act forthwith on the demand that their cost be drastically reduced.

5. Brief of Petitioner at (i), *Air Wisc. Airlines Corp. v. Hoeper*, 571 U.S. 237 (2014) (No. 12-315) (Peter D. Keisler et al.) (emphasis added).

It can be helped by the unifying of relief activities, which today are often scattered, uneconomical, and unequal. *It can be helped* by national planning for and supervision of all forms of transportation and of communications and other utilities which have a definitely public character.⁶

President Roosevelt’s speech shows how to move old information up in the sentence by using passive sentences. Four times, for example, President Roosevelt begins: “*It can be helped.*” In this way, he shifts the object of the sentence (*it*) to the initial subject, requiring the passive voice of the verb (*be helped*).⁷

Skilled writers sometimes intentionally move new information to the start of a sentence to emphasize a particular point. The traditional approach—using old information before new information—facilitates understanding because it shows the relationship between the old and new information. Deviation from this approach is sometimes disquieting, but disquiet may allow the writer to emphasize a point by requiring the reader to pause.⁸

Mr. Pratik Shah used this approach, switching the ordinary sequence of old and new information to emphasize a point: “Fool me once, shame on you; fool me twice, shame on me. In this case, South Carolina, following the lead of other state and federal regulators, has added a new twist to that *old saying: fool no one*, pay \$124 million to the treasury.”⁹ The italicized language constitutes the old information, referencing the prior sentence. Until readers get to the italicized language, they will have little idea of what to expect. But

6. President Franklin D. Roosevelt, First Inaugural Address (March 4, 1933), in William Safire, *Lend Me Your Ears: Great Speeches in History* 939 (2004) (emphasis added).

7. See Elizabeth Fajans & Mary R. Falk, *Linguistics and the Composition of Legal Documents: Border Crossings*, 22 *Legal Stud. F.* 697, 717 (1998) [“[O]ne legitimate use of passive voice is to shift the object of a sentence into the initial subject position because it expresses old information.”].

8. See Murray Singer, *Psychology of Language: An Introduction to Sentence and Discourse Practices* 137 (1990) (discussing studies “indicating that comprehension time is greater if a sentence has an incongruent given–new structure”).

9. Brief of Amicus Curiae Cato Institute in Support of Petitioners at 2, *Ortho-McNeil-Janssen Pharms., Inc. v. South Carolina ex rel. Wilson*, 136 S. Ct. 824 (2016) (No. 15-600) (emphasis added).

this withholding of information is what the writer wants: the veil is lifted when readers get to the italicized language, intensifying the effect of a fine for \$124 million even though the person had not deceived anyone.

Repeated use of this technique would undoubtedly frustrate many readers, but occasional use is sometimes effective as a way to emphasize a particular point.

1.3 STARTING A SENTENCE WITH CONJUNCTIONS

Traditionalists often advise against starting sentences with conjunctions like “and” or “but.” Ignore that misguided advice. Writers can safely begin sentences with “and” or “but,” for grammarians no longer frown at these openings. Yet one should vary the beginning of sentences. Starting nearly every sentence with “and” or “but” creates tedium and impedes the flow of a document.

Many traditionalists also advise against opening a sentence with “because.” But sentences can begin with “because.”

2. Sentence Length

The core of a sentence ordinarily consists of the subject, verb, and object. Between these sentence parts, however, writers often sprinkle other phrases and clauses, impeding the flow between the subject, verb, and object. As a result, longer phrases and sentences are often harder to follow than shorter ones. Many writers thus set artificial limits for their sentences, such as 25 words per sentence.

This practice stems from an intuitive appreciation for the limits on a reader’s short-term memory. As we read, we constantly process newly acquired information with other information already known. But our short-term memories are limited to just a few words at any discrete point in our reading.¹⁰

10. See Frank Smith, *Understanding Reading: A Psycholinguistic Analysis of Reading and Learning to Read* 99 (6th ed. 2012) (“Short-term memory can’t contain very much at any one time—little more than half a dozen items.”); Colette A. Daiute, *Psycholinguistic Foundations of the Writing Process*, 15 *Res. Teaching Eng.* 5, 8 (1981) (“Even if a 15 word unit

Long groupings of words strain our short-term memory. The solution for some is to limit the number of words in a sentence. Though this approach may relieve some strain on the reader’s short-term memory, constant use of short sentences fosters tedium and dilutes the impact. Skilled writers try not only to make their writing easy to understand but also to intensify the effect of critical points.

Longer sentences, when broken into chunks, can be understood as easily as shorter sentences.¹¹ With longer sentences, the key is to avoid straining the reader’s short-term memory,¹² as most people can retain fewer than ten items at a time.¹³

Even in long sentences, we can often avoid straining a reader’s short-term memory, as Martin Luther King Jr. showed with a 305-word sentence cataloguing a litany of injustices. He eased the listener’s burden by creating 12 related chunks in the sentence.

[*First chunk*] But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; [*second chunk*] when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; [*third chunk*] when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the

is not a strong perceptual clause, including representation of a subject, verb, and object, it may be recoded because 15 words present a burden to short-term memory.”).

11. See Klara Marton et al., *Effect of Sentence Length and Complexity on Working Memory Performance in Hungarian Children with Specific Language Impairment (SLI): A Cross-Linguistic Comparison*, 41 *Int’l J. Lang. Comm. Disorders* 653, 670 (2006) (“In both English- and Hungarian-speaking children linguistic complexity seems to have a larger effect on verbal working memory performance than the length of the sentences.”).

12. See Ronald T. Kellogg, *Working Memory Components in Written Sentence Generation*, 117 *Am. J. Psychol.* 341, 350 (2004) (stating that a heavy load on verbal working memory reliably impeded sentence generation).

13. See George Johnson, *The Light of Discovery*, in *Knowledge Management Tools* 114 (Rudy L. Ruggles III ed., 1997) (“Experiments have shown that humans can retain fewer than ten items or ‘chunks’ in their short-term memory.”); Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 *J. Ass’n Legal Writing Directors* 108, 125 (2004) (“Research concludes that human short-term memory can process seven plus or minus two . . . chunks at a time without losing information.”); see also Murray Singer, *Psychology of Language: An Introduction to Sentence and Discourse Processes* 9 (1990) (“Working memory holds only two to eight familiar units of meaning, known as *chunks*.” (emphasis in original)).

midst of an affluent society; [*fourth chunk*] when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can't go to the public amusement park that has just been advertised on television, [*fifth chunk*] and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, [*sixth chunk*] and see her beginning to distort her personality by developing an unconscious bitterness toward white people; [*seventh chunk*] when you have to concoct an answer for a five-year-old son who is asking: "Daddy, why do white people treat colored people so mean?"; [*eighth chunk*] when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; [*ninth chunk*] when you are humiliated day in and day out by nagging signs reading "white" and "colored"; [*tenth chunk*] when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; [*eleventh chunk*] when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; [*twelfth chunk*] when you are forever fighting a degenerating sense of "nobodiness"—then you will understand why we find it difficult to wait.¹⁴

A similar method involves a mix of short and long sentences, using short sentences to create impact. This method was artfully employed by Winston Churchill. When addressing Parliament shortly after his appointment as prime minister, Churchill sought to unify the country against the German threat. In doing so, Churchill varied his sentence structure when trying to land a punch:

You ask, what is our policy? I say it is to wage war by land, sea, and air. War with all our might and with all the strength God has given us, and to wage war against a monstrous tyranny never

14. Martin Luther King Jr., *Letter from a Birmingham Jail*, in *Why We Can't Wait* 91–92 (1964) (emphasis added).

surpassed in the dark and lamentable catalogue of human crime.

That is our policy.

You ask, what is our aim? I can answer in one word. *It is victory.*¹⁵

In the speech as a whole, the sentences range from 3 words to 56.¹⁶ Nine sentences consist of fewer than 11 words, and 4 sentences consist of more than 31 words.¹⁷ Churchill masterfully used short sentences by pairing them with long sentences.

President Franklin D. Roosevelt also varied the length of his sentences when trying to stir Congress to declare war on Japan:

No matter how long it may take us to overcome this premeditated invasion, the American people, in their righteous might, will win through to absolute victory.

I believe that I interpret the will of the Congress and of the people when I assert that we will not only defend ourselves to the uttermost but will make it very certain that this form of treachery shall never again endanger us.

Hostilities exist. There is no blinking at the fact that our people, our territory, and our interests are in grave danger.

With confidence in our armed forces, with the unbounding determination of our people, we will gain the inevitable triumph. *So help us God.*¹⁸

The short sentences echo because they follow much longer sentences. For example, Roosevelt’s 2-word and 4-word sentences follow sentences of 44 and 19 words. And Churchill’s 3-word and 4-word sentences follow sentences of 26 and 33 words.

Some judges effectively use the same technique, using short, pithy sentences to highlight a particular point. An illustration appears in

15. Winston Churchill, Address before Parliament (May 13, 1940), in William Safire, *Lend Me Your Ears: Great Speeches in History* 145 (2004) (emphasis added).

16. See *id.* at 143–45.

17. *Id.*

18. President Franklin D. Roosevelt, Address to Congress Asking Congress to Declare War on Japan (Dec. 8, 1941), in William Safire, *Lend Me Your Ears: Great Speeches in History* 157–58 (2004) (emphasis added).

Judge Richard Posner’s criticism of a state’s refusal to recognize the validity of same-sex marriages in *Baskin v. Bogan*:

Indiana permits joint adoption by homosexuals (Wisconsin does not). But an unmarried homosexual couple is less stable than a married one, or so at least the state’s insistence that marriage is better for children implies. If marriage is better for children who are being brought up by their biological parents, it must be better for children who are being brought up by their adoptive parents. The state should want homosexual couples who adopt children—as, to repeat, they are permitted to do—to be married, if it is serious in arguing that the only governmental interest in marriage derives from the problem of accidental births. (*We doubt that it is serious.*)¹⁹

Is there any question that Judge Posner wants to convey his skepticism about Indiana’s explanation for its interest in determining who can marry?

Seasoned advocates also employ this technique. For example, Neal Katyal represented an individual allegedly acting as a whistleblower. In discussing the facts, Mr. Katyal wanted to set the stage for his client’s decision to blow the whistle. The key, however, was to emphasize the client’s actual decision to blow the whistle. So he related that decision in a five-word sentence:

Only then did MacLean look outside for help. He firmly believed that the new policy was contrary to law and extraordinarily dangerous to public safety. And time was running out before it took effect. *So MacLean blew the whistle.* He contacted a reporter with a history of responsible reporting about TSA who maintained close connections with Congress, telling him about the plan to remove marshals from long-distance flights.²⁰

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19. 766 F.3d 648, 663 (7th Cir. 2014) (emphasis altered).

20. Brief for Respondent at 11, *Dep’t of Homeland Sec. v. MacLean*, 574 U.S. 383 (2015) (No. 13-894) (internal citations omitted) (Neal Katyal et al.) (emphasis added).

Make sentences readily understandable; no one should need to reread anything that you write. To make writing understandable, consider the constraints on readers’ short-term memories. That consideration need not turn the argument into a collection of short sentences. Instead, use short sentences along with long sentences; the variety can create a rhythm and allow you to emphasize particular points.

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