

The Legal Writer

Commas for My Class:

By Suzanne E. Rowe



With apologies to all of the judges, attorneys and legal staff who read the *Bulletin*, this article is not for you. You're welcomed to read it. You might enjoy it, you could possibly learn something from it, but you're not my intended audience.

I'm writing this article for my students this year, enrolled randomly by the registrar in my section of Legal Research and Writing. They are among the brightest, most motivated group I've encountered during my 20 years in academia, but back in August some of them didn't have a clue about how to use a comma to produce clear, effective writing.

My students were not unique, at least not in this regard. Many students arrive at law schools throughout our state and nationwide without sufficient writing instruction or practice, and only some students have picked up good habits through reading great books.

It's not their fault. One can only learn so much about grammar, punctuation and style through osmosis. At some point, one needs instruction. After instruction, one needs repetition, perhaps in the form of exercises. And then, one needs practice — frequent feedback on original papers.

Alas, our public school teachers are overwhelmed by too many students, too many nonteaching demands and too few resources. Alas, our college professors expect students to arrive on campus already knowing how to write. (I overheard a university professor in a local bakery exclaiming to a colleague that college courses shouldn't teach grammar — using the same tone she would have decried cleaning windows.)

So, uninstructed high school students become uninstructed college students become law students. And it's my job to instruct them in the fundamentals of writing and give them plenty of opportunities to practice — along with teaching them legal research, analysis, organization, citation, oral advocacy, thesis sentences, paragraph coherence...well you get the idea.

Some students get by without much instruction or practice in writing fundamentals, but that doesn't mean instruction and practice are unnecessary. To throw in a basketball analogy, maybe you right-handed athletes know that you're supposed to shoot a left-handed layup with your left hand, keeping your body between the ball that you hope goes into the hoop and your opponent who hopes to block your shot. Maybe you picked that up after being blocked multiple times when you shot the wrong way. But your

basketball fundamentals are likely stronger if a coach taught you the correct way to shoot a left-handed layup and then made you practice. A lot.

Commas are like lay-ups: they're easy to use correctly once you know the fundamentals. And then practice. A lot. In *Outliers*, Malcolm Gladwell suggests that 10,000 hours of practice will lead to success. I think comma mastery requires considerably less time, but we might as well aim high.

Hmmm...I see that many judges, attorneys and legal staff are still with me. Maybe you recognize yourself (or maybe just a coworker) in my description of the uninstructed. Welcome to Commas 101. It covers just four rules, but these account for most of the errors I see.

Introductions

Promote clarity by using a comma after a sentence introduction of four words or more. Another sports analogy helps here. If your sentence has a long wind-up before the pitch, a comma tells the reader when you release the ball. The comma shows where the main idea begins.

A preceding sentence is a prime example. The long introduction *If your sentence has a long wind-up before the pitch* leaves the reader wondering when and where to expect the real sentence to begin. The comma provides that information, imposing some order and providing some mental relief. The comma does this by signaling that the sentence has two ideas, an introductory one and a primary one. When the reader can easily separate the two ideas, the text is easier to understand.

Most grammar guides strongly suggest (even require!) a comma after an introduction of three or four words. For consistency, I prefer a comma after an introduction of just two words (as in this sentence) or even one word. Note the comma after each introduction below:

First, preheat the oven.

Next, mix the chocolate, butter, sugar, eggs and flour.

After that, pour the batter into a pan.

When you've cooked the batter for 30 minutes, test it with a toothpick.

If the toothpick comes out clean, your brownies are done.

Finally, enjoy!

I intend to make brownies for my students the day that I force them to read this article. Perhaps the sweet association will encourage learning.

Lists

Use a comma between each item in a list. Note the confusion created in the following sentence without commas:

The board voted to sell the assets that were not profitable use the proceeds to pay the judgment and fire the CEO.

The board voted on three things, but they are hard to find in the unpunctuated sentence. The difficulty is compounded by the fact that "use" could be a noun as in "profitable use" or a verb as in "use the proceeds." Inserting commas makes the text clearer:

The board voted to sell the assets that were not profitable, use the proceeds to pay the judgment, and fire the CEO.

Reasonable minds differ about whether the comma after "judgment" is required. It's the much-maligned Oxford comma. It's not absolutely necessary in the preceding example. But if the sentence were slightly more complicated, the comma could avoid unnecessary confusion.

The board voted to sell the assets that were not profitable, use the proceeds to pay the judgment and the related attorneys fees and court costs and fire the CEO.

The second item — the use of the proceeds — is complex, comprising the judgment, the related attorneys fees and the related court costs. A comma after "costs" would show the reader the break between the second item, with its three subparts, and the third.

Pairs

Lists of two do not need commas. While commas are helpful in separating lists of three, four or more items, they generally should not be used for lists of two items — unless you are a famous novelist or trying to avoid obvious confusion. It does not matter whether the items are nouns, verbs or other parts of speech. In the following sentences the two grammatically similar items are underlined, and they shouldn't have a comma between them.

Incorrect: *The attorney, and the paralegal planned to attend the hearing.* (No comma between the two nouns)

Incorrect: *The judge turned to the plaintiff's attorney, and asked whether she was willing to concede the point.* (No comma between the two verbs)

Incorrect: *The client had asked what time the hearing was, and in which courtroom.* (No comma between objects — or whatever “what time” and “in which” might be)

Of course, exceptions exist. But if there's no confusion and you're writing legal documents, don't use commas in lists of two.

Interruptions

When a word or a group of words interrupts a sentence, use a comma on both sides of the interruption. Not just one side, but both sides. This rule seems simple, but it is deadly serious. Consider those words a virus that must be contained! Consider them an invading army that must be stopped! Don't let them loose to wreak havoc on civilization!

Note the civilized use of commas in these examples:

The virus, which the patient had contracted on a trip to the rain forest, was deadly.

The general's plan, besides being bold, was very risky.

The soldier, who was completing his second tour in Iraq, dreamed of attending law school.

Just one comma won't do. The interruption must be contained on both sides.

Note that if the extra information comes at the end of the sentence, rather than interrupting the sentence, then the period provides the final containment.

Example with interruption: *My assistant, who always finds the missing commas in my letters, is a valuable colleague because of her detailed proofing.*

Example with information at end: *I am grateful for the detailed proofing of my assistant, who always finds the missing commas in my letters.*

More Instruction

If some of this instruction has sounded familiar, it's because previous articles in this column have addressed commas, too. We seem to go on a comma rampage every two years. If you'd like a bit more instruction, the following two articles provide a great start: “Punctuation You Can Learn to Love: Six Simple Steps to Correct Commas” (November 2009, by Tenielle Fordyce-Ruff); and “Comma Power: A Punctuation Mark with Clout” (May 2007, by your favorite writing curmudgeon). They are linked from the *Bulletin's* archive web page at www.osbar.org/publications/bulletin/archive.html.

Conclusion

After our work in class this year, my students have a lot fewer than 10,000 hours of practice to go before they're using commas perfectly. You'd better get started if you're going to catch up with them!

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