

A Letter to Mrs. Finklebean

By Mark Cooney

Here's another of our greatest bits during this 30th anniversary of the column. This one appeared in August 2010. It is also among the essays collected in Professor Cooney's book, Sketches on Legal Style, published by Carolina Academic Press. —JK

Dear Mrs. Finklebean,

I was a student in your fourth-grade class way back, jeez, almost 30 years ago—long before my silk-stocking days as a partner at a prestigious law firm. If I stand out in your memory, it's probably because of my regrettable decision to put a wriggling gob of earthworms into your coat pocket after recess one day. I swear it wasn't my idea; Butch Dugan threatened to give me an atomic wedgie unless I did it. Once again, I'm truly sorry for that little stunt.

But I haven't written you after all these years to renew my childhood apologies, Mrs. Finklebean. In fact, if I may be so bold, I've written because you owe me an apology—one that's long overdue. Let me explain.



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The other night, I opened one of our old classroom favorites, *The Cricket in Times Square*. As I read it aloud to my daughters, something curious struck me. I hadn't gotten through a single page before I noticed a sentence beginning with the word *And*. Then, on the second page, I saw two sentences beginning with the word *But*—and another sentence starting with *And*. This got me scratching my head because I can still remember your exact words (and your wagging index finger): “Don't ever begin a sentence with *But* or *And*! It's improper!”

I put the book down and started paging through some of the other books you read to us, like *Fantastic Mr. Fox* and *The Lion, the Witch and the Wardrobe*. I'd barely read a few pages of each when I started seeing sentences beginning with *But* and *And*. I was dumbstruck. Back in school, you were adamant that this was “wrong,” and you warned us against it in no uncertain terms. In fact, I think you mentioned something about blindness and eternal damnation.

These discoveries caused me great anxiety because, based on your school lessons, I've spent years telling my law-firm underlings that they should never, ever begin sentences with *But* or *And*. No transgressor has survived my red pen's wrath. So I racked my brain for some explanation. At first, I told myself that this technique must be acceptable only in children's literature. Yet

when I checked more of the classics on my bookshelf—books enjoyed by grown-ups and children alike—I saw that the literary giants of yesteryear routinely began sentences with *But* and *And*: Charles Dickens,¹ Mark Twain,² F. Scott Fitzgerald,³ Edgar Allan Poe,⁴ Pearl S. Buck,⁵ J.R.R. Tolkien,⁶ to name just a few.

With a growing sense of unease, I told myself that this surely had to be some relic of antiquated writing. Yet I saw the same thing in modern best sellers like *The DaVinci Code*,⁷ *Tuesdays with Morrie*,⁸ *Angela's Ashes*,⁹ and the *Harry Potter*¹⁰ books. Then I found sentence-starting *Buts* and *Ands* in the latest issues of *National Geographic*,¹¹ *Forbes*,¹² *Discover*,¹³ *Smithsonian*,¹⁴ *Newsweek*,¹⁵ *Money*,¹⁶ and *The New Yorker*¹⁷—magazines written and edited by real pros. I saw the same thing from leading historical writers like Stephen Ambrose¹⁸ and Pulitzer Prize-winner David McCullough.¹⁹ Leading essayists like Charles Osgood,²⁰ George Will,²¹ and Anna Quindlen²² also bite, without hesitation, at this supposedly forbidden literary fruit.

The plain truth, Mrs. Finklebean, is that I couldn't find a single professional writer who did not start sentences with *But* and *And*. I found this technique, with ease, in every genre and generation that my curiosity chased. The rule you had sewn so indelibly into my mind unraveled with such force that my head spun.

[E]very accomplished writer of the English language, whether a legal writer or not, begins sentences with the words *But* and *And*.

But then a thought struck me—an iron-clad justification for every red line I'd ever marked through a sentence-starting *But* or *And*. The legal briefs that my firm produces don't contain just any old kind of writing. They aren't essays, novels, or news items read for leisure. No, my firm's briefs contain *legal* writing. This is solemn, formal writing—writing that must bear the weight of the consequences that hang in the balance. Rights and liberties are at stake. Legal writing, I thought to myself, is no place for the casual *Buts* and *Ands* so common to other types of writing.

I put my theory to the test the next morning at work, going straight to the top: case opinions by the United States Supreme Court. Imagine how my stomach sank when I discovered that every single Justice on the Supreme Court begins sentences with *But* and *And*. Chief Justice Roberts does it.²³ Justice Scalia does it.²⁴ So do Justices Kennedy,²⁵ Thomas,²⁶ Ginsburg,²⁷ Breyer,²⁸ Alito,²⁹ Sotomayor,³⁰ and Kagan.³¹

And just as I was readying my poison pen for a scathing letter to the Justices, accusing them of abandoning the respectable formality that has for years been the high court's hallmark, I saw that Justice Oliver Wendell Holmes Jr. began sentences with *But* and *And*.³² So did Justice Benjamin Cardozo.³³ Chief Justice John Marshall³⁴ and Justice Thurgood Marshall,³⁵ too. There was no end to it.

So what will I tell my law-firm associates now, Mrs. Finklebean? Must I warn them that they'll risk becoming United States Supreme Court Justices if they begin sentences with *But* or *And*?

And if all this weren't enough, I found sentence-starting *Buts* and *Ands* in our nation's seminal legal writings: the Constitution,³⁶ the Declaration of Independence,³⁷ the Federalist Papers.³⁸ Abe Lincoln began a sentence with *But* in the Gettysburg Address.³⁹ I also found sentence-starting *Buts* and *Ands* in esteemed modern texts, like *Prosser & Keeton on Torts*⁴⁰ and the *Restatement of Contracts*⁴¹—even the Federal Rules of Civil Procedure.⁴²

As you can imagine, Mrs. Finklebean, by this point I was reeling. I had to find out what the legal-writing experts say about all this. So during lunch hour, I snuck into an

associate's office and pulled some of her legal-writing texts off the shelf. I looked in Bryan Garner's *Dictionary of Legal Usage*, which said that “[i]t is a rank superstition” and a “gross canard” that the words *And* and *But* “cannot properly begin a sentence.”⁴³ Then I looked in *Writing and Analysis in the Law* and saw that the authors began sentences with *And* and *But*.⁴⁴ So did the authors of *Lifting the Fog of Legalese*⁴⁵ and *Legal Writing and Analysis*.⁴⁶

Even my faith offered me no solace. At home one night, I stole away to a quiet corner and began thumbing through my Bible. And what did my eyes behold? Almost every sentence in *The Gospel of Mark* begins with *And* or *But*. Then I flipped back to *Genesis* and found the same thing. Ditto for *Exodus*, and on and on...

Mrs. Finklebean, it has become perfectly clear to me that every accomplished writer of the English language, whether a legal writer or not, begins sentences with the words *But* and *And*. The supposed rule against it is no rule at all. It never was a rule. It's pure myth. Always has been. And there's nothing worse than perpetual dogma with no basis in reality.

We've all spent a lifetime reading sentences starting with *But* and *And*. We've just never given it a second thought because we've been paying attention to the content—to the ideas being communicated—rather than the writer's word choices. It's a credit to this ever-present technique that we never notice it. It's so clean and effective that we read along in our usual state of obliviousness.

I see now how starting a sentence with the word *But*, for example, is a strong, quick, and clean way to signal contrast or disagreement with the idea expressed in the preceding sentence. Just one glance at that little word sends our brain an immediate and unmistakable message, making the transition to the next idea natural and seamless. It aids clarity, and it packs a punch. That's why fine writers so often begin sentences with *But*.

I don't mean to sound harsh, Mrs. Finklebean, and I'm not bitter. Really. I'm sure you had noble intentions when you taught us this fake rule. You were probably worried that because we fourth graders were just

babes in the writing woods, we might lapse into sentence fragments if we began sentences with *But* or *And*. It's true that we were innocents. Heck, we hadn't even had sex-ed yet. But rather than misleading us, might you have simply told us to beware of fragments?

Thank you for considering my comments, Mrs. Finklebean. If you're ever in my neck of the woods, please drop by for some blueberry pie—and perhaps a good book.

With warmest regards,

Clark J. Mooney, Esq. ■



Mark Cooney has taught legal writing for 12 years at Thomas M. Cooley Law School. He is the author of *Sketches on Legal Style* and has edited for *The Scribes Journal of Legal Writing* since 2009. Before joining Cooley's full-time faculty, he was a civil

litigator for 10 years, most recently with Collins, Einhorn, Farrell & Ulanoff, P.C., in Southfield.

ENDNOTES

1. See, e.g., Dickens, *Great Expectations* (Modern Library Classics, 2001), at 7, 10 (“But now I was frightened again...” “And it was made more difficult...”).
2. See, e.g., Twain, *Collected Tales, Sketches, Speeches, & Essays 1852–1890* (Library of America, 1992), at 14, 17 (“And now for the facts.” “But when the feat was at last accomplished, he sank down exhausted...”).
3. See, e.g., Fitzgerald, *The Great Gatsby* (Scribner 1995), at 6, 27 (“And, after boasting this way of my tolerance, I came to the admission that it has a limit.” “But above the grey land... you perceive... the eyes of Doctor T.J. Eckleburg.”).
4. See, e.g., Poe, *The Tell-Tale Heart*, in *Complete Stories and Poems of Edgar Allan Poe* (Doubleday & Co, 1966) (“But you should have seen me.” “And still the men chatted pleasantly...”).
5. See, e.g., Buck, *The Good Earth* (Washington Square Press, 1999), at 1, 3 (“But this morning he did not wait.” “And if the woman wearied, there would be her children to light the fire...”).
6. See, e.g., Tolkien, *The Lord of the Rings* (Houghton Mifflin Co, 2001), at 21 (“And if that was not enough for fame, there was also his prolonged vigour to marvel at.” “But he had no close friends...”).
7. See, e.g., Brown, *The DaVinci Code* (Doubleday, 2003), at 17, 31 (“But it was straight ahead...” “And with it, of course, had come his skills.”).
8. See, e.g., Albom, *Tuesdays with Morrie* (Doubleday, 1997), at 6, 9 (“But then the dancing stopped.” “And that was the end of his secret.”).
9. See, e.g., McCourt, *Angela's Ashes* (Scribner, 1996), at 14 (“But the child won't come.” “And the child was named Angela for the Angelus which rang the midnight hour...”).

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10. Rowling, *Harry Potter and the Sorcerer's Stone* (Scholastic Press, 1997), at 3, 5 ("But on the edge of town, drills were driven out of his mind by something else." "And the old man hugged Mr. Dursley....").
11. See, e.g., Jacobson, *The Singapore Solution*, Nat'l Geographic, January 2010, at 148 ("But this is beyond even him." "And so bloggers... are free to broadcast opinions....").
12. See, e.g., Shlaes, *Current Events*, Forbes, January 18, 2010, at 19 ("And worst of all is that... the Treasury and the Federal Reserve have failed to clarify rules." "But many people couldn't get a job at all.>").
13. See, e.g., Guterl, *NASA Braces for Course Correction*, Discover, January/February 2010, at 20, 21 ("And scrapping NASA's new Ares I Booster program could save billions...." "But from necessity, it is poised to reinvent itself.>").
14. See, e.g., Hammer, *Sherlock Holmes' London*, Smithsonian, January 2010, at 58 ("And Conan Doyle agreed to produce a second novel...." "But the Langham's exterior... has hardly changed....").
15. See, e.g., Pfeffer, *Lay Off the Layoffs*, Newsweek, February 15, 2010, at 34, 37 ("And some research has looked directly at the health consequences...." "But some drawbacks are surprising.>").
16. See, e.g., Garskof, *Six Ways to Ensure a Project Pays Off*, Money, January/February 2010, at 58 ("But these six new rules will help...." "And trying to keep problems a secret can cost you bigtime.>").
17. See, e.g., Gladwell, *The Sure Thing*, The New Yorker, January 18, 2010, at 24, 29 ("And people who like what they do are profoundly conservative." "But he was bored....").
18. See, e.g., Ambrose, *To America* (Simon & Schuster 2002), at 5, 6 ("But Jefferson's attitude toward women was at one with that of the white men of his age." "And even Abigail Adams wrote of him, 'He is one of the choice ones of earth.'").
19. See, e.g., McCullough, *1776* (Simon & Schuster 2005), at 5 ("And in notable contrast to much of fashionable society and the court,... the King remained steadfastly faithful to his very plain Queen...." "But this was hardly fair.>").
20. See, e.g., Osgood, *See You on the Radio* (G.P. Putnam's Sons, 1999), at 3, 3-4 ("But try as he might, he couldn't." "And as he thrashed around, he attracted some company.>").
21. See, e.g., Will, *One Man's America* (Crown Publishing Group, 2008), at 132, 132-133 ("And in the 1990s, welfare dependency—and crime—were cut in half." "But the second half of the 1960s brought the Great Softening....").
22. See, e.g., Quindlen, *Loud and Clear* (Random House, 2004), at 9 ("And eventually science said that that was right, and that they would be best fed on demand.... But it certainly seemed as though those babies had distinct personalities....").
23. See, e.g., *Beard v Kindler*, 558 US 53, 57; 130 S Ct 612; 175 L Ed 2d 417 (2009) ("But before Kindler could be transferred from Canadian custody, he escaped again."); *NW Austin Mun Utility Dist No One v Holder*, 557 US 193, 202; 129 S Ct 2504; 174 L Ed 2d 140 (2009) ("And minority candidates hold office at unprecedented levels.>").
24. See, e.g., *US v Gonzalez-Lopez*, 548 US 140, 147, 150; 126 S Ct 2557; 165 L Ed 409 (2006) ("And even our recognition of the right to effective counsel... was a consequence of our perception that representation by counsel 'is critical to the ability... to produce just results.'... But the requirement of showing prejudice in ineffectiveness claims stems from the very definition of the right at issue....").
25. See, e.g., *Ricci v DeStefano*, 557 US 557, 562, 566; 174 L Ed 2d 490 (2009) ("And they, in turn, threatened a discrimination lawsuit...." "But in January 2004,... City officials... convened a meeting....").
26. See, e.g., *Atlantic Sounding Co v Townsend*, 557 US 404, 420, 422; 129 S Ct 2561, 2572, 2573; 174 L Ed 2d 382 (2009) ("But application of that principle here does not lead to the outcome suggested by petitioners or the dissent." "And because respondent does not ask this Court to alter statutory text or 'expand' the general principles of maritime tort law, Miles does not require us to eliminate the general maritime remedy of punitive damages....").
27. See, e.g., *Union Pacific RR Co v Bhd of Locomotive Engineers & Trainmen Gen Comm of Adjustment*, 558 US 67, 79, 82; 130 S Ct 584; 175 L Ed 2d 428 (2010) ("But instead of resting its decision on the Union's primary, statute-based argument... the Court of Appeals reversed on the ground that the NRAB's proceedings were incompatible with due process." "And we have determined that a Chapter 7 trustee's (or creditor's) limited time to object to the debtor's discharge... is a claim-processing, not a jurisdictional, matter.>").
28. See, e.g., *Alvarez v Smith*, 558 US 87, 92; 130 S Ct 576; 175 L Ed 2d 447 (2009) ("And a class might well contain members who continue to dispute ownership of seized property. But that fact is beside the point.>").
29. See, e.g., *Horne v Flores*, 557 US 433, 439, 451; 129 S Ct 2579; 174 L Ed 2d 406 (2009) ("But petitioners argue that Arizona is now fulfilling its statutory obligation...." "And rather than inquiring broadly..., the Court of Appeals concerned itself only with determining whether increased ELL funding complied with the original declaratory judgment order.>").
30. See, e.g., *Mohawk Indus, Inc v Carpenter*, 558 US 100, 113; 129 S Ct 599; 175 L Ed 2d 458 (2009) ("But this may be due to the fact that the practice... is relatively new...."); *Boykin v KeyCorp*, 521 F3d 202, 216 (CA 2, 2008) (while serving on the United States Court of Appeals, Second Circuit) ("And that is precisely the point....").
31. See, e.g., *Ransom v FIA Card Serv, NA*, ___ US ___; 131 S Ct 716, 726; 178 L Ed 2d 603 (2011) ("And a deduction is so appropriate only if the debtor has costs corresponding to the category covered by the table...." "But here, the Collection Financial Standards' treatment of the car-ownership deduction reinforces our conclusion....").
32. See, e.g., *NJ v NY*, 283 US 336, 346; 51 S Ct 478; 75 L Ed 1104 (1931) ("And the effluent from such plant shall be treated with a chemical germicide...."); *Dunn v US*, 284 US 390, 394; 52 S Ct 189; 76 L Ed 356 (1932) ("But verdicts cannot be upset by speculation or inquiry into such matters.>").
33. See, e.g., *Smyth v US*, 302 US 329, 356; 58 S Ct 248; 82 L Ed 294 (1937) ("But the rule of law is settled...."); *Shepard v US*, 290 US 96, 98; 54 S Ct 22; 78 L Ed 196 (1933) ("And then she added the words, 'Dr. Shepard has poisoned me.'").
34. See, e.g., *Delassus v US*, 34 US 117, 135; 9 L Ed 71 (1835) ("But the act of congress... contains no reservation of lead mines."); *Life & Fire Ins Co of NY v Adams*, 34 US 573, 593; 9 L Ed 234 (1835) ("And the said Adams further gave to the said Henry Eckford or to his successor... full power of substitution in the premises.>").
35. See, e.g., *Johnson v Home St Bank*, 501 US 78, 82, 84-85; 111 S Ct 2150; 115 L Ed 2d 66 (1991) ("But unless the debtor and creditor have provided otherwise, the creditor ordinarily is not limited to foreclosure...." "And because only 'claims' are discharged under the Code, the very need to codify *Long v Bullard* presupposes that a mortgage interest is otherwise a 'claim.'").
36. See, e.g., U.S. Const. art. I, § 3, cl 6 ("And no Person shall be convicted without the Concurrence of two thirds of the Members present."); *Id.* at art. I, § 7, cl 2 ("But in all such Cases the Votes of both Houses shall be determined by yeas and nays....").
37. Declaration of Independence, para 2 (1776) ("But when a long train of abuses and usurpations... evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government...." "And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.>").
38. See, e.g., Madison, *The Federalist No 10* ("But the most common and durable source of factions has been the various and unequal distribution of property." "And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.>").
39. Lincoln, *The Gettysburg Address* (November 19, 1863) (transcript available at <http://www.ourdocuments.gov/doc.php?doc=36>) ("But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow, this ground—").
40. See, e.g., Prosser & Keeton, *Torts* (5th ed), at 44, 45 ("But at least in the absence of such knowledge on the part of the defendant, there is no assault." "And even a lawful demand may be made in such a violent manner....").
41. See, e.g., Restatement Contracts, 2d, § 13 comment b ("But the other party may be able to reclaim the consideration...."); *Id.* at § 15 comment d ("And if the other party did not know of the incompetency... he cannot be compelled to perform....").
42. See, e.g., FR Civ P 9(c) ("But when denying that a condition precedent has occurred or been performed, a party must do so with particularity."); FR Civ P 71.1(i)(1)(B) ("And if the parties so stipulate, the court may vacate a judgment already entered.>").
43. Garner, *A Dictionary of Legal Usage* (Oxford University Press, 2011), at 56, 126.
44. See Shapo, Walter & Fajans, *Writing and Analysis in the Law* (Foundation Press, 1999), at 1, 7 ("And to be a good writer, you must...." "But the doctrine also means....").
45. See Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* (Carolina Academic Press, 2006), at 10 ("But those who enjoy a fresh metaphor... can rest assured...." "And in every context, simplicity has a beauty of its own.>").
46. See Murray & DeSanctis, *Legal Writing and Analysis* (Foundation Press, 2009), at 1, 11 ("But the study of law also differs...." "And in many cases, you will not need....").