

# Basic Writing Tips

Kim D. Chanbonpin & Mark Cooney

or . . .

Not-so-basic editorial tips that will help you refine your writing so that it's as clear, crisp, and vivid as that of our Scribes Lifetime-Achievement Award winners:  
The Hon. Frank Easterbrook and The Hon. Richard Posner

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# 7 tips (plus a few bonuses)

- Four edits

*plus*

- Two “rules” to break

*plus*

- One punctuation rule

# The great misconception . . .



- But editing isn't just a function of time.
- We must learn to look for and spot specific edits.



# Our “Big Four” Edits

1. Avoid needlessly inflated (or wordy) language.
2. Avoid nominalizations.
3. Watch for wordy or needless prepositions.  
(Question every *of*.)
4. Prefer active voice (but you’ ll leave some passive voice).

**Don't needlessly  
inflate your language  
(or add surplus)**



“**Classic language is simple language.** The reader’s pleasure lies not in the effort you put into a trumpeting voice, but in how invisible you make the words, just how close you can get to telepathy.”

— Victoria Mixon, *The 4 Most Common Mistakes Fiction Editors See*, *Helping Writers Become Authors* (Feb. 4, 2011), <http://www.helpingwritersbecomeauthors.com/2011/02/4-most-common-mistakes-fiction-editors.html>.



*Washingtonian* submission guidelines:

“Speak to the reader as an intelligent friend. The best style is clear, honest, and direct. **We like sophisticated ideas and simple language, not the reverse.** And don't forget the favorite question of the late *New Yorker* editor Harold Ross: ‘What the hell do you mean?’ ”

A barn, in a day, is a small night. The splinters of light between the dry shingles pierce the high roof like stars, and the rafters and crossbeams and built-in ladders seem, until your eyes adjust, as mysterious as the branches of a haunted forest.

— John Updike

A barn, in a day, is a small night. The splinters of light between the dry shingles pierce the high roof like stars, and the rafters and crossbeams and built-in ladders seem, until your eyes adjust, as mysterious as the branches of a haunted forest.

- 32 of his 45 words were one syllable
- The rest were only two syllables (except for *mysterious*)

A free bird leaps  
on the back of the wind  
and floats downstream  
till the current ends  
and dips his wing  
in the orange sun rays  
and dares to claim the sky.

— Maya Angelou

# The (unfortunate) typical:

- Subsequent to his termination, the employee brought a cause of action against the employer for wrongful discharge, alleging that his employment had been terminated for the reason that he was too young.
- He commenced action pursuant to § 1983, alleging that the police officers utilized excessive force while subduing him.
- After consuming 12 beers, the houseguest, who was 20 years old, proceeded to leave the party, and he subsequently drove back to his home in an intoxicated state.

- Subsequent to his termination, the employee brought a cause of action against the employer for wrongful discharge, alleging that his employment had been terminated for the reason that he was too young.
- After his firing, the employee sued the employer for wrongful discharge, alleging that the employer had fired him for being too young.

- He commenced action pursuant to § 1983, alleging that the police officers utilized excessive force while subduing him.
- He sued under § 1983, alleging that the police officers used excessive force while subduing him.

- After **consuming** 12 beers, the houseguest, who was 20 years old, **proceeded to leave** the party, and he **subsequently** drove back to his home **in an intoxicated state**.
- After **drinking** 12 beers, the 20-year-old houseguest **left** the party and **drove home drunk**.



# Your turn . . .

Subsequent to settlement negotiations, the parties reached an amicable decision to go their separate ways. . . . Prior to addressing that subject, however, we must make a determination on whether this legal action is properly in federal court.

How would  
Judge Easterbrook  
write it?



“**After** settlement negotiations, the parties **agreed** to go their separate ways. . . . **Before** we **tackle** that subject, however, we must **decide** whether the **suit** is properly in federal court.”

*Alliance for Water Efficiency v. Fryer*, 808 F.3d 1153, 1154, 1156 (7th Cir. 2015)

# What changed?

- subsequent to → **after**
- reached an amicable decision → **agreed**
- prior to → **before**
- address[ ] (which was fine, but . . . ) → **tackle** (= a fresh little change here)
- make a determination → **decide**
- legal action → **suit**

# Your turn . . .

The sons cannot maintain suit due to the fact that they have admitted in their complaints that they failed to initiate said suit within the six months allotted by the statute.

(31 words)

How would  
Judge Posner  
write it?



“The sons cannot **sue because they admit**  
in their complaints that they failed to **sue**  
**within six months . . . .**”

(18 words instead of 31)

*Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F.  
3d 509, 510 (7th Cir. 2016)

# What changed?

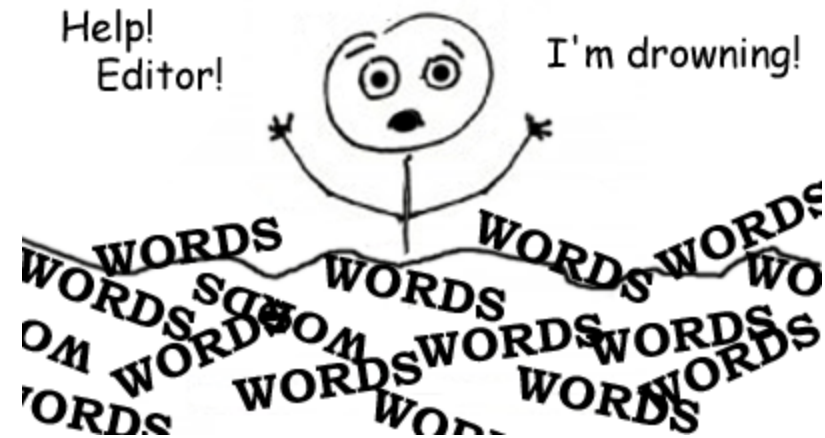
- maintain suit → sue
- due to the fact that → because
- they have admitted → they admit
- failed to initiate said suit → failed to sue
- within the six months  
allotted by the statute → within six months



# Confidence with vivid, crisp language:

- “It’s true that the sites rake off some of the money in the pot.”  
— Posner, *Sonnenberg* at 511
- “But that’s the nature of a compromise. Neither side gets everything it wants.”  
— Easterbrook, *Fryer* at 1157

# Avoid Nominalizations



## Example

The court reached the conclusion that the statute provides protection for employees who are subjected to discrimination due to their age.

The court reached the conclusion that the statute provides protection for employees who are subjected to discrimination due to their age.

(21 words)

The court **concluded** that the statute **protects** employees who are **discriminated against** because of their age.

(16 words)

# Comparison

- The court **reached the conclusion** that the statute **provides protection for** employees who are **subjected to discrimination** due to their age.
- The court **concluded** that the statute **protects** employees who are **discriminated against** because of their age.

# Your turn . . .

The Illinois statute provides for the imposition of criminal penalties.

(10 words)

How would  
Judge Posner  
write it?





“[The] Illinois statute **imposes** criminal penalties . . . .”

(now 6 words → nearly a 50% cut from the original 10)

*Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F.3d 509, 510 (7th Cir. 2016)

# Your turn . . .

Fryer, by contrast, made the contention that the organizations have a wish to be identified in his report.

(18 words)

How would  
Judge Easterbrook  
write it?



“Fryer, by contrast, **contended** that the organizations **wish** to be identified in his report . . . .”

(14 words)

*Alliance for Water Efficiency v. Fryer*, 808 F.3d 1153, 1155 (7th Cir. 2015)

# Watch for Needless or Wordy Prepositions

Question every

- of
- of the
- by the
- for the

(This doesn't mean that you'll need or want to change them all.)

- The opinion **of the** court was comprehensive.
- The **court's opinion** was comprehensive.

- The court published its opinion **for purposes of** guiding the bench and bar in future cases.
- The court published its opinion **to** guide the bench and bar in future cases.

- The verdict **of the** jury was supported **by the** evidence offered **by the** prosecution.
- The **jury verdict** was supported by the **prosecution's evidence**.

[*Active voice*: The prosecution's evidence supported the jury's verdict.]



# Lessons:

To avoid needless prepositions, you might

## 1. Create a possessive

- The decision **of the** court =
- The **court's** decision
  
- The statements **of the** board member were shocking. =
- The **board member's** statements were shocking.

or . . .

## 2. Create an adjective

- A claim **for** defamation =
- A **defamation claim** . . .

# Your turn . . .

- The injunction entered by the district court is vacated.
- Some of the language of the magistrate judge suggests . . .

How would  
Judge Easterbrook  
write it?



- “The **district court**’ s injunction is vacated . . . .”
- “Some of the **magistrate judge**’ s language suggests . . . .”

*Alliance for Water Efficiency v. Fryer*, 808 F.3d 1153, 1157 (7th Cir. 2015)

# Your turn . . .

The courts of Illinois are reluctant to imply a private right.

How would  
Judge Posner  
write it?



- “**Illinois courts** are reluctant to imply a private right . . . .”

*Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F.3d 509, 511 (7th Cir. 2016)



Passive Voice

1,055

**The motion was granted by the court.**

**Active Voice:**

**The court granted the motion.**

**The motion was granted.**

**Active Voice:**

**The court granted the motion.**

## LEASE

\* \* \*

16. *Common areas:* All common areas must be kept in reasonable repair.

## LEASE

\* \* \*

16. *Common areas:* The landlord must keep all common areas in reasonable repair.

# Example

This form of speech is protected by the First Amendment.



# Example

This form of speech is protected by the  
First Amendment.

(10 words)

## Active voice:

The **First Amendment** protects this form of speech.

(8 words)

# Your Turn . . .

Criminal penalties are imposed by an Illinois statute on anyone who “knowingly establishes, maintains, or operates, an internet site that permits [gambling].”

(22 words)

How would  
Judge Posner  
write it?



“An Illinois statute imposes criminal penalties on anyone who ‘knowingly establishes, maintains, or operates, an internet site that permits [gambling].’ ”

(20 words)

*Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F. 3d 509, 510 (7th Cir. 2016)

# Your turn . . .

After settlement negotiations, it was agreed by the parties that they would go their separate ways.

(16 words)

How would  
Judge Easterbrook  
write it?



“After settlement negotiations, the **parties** **agreed** to go their separate ways.”

(11 words)

*Alliance for Water Efficiency v. Fryer*, 808 F.3d 1153, 1154 (7th Cir. 2015)



# Comparison

- After settlement negotiations, it was agreed by the parties that they would go their separate ways.
- After settlement negotiations, the parties agreed to go their separate ways.





- Don't be a slave to (false) dogma.
- Two fictional “rules” you should . . .  
**break!**

Charles Dickens  
F. Scott Fitzgerald  
J.R.R. Tolkien  
Pearl S. Buck  
J.K. Rowling  
George Will  
Anna Quindlen

Mark Twain  
Edgar Allen Poe  
C.S. Lewis  
Toni Morrison  
Amy Tan  
Charles Osgood  
Mitch Albom

National Geographic  
Discover  
Money

Forbes  
Smithsonian  
The New Yorker

But legal writing is more formal!

- “**But** before Kindler could be transferred from Canadian custody, he escaped again.” — *Beard v Kindler*, 130 S. Ct. 612, 615 (2009) (**Chief Justice Roberts**)
- “**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 . . . .” *United States v Gonzalez-Lopez*, 548 U.S. 140, 147, 150 (2006) (**Justice Scalia**)

- “**And** no Person shall be convicted without the Concurrence of two thirds of the Members present.” — US Const, art I, § 3, cl 6
- 
- “**But** in all such Cases the Votes of both Houses shall be determined by yeas and Nays....” — *Id.* at art I, § 7, cl 2

- “**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 . . . .” — The Declaration of Independence, para 2 (1776)
- “**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.” — *Id.*



But would  
Judges  
Easterbrook and Posner  
do that?





- “**But** courts should not decide constitutional issues unnecessarily . . . .”
- “**But** that’s the nature of a compromise.”
- “**But** Fryer maintains that the Alliance is just a conduit . . . .”

*Alliance for Water Efficiency v. Fryer*, 808 F.3d 1153, 1156, 1157  
(7th Cir. 2015)



- “**And** hordes of new gamblers might be enticed to gambling websites . . . .”
- “**But** fortunately for the hosts, Illinois courts are reluctant to imply a private right . . . .”
- “**But** the plaintiffs have no contract with the defendants . . . .”

*Sonnenberg v. Amaya Group Holdings (IOM) Ltd.*, 810 F.3d 509, 511 (7th Cir. 2016)

**(Gasp!)**

**Single-sentence paragraphs???**



In March 2006, I found myself, at 38, divorced, no kids, no home, and alone in a tiny rowing boat in the middle of the Atlantic Ocean. I hadn't eaten a hot meal in two months. I'd had no human contact for weeks because my satellite phone had stopped working. All four of my oars were broken, patched up with duct tape and splints. I had tendinitis in my shoulders and saltwater sores on my backside.

I couldn't have been happier.

After 3,000 miles and 103 days at sea, I was about to accomplish my goal . . .

In March 2006, I found myself, at 38, divorced, no kids, no home, and alone in a tiny rowing boat in the middle of the Atlantic Ocean. I hadn't eaten a hot meal in two months. I'd had no human contact for weeks because my satellite phone had stopped working. All four of my oars were broken, patched up with duct tape and splints. I had tendinitis in my shoulders and saltwater sores on my backside.

**I couldn't have been happier.**

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# Example from a (real) brief . . .

Igor Berger and the Katzes, all Russian immigrants, formed a cleaning-supplies company more than two decades ago. The Katzes were the majority shareholders; Mr. Berger owned a one-third share. As with many small businesses, much of what they did was based on a handshake and trust.

For 25 years, these three people were partners, confidants, and intimate friends who shared and shared alike, and agreed on every business decision that needed to be made. They received equal distributions without regard to who was contributing what to the business.

Then Mr. Berger got sick.

But always apply the  
chocolate-milkshake test





# Just One Punctuation Rule

# Colons

*General rule:*

- A complete sentence (an “independent clause”) should appear before a colon. That complete sentence should logically point to the information that comes after it.

# *Examples:*

- The bylaws had a glaring flaw: they failed to provide for meetings.
- The court decided one issue: jurisdiction.
- There was one reason for the bank's failure: greed.

# Compare

- The single event leading to this lawsuit was Smith's failure to exercise reasonable care in watching out for dangerous conditions on the sidewalks she used.
- Smith fell for one reason: she didn't watch where she was going.

# Compare

- There was only one way out of the building, which was the fire escape.
- There was just one way out: the fire escape.

But (again) always apply the  
chocolate-milkshake test



# Bonus Style Tips



AVOID ALL-CAPS STYLE BECAUSE IT IS HARDER FOR YOUR READERS TO READ EASILY. AND REMEMBER, YOUR READERS ARE JUDGES AND JUDICIAL CLERKS WHO ARE DECIDING YOUR CASE. YOU WANT TO MAKE THEIR WORK EASIER, NOT HARDER.



**AND BOLDING YOUR ALL-CAPS  
STYLE MAKES THINGS EVEN WORSE  
BECAUSE NOW YOUR HEADING OR  
QUESTION PRESENTED IS STILL  
HARD TO READ AND, ON TOP OF  
THAT, IS SHOUTING AT YOUR POOR  
READERS. YOU WANT HAPPY  
READERS, SO DO NOT SHOUT AT  
THEM.**

# Questions?

