FEDERAL JUDICIAL CENTER

Court Web: ADVANCED LEGAL WRITING:

STRONG, CONFIDENT SENTENCES

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SENTENCES: CHUNKS AND CORES

By the time we leave law school, all of us have heads stocked—overstuffed, perhaps—with advice about writing sentences:

- Prefer short sentences.
- Omit needless words.
- Use strong, active verbs; avoid the passive.
- Don't overuse adjectives and adverbs.
- Prefer simple words to fancy ones.

. . . and so on. Much of this advice is intended to help us fight off bad habits, especially habits fostered by reading long-winded, clumsy prose by other lawyers. But professional writers should aspire to something more than staying out of stylistic trouble—even to something more than simple clarity, as fundamental as that virtue is. They should write sentences that are sophisticated and flexible enough to convey the nuances of their thinking and to keep their readers awake. In other words, their sentences should sing a little.

For writers who have assimilated the usual advice and still want to improve their style, the key to truly effective sentences lies in combining two fundamental principles:

CHUNKS: Readers absorb information best if they can absorb it in pieces, and

CORES: Link the sentence's grammatical form (its "syntactical core") to the focus or theme of your information.

As the examples on the following pages will show, these principles form the bedrock of a style that is clear, direct, and forceful. They also lead to an even more important end: if intelligently used, they can transform your prose into a supple instrument for capturing and communicating the nuances of your thinking. This happy result comes about because the principles allow you, in a passage composed of many bits of information, to adjust the emphasis you give each bit.

CHUNKS

The first way to make your sentences clear, direct, and forceful is break long strings of information into "chunks." To create effective chunks, you decide

- what information goes into its own logical chunk,
- how to chunk with emphasis in mind, *i.e.*,
    - putting the most important information in the most emphatic chunks
    - moving chunks to the beginning and end of the sentence, the spots of maximum emphasis;
    - choosing the type of chunk that best reflects the emphasis you want to give that information: should the chunk be a big one (for example, an independent clause) or a small one (for example, a phrase); and
- how to make the chunks concise.

BREAK A LONGER SENTENCE INTO SHORTER CHUNKS

Example # 1:

Before:

This case involves the novel issue of whether or not a minor is responsible for damages sustained by a restaurant in lost profits resulting from a liquor license suspension caused when the minor orally misrepresented her age to the owner of the restaurant who thereafter sold liquor to her.

After:

This case involves a novel issue: when a minor orally misrepresents her age to a restaurant owner who then sells liquor to her, and who as a result has his liquor license suspended, is the minor responsible for the damages sustained by the restaurant in lost profits?

or

In this case, a minor orally misrepresented her age to the owner of a restaurant. He then sold liquor to her, and as a result had his liquor license suspended. The issue raised is novel: is the minor responsible for the damages sustained by the restaurant in lost profits?

* * * * * *

Example #2:

Before:

The Department had long held that sales of tangible personal property made to out-of-state purchasers who picked up the property at the seller's loading dock in Pennsylvania and transported it out-of-state were includible in the numerator of the seller's apportionment factor in determining its Pennsylvania corporation tax liabilities.

After:

The Department had long held that, when determining Pennsylvania corporation tax liabilities, if an out-of-state purchaser received tangible personal property at the seller's loading dock in Pennsylvania and transported it out-of-state, the sales of that property could be included in the numerator of the seller's apportionment factor.

Example #3:

Before:

Compensation for the California damage claimants remains a significant public policy concern counseling application of California law in a California forum.

After:

If California damage claimants are to receive adequate compensation, as public policy dictates they should, California law should be applied in a California forum.

or

Public policy dictates that California damage claimants should receive compensation that is adequate by the standards developed in the state's courts. To achieve this end, California law should be applied in a California forum.

USE THE STRUCTURE OF A SENTENCE TO CLARIFY ITS CONTENT

Before:

The implementation of the proposal would require Widget Corp. to breach existing contracts because it would have to change its source of raw material.

After:

To implement the proposal, Widget Corp. would have to change its source of raw material, and therefore to breach existing contracts.

or

The proposal would force Widget Corp. to change its source of raw material, and thus to breach existing contracts.

or

The proposal would force Widget Corp. to change its source of raw material. This would breach its existing contracts.

* * * * * *

Before:

This case involves the novel issue of whether or not a minor is responsible for damages sustained by a restaurant in lost profits resulting from a liquor license suspension caused when the minor orally misrepresented her age to the owner of the restaurant who thereafter sold liquor to her.

Revision if you represent the restaurant owner:

This case involves a novel issue: when a minor induces a restaurant owner to sell her liquor by lying about her age, and the restaurant as a result has its liquor license suspended, is the minor responsible for the damages sustained by the restaurant in lost profits?

Revision if you represent the minor:

This case involves a novel issue: when a restaurant owner sells liquor to a minor who has misrepresented her age, and serves her six jello shots in the next hour, is she responsible for the damages sustained by the restaurant in lost profits after its liquor license was suspended?

THE HIERARCHY OF CHUNKS

Independent clauses:

Jane is an overworked lawyer, but ....

Dependent clauses:

Although Jane is an overworked lawyer, ...

Prepositional phrases:

As an overworked lawyer, Jane ....

Modifying phrases and words:

Jane, an overworked lawyer, ...

Jane, overworked, ...

* * * * * *

Harrigan was the manager of the marina. She testified that the boat was delivered to the marina on January 7, but she did not see it there again after January 8.

Harrigan, the manager of the marina, testified that she last saw the boat on January 8, the day after it was delivered.

Harrigan was the manager of the marina. She testified that she last saw the boat on January 8, the day after it was delivered.

Harrigan, the manager of the marina, testified that the boat was delivered to the marina on January 7. She last saw it on January 8.

* * * * * *

Although ABC acknowledges that it did not respond to the discovery request, plaintiff also acknowledges that it has no proof that the request was properly delivered to ABC.

Although plaintiff acknowledges that it has no proof that its discovery request was properly delivered to ABC, ABC also acknowledges that it did not respond to the discovery request.

AN EXAMPLE OF CHUNKING AT THE PARAGRAPH LEVEL

By this motion, Smith seeks dismissal of the only claim in Jones' complaint that survived the jury's verdict. The complaint recited six causes of action. One, breach of contract, was dismissed by Jones prior to trial. Another, tortious interference with business relations, was dismissed by this Court at the close of Jones' case. Of the four claims that went to the jury, the jury found in Smith's favor on three: fraud and breach of express and implied warranties of title. The only claim on which the jury found in Jones' favor was breach of the implied warranty of merchantability.

In this memorandum, we shall demonstrate that judgment should be entered for Smith on this claim as well. Four reasons compel this conclusion. First, although the jury found that the warranty of merchantability had been breached, Jones introduced no evidence on the subject of whether "The Orchard" would be deemed marketable under the standards of the international art market. The jury received no guidance as to the standards of merchantability for Old Master paintings, and its verdict was thus based on sheer speculation.

Second, the alleged breach of warranty occurred with respect to goods that were never sold to Jones. Jones was therefore left to argue that Smith had anticipatorily repudiated its contract within the meaning of Section 2-609 of the Uniform Commercial Code. But before there can be a finding of anticipatory repudiation, a party must make a written demand for adequate assurance of due performance. Jones made no such written demand.

Third, there is a fundamental inconsistency between the jury's findings that the warranties of title were not breached and that the warranty of merchantability nevertheless was. Jones alleged no defects in "The Orchard" other than a defect in title. He claimed that the painting was unmerchantable because title was defective, and for no other reason. The jury found no defect in title and thus removed the only basis for finding a breach of warranty of merchantability. Jones has, in effect, proceeded on the theory that a breach of warranty of merchantability is a "lesser included offense" of a breach of warranty of title. No case decided under the Uniform Commercial Codes supports that theory.

Fourth, even if there was a breach of the warranty of merchantability, that breach was not a proximate cause of any injury to Jones. It is undisputed that Gekkoso, Jones' client, knew that Romania had tried to seize the painting in Spain in 1982. Knowing this, it was nevertheless willing to enter into a contract with Jones to purchase the painting. If Jones' view of the evidence is accepted, Gekkoso ultimately cancelled because it believed that Jones had lied about this incident. Under this view, it was Jones' deception, and not any breach of warranty, that caused him injury.

* * * * * *

Chunking to add emphasis to the beginning of a dissent

MILLENDER; Brenda Millender; and William Johnson, Plaintiffs–Appellees,

v.

COUNTY OF LOS ANGELES; Robert J. Lawrence (292848); Curt Messerschmidt (283271), Defendants–Appellants,

CALLAHAN, Circuit Judge, with whom TALLMAN, Circuit Judge joins, dissenting:

Although the majority's opinion nicely lays out the law applicable to a determination of qualified immunity, my review of the law and the facts in this case require that I dissent. I address four matters. First, I take issue with the majority's determination that the warrant constitutionally could not provide for the search and seizure of firearms other than the sawed-off shotgun. Second, in reviewing the applicable case law, the majority fails to appreciate the factors courts have used to transform an abstract standard—did the officer reasonably rely on review by counsel and a magistrate—into a workable guide for a line officer. Third, I would find that the totality of the circumstances in this case compels a finding that the line officer reasonably relied on his supervisors, the district attorney, and the magistrate to determine the constitutional limits of the search warrant. Finally, I am concerned that the majority's parsing of the search warrant is likely to encourage uncertainty and needless litigation. I would grant the officer qualified immunity.

I

Our differing views on the warrant's provision for the search and seizure of firearms are revealed by our respective applications of *United States v. Spilotro*, 800 F.2d 959 (9th Cir.1986), which sets forth the framework for determining a warrant's sufficiency. There we held that "[i]n determining whether a description is sufficiently precise," we should concentrate on one or more of the following:

Suggested revision to *Millender* dissent opening:

Although the majority's opinion nicely lays out the law applicable to a determination of qualified immunity, my review of the law and the facts of this case require that I dissent. [Contrary to the majority's conclusion,] Qualified immunity for these arresting officers is here fully justified.

The majority's analysis contains four important missteps, each leading to the next. The result is an unnecessary and uncertain modification to the doctrine of qualified immunity, which will in turn lead to additional claims against the police.

First, despite the warrant's specific reference to a "sawed-off shotgun," this Circuit's caselaw establishes that the warrant could reasonably and constitutionally be interpreted to permit a search for and seizure of firearms other than the one weapon.

Second, both the Supreme Court and this Circuit have identified factors that transform the abstract standard emphasized by the majority – did the officer reasonably rely on review by counsel and a magistrate – into a workable guide that supports, rather than denies, qualified immunity in this case.

Third, based on these factors, the totality of the circumstances in this case – one involving the arrest of an evidently dangerous person – should compel a finding that the line officer reasonably relied on his superiors, the district attorney, and the magistrate to determine the constitutional limits of the search warrant.

Fourth, the majority's unnecessarily precise parsing of the warrant is likely to create uncertainty for the police and, as noted above, needless litigation against them.

BUT WHEN CHUNKING GOES AWRY . . . . .

From a set of CLE materials, with apparently a very non-traditional topic:

Corporate and finance practitioners often encounter puzzled looks when they try to describe what they do to lay persons, including their spouses.

From a state appellate opinion, where courtrooms are more interesting than usual:

Defendant Joe Smith was convicted of driving while intoxicated, contrary to [state statute] and other driving related offenses during a bench trial.

. . . .

During cross-examination of Officer Martinez, defense counsel introduced the video recording of Defendant's performance on the field sobriety tests, and Defendant himself admitted to consuming two beers when he took the stand.

CORES

All readers of English look for the "grammatical core" of a sentence—its subject, verb, and object (if it has one). Thus, you communicate more clearly and efficiently by telling your story through the subjects, verbs, and objects of your sentences. To take advantage of that knowledge of reader psychology, you make your sentences clear, direct, and forceful by creating, in addition to chunks, a strong grammatical core. The easiest sentences to read have two key features: they keep their cores together so that each piece can be readily linked to the others; and the sentence's grammatical core carries the sentence's "substantive core" of information.

STRENGTHENING THE CORE:

WHERE IS IT?

Before:

The District Court after evidentiary hearings last held in August 1977 found that the Department had failed to follow the procedures laid out in its own regulations.

After:

After evidentiary hearings last held in August 1977, the District Court found that the Department had failed to follow the procedures laid out in its own regulations.

* * * * * *

WHAT IS THE CORE'S CONTENT?

Before:

Thus, an interpretation that the proof of disability could be given at any time the Insured was still living would require ignoring clear and repeated language establishing a cut-off date for claiming a waiver of premium.

After:

Thus, to find that proof of disability could be given at any time the Insured was still living, this court would have to ignore clear and repeated language establishing a cut-off date for claiming a waiver of premium.

STRENGTHENING THE CORE:
WHAT DOES IT SAY?

Before:

The reason for there having been less utilization by corporations of funded programs than unfunded programs is . . . .

After:

Corporations used funded programs less often than unfunded programs because . . . .

* * * * * *

Before:

There is a tendency among novice litigators to use hyperbole in their briefs . . . .

After:

Novice litigators tend to use hyperbole in their briefs . . . .

ACTIVE VOICE vs. PASSIVE VOICE
ACTIONS vs. CONCEPTS

Example #1:

The union filed a complaint.

The complaint was filed by the union.

The complaint was filed.

Example #2:

Johnny tried to steal my marbles.

An attempt at stealing my marbles was made by Johnny.

Example #3:

The police investigated the incident.

The police conducted an investigation of the incident.

THE SYNTAX OF ACTION

Put the Main Action
Into the Verb

Put the Main Actor
Into the Subject

Actor	act	recipient
Man	bites	dog
Subject	verb	object

Before:

The failure of Megacorp to provide Interbank with useful information prevented its determination of the project's status.

After:

Because Megacorp failed to give Interbank useful information, it prevented the bank from determining the project's status.

Allocating the Responsibility

Because Megacorp failed to give Interbank useful information, it prevented the bank from determining the project's status.

or

Because Megacorp failed to give Interbank useful information, Interbank could not determine the project's status.

or

Because Interbank did not receive useful information from Megacorp, Interbank could not determine the project's status.

Hiding the Ball

Example #1:

The document was not produced in April as the result of an oversight by a legal assistant. As soon as we discovered the error, we promptly notified the plaintiff and produced the document.

* * * * * *

Example #2:

Of the four claims that went to the jury, the jury found in Wildenstein's favor on three: fraud and breach of express and implied warranties of title. The only claim on which a verdict was returned in Van Rijn's favor was breach of the implied warranty of merchantability.

Choosing the Actor

Example #1:

Before:

The primary motivation for United States depositors to place their funds with a branch outside the United States is to receive a higher rate of return.

After:

United States depositors place their funds with a branch outside the United States primarily because they receive a higher rate of return.

or

A branch outside the United States attracts funds from United States depositors primarily because it pays a higher rate of return.

* * * * * *

Example #2:

Version 1:

The use of § 502(d) against Merrill Lynch at the filing of the Objection would operate to severely penalize Merrill Lynch since its Claim is so great. Such a use would arbitrarily treat Merrill Lynch differently from other creditors of the Debtor, contrary to the intent of § 502(d), which is to assure an equality of distribution of the assets of the bankruptcy estate. Davis, 889 F.2d at 662.

Version 2:

Because Merrill Lynch's claim is so great, it would be severely penalized by the use of § 502(d) against it at the filing of the Objection. If this were to occur, Merrill Lynch would arbitrarily be singled out for different treatment than other creditors. Such a result would be contrary to the intent of § 502(d), which is to assure [an equality of distribution of the assets of the bankruptcy estate.] Davis, 889 F.2d at 662.

Version 3:

Section 502(d) is intended to assure an [equality of distribution of the assets of the bankruptcy estate]. Davis, 889 F.2d at 662. If § 502(d) were used against Merrill Lynch at the filing of the Objection, however, the result would be to penalize Merrill Lynch because of the size of its claim—and thus to single it out for different treatment than other creditors. Section 502(d) is intended to prevent, not to promote, such unequal treatment.

Making a Concept an Actor

Equity came to the relief of the stockholder, who had no standing to bring civil action at law against faithless directors and managers. Equity, however, allowed him to step into the corporation's shoes and to seek in its right the restitution he could not demand in his own. It required him first to demand that the corporation vindicate its own rights, but when, as was usual, those who perpetrated the wrongs also were able to obstruct any remedy, equity would hear and adjudge the corporation's cause through its stockholder.....

Justice Jackson

BE CONCISE

Before:

Furthermore, 10b-7 prohibits anyone from stabilizing a security at a price higher than the current independent bid price for such security. It has never been litigated whether the current independent bid price is the price at the time of the writing of the option or at the time of the exercise of the option. A Rule 10b-7 defense would succeed only if the court interpreted the current independent bid price to be the price at the time of the writing of the option.

After:

Furthermore, 10b-7 prohibits anyone from stabilizing a security at a price higher than the current independent bid price. However, no court has yet determined whether this price is the price at the time of the option's writing or at the time of its exercise. A Rule 10b-7 defense would succeed only if the court chose the first interpretation.

EDITING EXERCISES: SENTENCES

1. The failure of plaintiff to produce the relevant documents on time delayed defendant's realization of the importance of the issue until deposition scheduling was complete.

2. A creditor is required under California's one-action rule to foreclose upon collateral before proceeding against the debtor's unsecured assets when a debtor's obligation is secured by real property.

3. Does the Board of Directors of a public corporation registered in New York have the authority to rescind the sale of substantially all the assets of the corporation after the sale has been consummated pursuant to authorization by the shareholders of the selling corporation without their authorization of the rescission?

4. Before the hearing for summary judgment, plaintiff's counsel stipulated that he had not served a notice of intent to file litigation against defendants. The trial court heard argument on May 9, 1989, and entered final summary judgment in favor of defendants which in essence was based on the applicability of Section 768.57 and plaintiff's failure to comply with the pre-filing notice requirements of the section.

EDITING EXERCISES

SENTENCES -- REVISIONS

1. Because plaintiff failed to produce the relevant documents on time, it prevented the defendant from realizing the issue's importance until all depositions had been scheduled.

   Because plaintiff failed to produce the relevant documents on time, defendant did not realize the issue's importance until all depositions had been scheduled.

   Defendant did not realize . . . because plaintiff failed to . . . .

   Plaintiff masked the issue’s importance by failing to produce the relevant documents on time.

   Because the relevant documents were not produced on time, the issue's importance was obscured until all depositions had been scheduled.

2. Under California's one-action rule, when a debtor's obligation is secured by real property, the creditor must foreclose upon that collateral before proceeding against the debtor's unsecured assets.

   When a debtor's obligation is secured by real property, California's one-action rule requires the creditor to foreclose upon that collateral before proceeding against the debtor's unsecured assets.

   California's one-action rule requires the creditor to foreclose upon real-property collateral before proceeding against the debtor's unsecured assets.

3. When the shareholders of a New York public corporation have authorized the Board of Directors to sell substantially all of the corporation's assets, and the sale has been consummated, may the board rescind the sale without authorization from the shareholders?

   After the shareholders of a New York public corporation have authorized the Board of Directors to sell substantially all of the corporation's assets, and the sale has been consummated, must the shareholders also authorize a rescission of the sale?

   After the sale of substantially all of a New York corporation's assets—a sale authorized by the shareholders—may the Board of Directors nevertheless rescind the sale without authorization from the shareholders?

4. Before the hearing for summary judgment, plaintiff's counsel stipulated that he had not served a notice of intent to file litigation against defendants. After hearing argument on May 9, 1989, the trial court entered final summary judgment. [In essence,] it held that Section 768.57 applied, and that plaintiff failed to comply with the section's notice requirements.