

PLAIN LANGUAGE

The big four: concrete edits for clearer prose

BY MARK COONEY

One misconception about editing is that it's simply a function of time—that if given the same document and the same block of time, everybody would make the same edits. That's not true. Effective editors train themselves to find and correct specific trouble spots. That is, they go into every editorial session knowing how wordiness usually arises and how to fix it. With practice and experience, those fixes become editorial reflexes.

Here are my “big four” edits for succinctness and readability. They're hardly unique to me. I've learned them from others. But they're my top picks for legal writers—the most impactful edits a lawyer can learn. They may seem small, but their cumulative impact is big.

EDIT 1: QUESTION EVERY OF.

The point: Prose suffers from needless or wordy prepositions.

The edit: When you see the word *of*, question it. You'll leave many, of course, but question each one. Often you can move the preposition's object—the word after *of* or *of the*—to serve as a possessive or adjective earlier in the sentence. (I learned this edit from my friend and mentor Joe Kimble, who helped redraft the Federal Rules of Civil Procedure and Evidence, among others, and who wrote on this topic in the September and October 2023 columns*). Once you get used to watching for *ofs*, do the same for phrases like *for the*, *by the*, and more.

Example:

- The verdict **of the** jury shocked onlookers.
- *Edit:* The jury's verdict shocked onlookers. [possessive]
- *Alternative:* The jury verdict shocked onlookers. [adjective]

* The simplest way to locate all columns going back to 1984 is to search online for “Plain Language column.”

Real-world example:

- *Wordy:* The plan **of the** Secretary will cut the revenues **of** MOHELA, impairing its efforts to aid college students **in** Missouri.
- *Better:* “The Secretary's plan will cut MOHELA's revenues, impairing its efforts to aid Missouri college students.”

—Chief Justice John Roberts, *Biden v. Nebraska*, 600 U.S. 477, 491, (2023).

Related edit:

Downsize wordy prepositions such as *in regard to* and *with respect to*:

- We spoke ~~in regard to~~ *about* possible settlement terms.
- ~~With respect to~~ *As for* the final provision, . . .

EDIT 2: AVOID WORDY NOMINALIZATIONS (I.E., BURIED VERBS OR “ZOMBIE NOUNS”)

The point: Strong verbs improve flow and impact. But verbs disguised as wordy, abstract nouns—“nominalizations,” as grammarians call them—turn crisp prose soggy.

The edit: Watch for nouns ending in *-ion*, *-ment*, and *-ence*. If a noun has buried a verb, unearth the verb and save words.

Example:

- The court **reached the conclusion** that the damage award was excessive.
- *Edit:* The court **concluded** that the damage award was excessive.

Real-world Example:

- The Court has never **made a determination of** the precise *mens rea* needed to impose punishment.

- *Better*: “[T]he Court has never **determined** the precise *mens rea* needed to impose punishment.”¹

—Justice Elena Kagan, *Counterman v. Colorado*, 600 U.S. 66, 82 n.6 (2023).

EDIT 3: AVOID ROTE LAWYERSPEAK (PREFER CONFIDENT, DIRECT LANGUAGE)

The point: Legalese and lawyerisms are fool’s gold. This column long ago (in October 1985) debunked the precedent myth, finding that fewer than 3% of the terms in a typical real-estate sales contract have any court-glossed meaning. And recycling the trappings of legal style—*pursuant to*, *subsequent to*, etc.—only blunts your message’s impact. So don’t bog down your message. Don’t succumb to habit or stuffy style. Connect with your busy readers.

The edit: Be on the lookout for legalese and needlessly inflated language such as *pursuant to*, *subsequent to*, *commenced a cause of action*, and many more. Replace them (as the Supreme Court Justices usually do) with substitutes that are more direct: *under*, *after*, *sued*, etc.

Example:

- **Subsequent to** the meeting, the buyer **commenced a cause of action** for breach of contract.
- *Edit*: **After** the meeting, the buyer **sued** for breach of contract.

Real-world example:

- Attributing his illness to his **employment activities** with Norfolk Southern, Mr. Mallory **retained** Pennsylvania lawyers and **commenced a civil action against** his former employer in Pennsylvania state court **pursuant to** the Federal Employers’ Liability Act.
- *Better*: “Attributing his illness to his **work** for Norfolk Southern, Mr. Mallory **hired** Pennsylvania lawyers and **sued** his former employer in Pennsylvania state court **under** the Federal Employers’ Liability Act”²

—Justice Neil Gorsuch, *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 126 (2023).

Breaking down the edits:

- employment activities = work
- retained = hired
- commenced a civil action against = sued
- pursuant to = under

EDIT 4: PREFER ACTIVE VOICE

The point: Active voice is clearer and more succinct than passive voice. With active voice, the actor (or logical agent) appears before the verb, performing the verb’s action. Passive voice—with the actor coming *after* the action (or not at all)—is often wordy and sometimes ambiguous. Passive voice isn’t always unclear or obtrusive, so

you’ll frequently leave it. (*Smith was served last Tuesday.*) But active voice is a good default style.

The edit: To check for passive voice, look for the actor. If the actor appears after its action (e.g., the motion *was granted* by the court) or doesn’t appear at all (e.g., the motion *was granted*), then the clause is passive.

Example:

- The contract **was signed** [action] by the **parties** [actors] on January 15, 2020. [*passive*]
- *Again*: The contract **was signed** [action] on January 15, 2020. [*passive, with implicit actor or actors*]
- *Edit*: The **parties signed** the contract on January 15, 2020. [*active*]

Real-world example:

- At sentencing, two of Lora’s arguments about his § 924(j) conviction **were rejected** by the **District Court**. [The actor appears after its action.] Most pertinent here, it **was argued** that [Who or what argued? Where is the actor?] the District Court had discretion to run the § 924(j) sentence concurrently.
- *Active voice*: “At sentencing, **the District Court rejected** two of Lora’s arguments about his § 924(j) conviction. Most pertinent here, **Lora argued** that the District Court had discretion to run the § 924(j) sentence concurrently”³ [*active voice in both emphasized clauses*]

—Justice Ketanji Brown Jackson, *Lora v. United States*, 599 U.S. 453, 455–56 (2023).

Again, the passive voice is sometimes understandable and inoffensive. It might even be strategic. (See the October 2023 column.) But more often, your switch to the active voice will pay dividends.

Spotting passive voice is challenging and takes practice. In fact, each of these “big four” edits takes practice. But if you keep them in mind every time you edit, you’ll quickly improve. In fact, the trouble spots will start to jump off the page at you. And you’ll soon see the difference in your writing—as will your readers.

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Mark Cooney is a professor at Cooley Law School, where he teaches legal writing. He is a senior editor of *The Scribes Journal of Legal Writing* and author of the books *The Case for Effective Legal Writing* (with Diana Simon) and *Sketches on Legal Style*. He was co-recipient (with Joseph Kimble) of the 2018 ClearMark Award for legal documents and is a past chair of the SBM Appellate Practice Section.