

At the Lectern

The Infinite Power of Grammar

Patrick Barry

“Grammar, which knows how to control even kings.”

—Molière

“At Cornell University, my professor of European literature, Vladimir Nabokov, changed the way I read and the way I write. Words could paint pictures, I learned from him. Choosing the right word, and the right word order, he illustrated, could make an enormous difference in conveying an image or an idea.”

— Justice Ruth Bader Ginsburg¹

Good lawyers know that effective advocacy requires more than just choosing the right words; it also requires choosing the right word order. The formal term for this choice is “syntax.” But perhaps a better description comes from a 1976 essay by Joan Didion called “Why I Write.”²

In it, Didion draws a helpful parallel between the arrangement of a photograph and the arrangement of a sentence. “To shift the structure of a sentence,” she notes, “alters the meaning of that sentence, as definitely and inflexibly as the position of the camera alters the meaning of the object photographed.”³ Didion refers to this phenomenon as grammar’s “infinite power,”⁴ a phrase that captures just how transformative word order can be.

Imagine, for example, you are preparing to move. Your boxes are packed. Your rugs are rolled. Your U-Haul is all gassed up and ready to go. Now you

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1. Ruth Bader Ginsburg, *Ruth Bader Ginsburg’s Advice for Living*, N.Y. TIMES, Oct. 1, 2016, https://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html?_r=0 (emphasis added).
2. Joan Didion, *Why I Write*, N.Y. TIMES BOOK REV., Dec. 5, 1976, at 2 (The title is taken from an essay of the same name written by George Orwell in 1946: George Orwell, *Why I Write*, 4 GANGREL (1946); see also THE COLLECTED ESSAYS, JOURNALISM AND LETTERS OF GEORGE ORWELL: AN AGE LIKE THIS 1920-1940 1-7 (Sonia Orwell & Ian Angus eds., 1968); GEORGE ORWELL, A COLLECTION OF ESSAYS 309 (1981)).
3. Didion, *supra* note 3, at 2.
4. *Id.*

just need somebody to help you lug the heavy stuff. So you text a friend and receive one of two responses:

“I’d love to help, but my parents are in town.”

OR

“My parents are in town, but I’d love to help.”

In many ways, both responses are the same. Both contain the same marks of punctuation: a comma and a period. Both contain the same number of words: ten.⁵ Both even contain the same exact words. There is no word in “I’d love to help, but my parents are in town” that is not in “My parents are in town, but I’d love to help.” And there is no word in “My parents are in town, but I’d love to help” that is not in “I’d love to help, but my parents are in town.” The only difference is the order of those words. The only difference is syntax.

Yet that difference, in this case and many others, can be substantial. It’s the difference between your request being met with what seems like a No (“I’d love to help, but my parents are in town”) or with what seems like a Yes (“My parents are in town, but I’d love to help”). It’s the difference between a job offer (“More than 500 people applied for this job, but we would really like to hire you”) and a job snub (“We would really like to hire you, but more than 500 applied for this job.”). It’s even the difference between the end to a good first date (“I am leaving the country next week, but I’d love to do this again.”) and the end to a dud (“I’d love to do this again, but I am leaving the country next week.”)

Knowing this difference, knowing the infinite power of grammar, good lawyers will always think about how the order of words can be flipped and shifted. They won’t limit their edits to deletion and insertion. “Cut” and “add” are not the extent of their skill sets. They’ll also edit by reconfiguration, by keeping the content but changing its location, by imagining new combinations and sequences, by not treating the structure they inherit as fixed.

Take this sentence from a criminal case involving the Confrontation Clause, the part of the Sixth Amendment that gives criminal defendants the right to cross-examine—or “confront”—the witnesses who testify against them.⁶ The sentence comes from a brief written by two students in the Federal Appellate Clinic at the University of Michigan Law School: “The district court erred when it admitted out-of-court statements from an unidentified declarant

5. Or eleven if you count the contraction “I’d” as two words instead of one. See, e.g., PAUL TAYLOR, TEXT-TO-SPEECH SYNTHESIS 60 (2009) (“While it is common in natural-language parsing to expand contractions and regard them as two words . . . they are *spoken* exactly as a single word would be, and for this reason we regard all these forms as single words.”) (emphasis in original).
6. U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him.”).

implicating Mr. Richard in the crime in violation of Mr. Richard's Sixth Amendment rights."

A lot of things can be done to improve this sentence. But we might start by simply reordering the words. The important thing to stress in this case is that Mr. Richard's Sixth Amendment rights were violated. So why not start with that directly? "In violation of Mr. Richard's Sixth Amendment rights, the district court erred when it admitted out-of-court statements from an unidentified declarant implicating Mr. Richard in the crime."

No word was added to the sentences the students originally wrote. No word was removed. But the sentence is already much clearer and more compelling.

A similar transformation can be performed on this hilariously misguided sentence collected as an example of bad writing in *Plain English for Lawyers*: "The defendant was arrested for fornicating under a little-used state statute."⁷

To avoid the impression that the defendant used the statute as a blanket and was caught actually fornicating *beneath* it, we might invert the sentence: "Under a little-used state statute, the defendant was arrested for fornicating."

The word "under" may continue to create problems for some readers. But the contrast between the original version and the edited version does seem to show that word order, just like word choice, really can change the world people see.

The magazine *The Economist* has figured this out. Playing with the common phrase "Great minds think alike," it created a clever ad campaign out of the following inversion:

Great minds like a think.

This slogan perfectly targets *The Economist's* audience, while at the same time communicating a lot about the magazine's own ethos: witty, worldly, intellectual, and also a bit irreverent. It's an excellent piece of advocacy. And all the magazine did was rearrange some words.

Of course, rearranging words isn't always an easy task. An anecdote about the literary giant James Joyce demonstrates this point. The anecdote has been told in many places, including the memoir of another literary giant, Stephen King.⁸ It's a good reminder of how much care and energy the best writers put into finding the right syntax and taking full advantage of the infinite power of grammar.

7. Richard C. Wydick, *Plain English for Lawyers*, 66 CAL. L. REV. 727, 747 (1978).

8. STEPHEN KING, ON WRITING: A MEMOIR OF THE CRAFT 151 (2000), *see also, e.g.*, FRANK BUDGEN, JAMES JOYCE AND THE MAKING OF ULYSSES 9-22 (1934) (reprinted in JAMES JOYCE: INTERVIEWS & RECOLLECTIONS 77 (E.H. Mikhail ed., 1990)), HUGH KENNER, ULYSSES 5 n.12 (1987).

The anecdote begins with a visit from one of Joyce's friends. Joyce doesn't get up to greet the friend. Instead he stays slumped over his writing desk, pouty and dejected after an apparently frustrating day of writing. The friend asks Joyce what's wrong. Joyce doesn't respond. The friend then guesses it might have something to do with Joyce's literary output that day. So he asks Joyce how many words Joyce wrote since starting in the morning.

"Seven," Joyce says.

Aware that Joyce is the kind of wordsmith that labors over every single word, the friend tries to be encouraging. "Seven is pretty good," he says, "at least for you."

"Yes, I suppose it is," Joyce says, not entirely consoled. "But I still don't know what order they go in!"

Good lawyers will try to avoid Joyce's level of obsessiveness. They have deadlines to meet, assignments to start, sanity to preserve. Yet they will nevertheless make time for exploring and playing with the infinite power of grammar. Given the importance of syntax—in contracts, briefs, e-mails, articles, and all other forms of writing—they can't afford not to. As Didion says elsewhere in "Why I Write," with characteristic brevity and force: "The arrangement of the words matters."⁹

Questions

- (I) **Criminal Sentencing:** Suppose you are representing a woman convicted of a crime. We'll call her Ms. Prynne. When it comes time to sentence Ms. Prynne, the judge could say one of either two things.
- A. "Look, I think you genuinely are sorry for the harm you have caused, Ms. Prynne, and I think you are really committed to being a productive member of society—but the crime you committed warrants a significant punishment."
 - B. "Look, the crime you committed warrants a significant punishment—but I think you genuinely are sorry for the harm you have caused, and I think you are really committed to being a productive member of society."
- Which statement do you think your client is hoping for?

9. Didion, *supra* note 3, at 2.

- (2) **The Syntax of Sports:** Buddy Ryan is famous among football fans for creating the “46 defense,” a positioning scheme so dominant that many consider the 1985 Chicago Bears team that used it to be the best ever. Yet there is a way to think of Ryan’s innovation as a simple move of syntax. He didn’t add any players to the eleven each team is allowed on the field at a team. Nor did he remove any players. All he did was rearrange how they lined up.

Can you think of other examples where “the infinite power of grammar” might be applied to non-writing examples?

- What about interior decorating?
- What about food presentation?
- What about the way a courtroom or chemistry lab is set up?

Is there a syntax of science? A syntax of engineering? A syntax of management, medicine, or math?

- (3) **Child Custody:** A law student the University of Michigan Law School was representing a Colombian mother in a custody dispute. The student originally wrote this sentence to help persuade the judge that the mother is not a flight risk.

Other than Mr. Macondo’s unsubstantiated fear, there is no evidence that Ms. Macondo will flee to Colombia, a country she was desperate to leave, with Lucas.

Suppose you think it is a little confusing and awkward to put “with Lucas” at the end of the sentence. Without adding or deleting words, how would you use the infinite power of grammar to instead end the sentence with “desperate to leave”?

- (4) **Civil Procedure:** One of the most-cited cases ever decided by the Supreme Court is *Ashcroft v. Iqbal*.¹⁰ It, along with its common companion *Bell Atlantic Corp. v. Twombly*,¹¹ fundamentally reshaped the formal complaints lawyers initially bring in federal court. Here's a sentence from the *Iqbal* decision: "To prevail on that theory, the complaint must contain facts plausibly showing that petitioners purposefully adopted a policy of classifying post-September-11 detainees as 'of high interest' because of their race, religion, or national origin."

The next sentence in the decisions could have been written at least two ways.

(a) "This the complaint fails to do."

(b) "The complaint fails to do this."

- Why might you go with the first option?
 - Why might you go with the second?
 - Which do you think the author of the majority opinion, Justice Anthony Kennedy, opted for?
- (5) **Protective Order:** Consider these two approaches to explaining why the plaintiff thinks the judge should issue a protective order and not allow the defendants to use as evidence the contents of an errantly sent e-mail.

"The plaintiff claims that because the information was sent as a result of an auto-fill error and he requested the documents to be destroyed, he is entitled to have the protective order granted."

"The plaintiff claims that he is entitled to have the protective order granted because the information was sent as a result of an auto-fill error and he requested the documents to be destroyed."

- Which version do you think is more effective? Why?

10. 556 U.S. 662 (2009).

11. 550 U.S. 544 (2007).

Examples

- (1) **Point of View:** “My elbow grazed her breast. Or her breast grazed my elbow, whatever your point of view.”
—Colson Whitehead, *Sag Harbor* (2010)
- (2) **Poet Laureate:** “[Billy] Collins’ revisions suggest an orderly process of refinement and improvement. The process continued, as you can see if you consult the final version of the poem as published under the title ‘In the Evening,’ in *The New Delta Review*. Almost every line has been changed from this manuscript, usually in subtle ways. For example, ‘I pick up a knife and an onion’ has become, ‘I pick up an onion and a knife.’ Better, no?”
—Ben Yagoda, *The Sound on the Page* (2005)
- (3) **Google:** “When the company was smaller, we drew a public distinction between two levels of director, where the more junior role would be titled as Director, Engineering, and the more senior role would be Engineering Director. We found that even such a subtle distinction as the word order of the title caused our people to fixate on the difference between the levels. So we eliminated the difference.”
—Laszlo Bock, *Work Rules! Insights from Inside Google that Will Transform How You Live and Lead* (2005)
- (4) **Grammar as Style:** “All syntax can do, and it is a very great deal, is to make the right word shine to its best advantage, as brightly as possible and in just the right place, set off from others or clustered with them.”
—Virginia Tufte, *Grammar as Style* (1971)
- (5) **Stephen Colbert:** “And to combat these Grade ‘A’ bad eggs, we’ve created The Greatest Criminal Justice System on Earth as seen eight times a day on TNT in the various *Laws & Orderses*. Mind you, the police—‘Order’—technically do their job before the prosecutors apply the ‘Law.’ So it should really be called ‘Order & Law.’ Show creator Dick Wolf really shanked that one.”
—Stephen Colbert, *America Again: Re-Becoming the Greatness We Never Weren’t* (2012)