

On the Papers

A MICRO-JOURNEY THROUGH A SENTENCE OF HORRORS

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I am going to explore a single sentence. It was written by one of my legal writing students at the Harvard Law School who later produced a book that won the Pulitzer Prize. In other words, he was already a smart and accomplished fellow. He knew what he wanted this sentence to say. If you told him you were having trouble reading it, he could unpack it and repack it in five minutes of discussion, and you would come away understanding his intended meaning. But a sentence is supposed to do all that work without the author being present, and on one reading. Take a look at it.

Similarly, in *Weaver*, the D.C. Court of Appeals held that the qualifying word “estimate” used in conjunction with the stipulations and conditions that the quantities were “to be used to canvass bids” and “not to be the basis for any payment by the ultimate consumer of the products” and that payments

would be made “only for actual quantities of work completed,” transformed the contract into a requirements contract.

The underlying structural problem here often oppresses legal readers: The author has separated his grammatical subject (“the qualifying word ‘estimate’”) from its verb (“transformed”) by 47 words. (For a fuller discussion of this problem, see my earlier article in this series, *How to Overburden Your Reader: Separate Your Subject from Your Verb*, LITIGATION, Vol. 39, No. 3 (Summer 2013), at 14.) If we get that subject and its verb together, the rest of the revision process falls easily into place.

The journey through his subject/verb separation, burdensome enough by itself, is rendered almost unendurable by the seemingly harmless presence of two small words: “and” and “that.” I have never met anyone who was capable of understanding

this sentence on first reading—with the exception of people who already knew so much about this area of the law that they did not need to read it in the first place.

The default value reader expectation: The moment a grammatical subject appears, a reader expects the appropriate verb to follow almost immediately. If it takes some time for that verb to arrive, a substantial part of the reader’s interpretive energy will be used to retain the memory of having encountered the subject. Without the subject in mind, the reader will not be able to put the verb to use. I want to explore here, in slow motion and great detail, what happens to a reader during this kind of wait. Please be patient. It is necessarily hard to read why a sentence is hard to read, even if the explanation is itself written clearly.

We begin with the opening word, “Similarly.” How do we expect an English sentence will unfold? We expect to find a subject up front, followed immediately by a verb, and then the unfolding of its complement. “Similarly” is not a grammatical subject. But we have experienced initial adverbs many times and know how to store them in mind as we then look for the subject.

But we do not get the subject. Instead, we get “in *Weaver*.” Now we *want* our subject. We do not want to encounter the words “a case in which,” because we then know it might be the fourth line down before we get the desired subject.

We need not have feared. The next arrival is that longed-for subject, “the D.C. Court of Appeals.” Fine. Now we want its verb. We get it: “held.” That verb is followed by one of our trouble words, “that.” When we see a “that,” we know to expect the immediate arrival of yet another subject-verb duo.

And we get subject 2, “the qualifying word ‘estimate.’” We are already dealing with “similarly” and “the D.C. Court of Appeals held that.” This is already a small handful, but as legal readers, we are used to this kind of verbal chunking. Now

our main need is to meet verb 2 while we still have subject 2 fresh in our mind. Unfortunately, verb 2 is not what we next encounter. Instead we find a qualification of subject 2—“used in conjunction with the stipulations and conditions. . . .” The handful is growing larger.

This new arrival contains a word that causes us just a bit of an extra burden, beyond that of our needing to recognize the words and their meanings. The new arrival is our second trouble word, “and.” “And” tells us to be prepared to receive a second element that will talk to, and neatly balance, whatever element appeared just before the “and.” Our new task here is an easy one: The “and” connects two single, similar words, “stipulations” and “conditions.” We can handle twin words like these well enough; but we are now in a bifurcated sub-unit of a qualifying unit of the main clause. And all this while we are still awaiting the arrival of verb 2.

But now we are confronted by a four-letter word that so often causes major problems—“that.” This “that” is “that” 2. “That” is not offensive here by itself, but only by what it promises: the arrival of another subject-verb duo, the third such unit in this sentence. Here is where the reading task becomes seriously challenging. The arrival of subject 3, “the quantities,” makes us generate that unique kind of reading energy that we reserve for the arrival of verbs. We need to be able to finish this part of the reading task as soon as possible: Subject → VERB! The problem is that we are already waiting to experience this kind of closure with the arrival of verb 2. At this moment, therefore, we have to generate the verb energy for verb 3 while somehow continuing to maintain a similar kind of verb energy in expectation of the later arrival of verb 2. That is complicated—and burdensome!

Verb 3—“were”—arrives immediately, thank goodness. The moment after this, we learn those quantities were “to be used to canvass bids”; but we then encounter a most troubling word—“and.” We are now

in a bifurcated sub-unit of a bifurcated sub-unit of a qualifying unit of the main clause. We need to know as soon as possible what this “and” is connecting. We see the quotation marks just before and just after the “and.” Good. We now know that the “and” connects two quoted items.

A new expectation sets in: We want the two units connected by “and” to balance each other neatly—just like “stipulations and conditions” did earlier. When we experience a phrase like “to be used to canvass bids,” as readers we weigh it, hoping its length and depth will be counterbalanced by the quoted item that comes after the “and.” This phrase has three accented syllables: “to be USED to CANvass BIDS.” We therefore prepare for the second quoted item to have three accents, which would make it as easy as possible to handle the two of them as a unified duo.

Unfortunately, this second item is not so easy to handle: “not to be the basis for any payment by the ultimate consumer of the products.” The words “not” and “basis” and “payment” use up the quota of three musical beats we were expecting; but three gets extended all the way to six—“NOT to be the BASIS for any PAYment by the ULTimate cONSUMER of the PROducts.” This makes our balancing act a very difficult one indeed.

The next two words, our silent assassins, defeat us entirely—“and that.” The “and” adds yet another sub-level of bifurcation. “That” 3, even worse, leads us to expect subject 4 and verb 4, which arrive on cue—“payments would be made.” Whatever verb-reading energy we had managed to conserve for the arrival of verb 2 must now be expended on verb 4. And we are now faced with another, insuperable problem: Does “that” 3 qualify “that” 2, which in turn qualifies “that” 1? Or are 2 and 3 parallel with each other? Or . . . ! We are now using all of our reader energy to figure out the sentence’s structure; we have none left with which to contemplate the sentence’s substance.

We drown.

Yes, the subject-verb separation causes the central problem; but it is the damage done to us by the bifurcating “and” and the subject-verb-expecting “that” repeated multiple times that do us in entirely.

The revision is simplicity itself: Get subject 2 and verb 2 together. It then becomes clear that the three quoted items are the three reasons that support the conclusion: This contract was transformed into a requirements contract.

Similarly, in *Weaver*, the D.C. Court of Appeals held that the qualifying word “estimate” transformed the contract into a requirements contract because it was used in conjunction with the following stipulations and conditions: (1) that the quantities were “to be used to canvass bids”; (2) that they were “not to be the basis for any payment by the ultimate consumer of the products”; and (3) that payments would be made “only for actual quantities of work completed.”

By the way, this is a 77-word revision of the original 68-word sentence. ■