

On the Papers

IMPORTANT: AVOID BEGINNING SENTENCES WITH “THE COURT HELD THAT . . .”

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“The Court held that . . .” “The plaintiff alleged that . . .” This construction is littered over the history of legal writing. It does a great deal of damage to the reader’s interpretation process. It usually should be avoided. Lawyers often tell me they have no problem reading such a construction: That they have been doing it all their professional lives. They insist it does not obscure meaning. They are right in one sense only: Having become so habituated to it, they do not perceive the damage it does to them as readers, sentence after sentence. This article explains that damage and how to avoid it.

Background: Last summer in these pages, I explained that there are only three units of discourse we need to control in order to indicate to readers the various levels of importance they should give our information—the main clause, the qualifying clause (my term), and the phrase. See *The Number Two Problem in Legal Writing: Solved*, 40 LITIG. 21 (Summer 2014).

A main clause has both a subject and a verb; it can stand by itself as a sentence. A qualifying clause has both a subject and

verb but cannot stand by itself as a sentence—usually because it starts with a word like “although” or “that.” And a phrase has a beginning and an end but lacks either a subject or a verb or both.

The major significance of these distinctions: Readers value the information in main clauses more than that in qualifying clauses. Placing the sentence’s most important information in qualifying clauses makes it harder for the reader to perceive the author’s intended meaning. The same holds true for wasting main clauses on unimportant information. Put these two flaws together in one sentence—like one that begins “The Court held that . . .”—and your reader quietly and unknowingly suffers double damage.

1a. The Court held that the defendants had not complied with the requirements established in the original contract in a timely manner.

The problem with this sentence is not its length but its structure. The main clause is

“The Court held X.” X in this case happens to be a whole qualifying clause—everything from “that” until the end of the sentence. Unfortunately for the reader, the qualifying clause contains all the sentence’s most important information.

If we can imagine a reader’s reading process in ultra-slow motion, note what happens when the reader reaches the word “that”: The reader has to keep those four initial words in mind—somewhere in mind—all the way to the end of the sentence. Otherwise, the sentence cannot reach its full syntactic conclusion. The energy the reader uses to do this is energy that should have been reserved for reading the important information that follows.

What to do? Demote the main clause to a qualifying clause; promote the qualifying clause to a main clause. Then the important information will be located in the unit to which we naturally pay our greatest attention.

While this may sound highly technical, and probably difficult to accomplish, it is usually quite a simple revision. In this case, demote “The Court held that” from main clause to qualifying clause by changing it to “As the Court held.” This allows you to get rid of the “that.” (Think of it as a four-letter word.) What used to be the qualifying clause, no longer burdened by its beginning with “that,” now becomes the main clause, with no further revision required:

1b. As the Court held, the defendants had not complied with the requirements established in the original contract in a timely manner.

Note the difference in the use of reader energy. When we get to the comma after “held,” we can toss away the whole four-word qualifying clause that preceded it (“As the Court held . . .”); in turn, that allows us to summon a fresh “here comes the main clause” breath of energy for the new main clause. Our energies are properly summoned and efficiently expended. The unimportant material is treated as

unimportant; the important material is read with focused emphasis.

Sometimes the wasted main clause at the beginning can be demoted all the way down to the level of a phrase:

2a. The plaintiffs alleged that the defendants had not complied with the requirements established in the original contract in a timely manner.

“The plaintiffs alleged *X*” can be reduced to a phrase by the elegant replacement of the verb “alleged” with its related nominalization, “allegations”:

2b. According to the plaintiffs’ allegations, the defendants had not complied with the requirements established in the original contract in a timely manner.

Nominalizations are often the scourge of legal writing—but not here. In a previous column, I spent a good deal of time warning about the use of nominalizations—a technical term for nouns related closely to verbs. See *Ensuring Readers Know What Actions Are Happening in Any Sentence*, 38 LITIG. 15 (Winter 2012). Like most things in life, nominalizations should be judged neither good nor bad in and of themselves, but only on the basis of the context in which they appear. As I explained there, nominalizations usually do damage when they usurp the action from the verb.

For example:

3a. The CEO made a *decision* to conduct a *review* of the matter.

If the author of this sentence intended the italicized words to be its main actions, the nominalizations make those actions harder to identify. The main verb is wasted on “made.” The CEO wasn’t “making” something. “To conduct” sounds suspiciously like an important action, even though it is a second-class verb form—not a main verb, but merely an infinitive. It sounds more action-packed than the

nominalized word “decision”—although, according to the author, it was not intended to be.

To make the actions more immediately and more easily perceivable, we need only change the nominalized action words into verbs:

3b. The CEO *decided to review* the matter.

However, if the CEO notices a growing discontent among people who perceive her as increasingly tyrannical, she might do well to opt for the (3a) version, in which the actions are softened and undercut. The (3b) version is not “better” than (3a); it just does things differently. Your rhetorical needs should dictate your rhetorical choices.

So changing (2b) to read “According to the plaintiffs’ allegations” unplugs the action-type energy emitted by the (2a) version, which began “The plaintiffs alleged that . . .” We *wanted* to undercut the energy on “alleged,” sending the verbal, action-type energy forward to “had not complied.”

2b. According to the plaintiffs’ allegations, the defendants had not complied with the requirements established in the original contract in a timely manner.

Here is a *good* use of nominalizations.

There is yet a further good achieved by both revisions (1b) and (2b). A multi-clause sentence appears to most readers as being the story of whoever or whatever shows up as the subject of the main clause. (For a fuller discussion of this, see my column *Whose Story Is This Sentence? Directing Readers’ Perceptions of Narrative*, 38 LITIG. 17 (Spring 2012)). Here again is example (1a):

1a. The Court held that the defendants had not complied with the requirements established in the original contract in a timely manner.

Because “the Court” is the subject of the main clause, the sentence asks to be read as

the story of the Court. When we revised the sentence, that changed:

1b. As the Court held, the defendants had not complied with the requirements established in the original contract in a timely manner.

Now the subject of the main clause is “the defendants,” whose story the sentence really intended to tell.

So am I heading in the direction of a new rule that says never begin a sentence with a short main clause followed by a much longer “that” clause? No. I have only one rule (other than the grammatical rules, which are rules—wrong-headed though they sometimes manage to be). That rule is “NO RULES.” Any rule you have heard about producing good writing is wrong at least some of the time. Some of our most hallowed pieces of writing advice, rigidified into rule-ish demands, are outright outrages:

Avoid the passive. (Wrong.) (For a discussion of this, see my column, *Why the Passive Voice Should Be Used and Appreciated—Not Avoided*, 40 LITIG. 16 (Winter 2014).)

To make it better, make it shorter. (Wrong.)

To determine the quality of your sentence, read it aloud. (Wrong.)

Write the way you speak. (Wrong.)

When would it be good writing to begin a sentence with “The Court held that . . .”? When “held” really is the main action you want to feature. If you are trying to distinguish between the Court merely remarking in dicta and the Court holding, then a pair of sentences beginning “The Court observed that . . .” and “However, the Court held that . . .” would do very well indeed. Context controls meaning. ■