

Minimize prepositional phrases. Question every *of*. (Part 2)

BY JOSEPH KIMBLE

In the previous column, I said that unnecessary prepositional phrases are perhaps the single biggest cause of sentence-level verbosity in legal writing — and indeed in all expository writing. I offered three techniques for minimizing them: use a possessive form (not *the testimony of James* but *James's testimony*); change the prepositional phrase to an adjective (not *an order of the court* but *a court order*); and cut the prepositional phrase entirely (*the Martinez analysis is persuasive in the context of this case*).

This time, I offer two more techniques. They deserve their own column because they strengthen writing in ways that go beyond simply tightening it, as important as that is. Converting abstract nouns and their accompanying weak verbs — commonly forms of *to be* or others such as *make* and *have* — to stronger verbs will enliven your prose. And preferring the active voice will make it more direct. In fact, these two techniques are the counter to the limp, opaque style that characterizes so much modern-day prose.

- “The difference between an active-verb style and a passive-verb style — in clarity and vigor — is the difference between life and death for a writer.”¹
- “Modern style tends to turn thought into a chain of static abstractions linked by prepositions and by weak verbs in the passive voice. ‘Weak’ here means that those verbs do not denote any single characteristic action but, like *is* and *have*, draw their strength from the accompanying noun (*give authorization* rather than *permit*; *take appropriate action* in place of *act*).”²

Incidentally, the technical term for a noun formed from a verb is “nominalization.” The more colorful and popular term — coined by Helen Sword — is “zombie noun.”³

Now, the preference for the active voice is just that — a preference. Among the perfectly good uses of the passive voice are these:

- The actor, or agent, is unknown or unimportant or understood. (*The statute was passed in 2010.*)
- You want to put the emphatic words at the end of the sentence. (*The court should not be influenced by this misreading.*)
- You want to connect two sentences better by putting old information at or toward the beginning of the new sentence. (*Plaintiff argues that But this argument was rejected by the Sixth Circuit in Wolf v. Waters [cite].*)⁴

Finally, the same reminder that I offered in Part 1 still goes: when applying almost any prescription, a writer must also consider sound and rhythm and idiom.

LIQUIDATE ZOMBIE NOUNS

Zombie nouns — abstract nouns ending in *-tion*, *-sion*, *-ment*, *-ance*, and the like — can often be converted to verbs or verb forms. The last five bullets below illustrate converting to a gerund, a verbal noun.

- “Plaintiffs have requested that this court require defendants to ~~make a determination as to~~ **determine** whether ‘a principal purpose’ of the sale was ‘to evade or avoid liability.’”
- “At this hearing, the examiner ~~came to the conclusion~~ **concluded** that the petitioner should not be recommended for parole.”
- “Plaintiff ~~made payments of~~ **paid** only \$25,519 during that time period.”
- “And since Wells ~~was no longer in attendance at~~ **no longer attended** union events, the union stopped asking him to sing the national anthem at those events.”

¹“Plain Language,” edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* nearly 40 years. To contribute an article, contact Prof. Kimble at WMU–Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, visit www.michbar.org/plainlanguage.

- “But the Legislature made an exception where the victim was a peace officer engaged in the performance of performing his or her duties.” [I’d say *their duties*, but that’s another subject.]
- “It is unlikely that the completion of completing the form in this case took more than a few minutes.”
- “Bates continues to rely on his belief that the submission of submitting the bid amounted to a representation regarding [about] Olson’s costs.”
- “Ms. Cooper pled [better: *pleaded*] guilty to aiding and abetting her captor, Mr. Mulligan, in the production of producing child pornography.”
- “Upon consideration of considering . . . , it is ordered that” [This formulation is ubiquitous.]

USE THE ACTIVE VOICE

- “He asserts that during the 2018–19 school year, he was complimented by the district superintendent, Mr. Harper the district superintendent, Mr. Harper, complimented him when five students made it to the state competition.”
- “His briefs repeatedly argue that the union improperly represented him, that it condoned the town’s discriminatory conduct, and that it failed to ensure that the CBA’s antidiscrimination policy was honored by the town the town honored the CBA’s antidiscrimination policy.”
- “Further, the testimony as it was given by Brunner that Brunner gave as to [about] the sale in Bay Harbor is so vague as to be not reliable.” [Better: “Further, Brunner’s testimony about the sale”]
- “Discovery procedures established that postdeath identification was conducted by the Civil Aeronautics Board the Civil Aeronautics Board conducted the postdeath identification.”

[Caveat: no change if you want the emphasis to fall on “Civil Aeronautics Board.”]

- “Here, by contrast, there is no question that the FRBNY [a needed initialism? is it used often in the opinion?] was specifically created by Congress Congress specifically created the FRBNY to further a key governmental objective.” [Caveat: perhaps no change if “FRBNY” was the subject of the previous sentence; then the original version would make a little better connection.]

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Joseph Kimble taught legal writing for 30 years at Cooley Law School. His third and latest book is *Seeing Through Legalese: More Essays on Plain Language*. He is a senior editor of *The Scribes Journal of Legal Writing*, editor of the Redlines column in *Judicature*, a past president of the international organization Clarity, and a drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure, Federal Rules of Evidence, and Michigan Rules of Evidence. Most recently, he won a 2023 Roberts P. Hudson Award from the State Bar of Michigan.

ENDNOTES

1. Zinsser, *On Writing Well* (New York: Harper Perennial, 7th ed. 2006), pg. 67.
2. Follett, *Modern American Usage* (New York: Hill & Wang, 1966), pg. 229.
3. Sword, *Zombie Nouns*, *New York Times* (July 23, 2012), <<https://archive.nytimes.com/opinionator.blogs.nytimes.com/2012/07/23/zombie-nouns/>> [https://perma.cc/7QEH/CCJL] (accessed September 13, 2023).
4. For a list of eight exceptions, see Good, *Mightier than the Sword* (Charlottesville: Blue Jeans Press, 1989), pgs. 126–28.

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