

Chapter 1

Introduction: General Principles of Writing and Editing

Chapter Goals

1. To introduce you to the general principles of writing.
2. To help you understand the three stages of writing.
3. To help you understand the pre-writing stage.
4. To help you focus on the purpose of your writing.
5. To help you focus on your audience.
6. To help you consider the restraints on an assignment.
7. To help you see the importance of planning.
8. To help you think about strategy in persuasive writing.
9. To help you understand the importance of the editing stage.
10. To introduce you to general principles of editing.
11. To help you develop the habit of reading your writing out loud.
12. To help you develop the habit of reading your writing from another's viewpoint.
13. To help you develop a holistic approach to writing.
14. To help you develop the habit of reading your writing carefully.
15. To help you become your own critic.
16. To help you develop the habit of challenging your writing.
17. To help you reflect on your writing.

The best way to become a self-directed learner is to develop attitudes and habits.¹ The first attitude I want you to develop is “I will become a reader-oriented writer.” Most authors write for themselves, and they do not give much thought to their readers. As a result, the reader often misunderstands what the author has said. In contrast, successful writers focus on their readers. They know that it is the writer’s responsibility to fully communicate his ideas to his reader. A reader shouldn’t have to read a passage twice. The second attitude I want you to possess is “I will try to communicate to my reader as fully as possible.”

The exercises in this book are intended to help you develop habits so that you will become a reader-oriented writer who fully communicates her ideas to the reader. However, before starting the exercises you need to learn some general principles about writing.

The Three Stages of Writing

Writing consists of three stages: (1) the pre-writing stage, (2) the writing stage, and (3) the editing stage (the post-writing stage). You should spend an equal amount of time on each of these three stages. I will only discuss the pre-writing stage and the editing stage in this section.

The Pre-writing Stage

In the pre-writing stage, you should define the writing’s parameters. What is your purpose in writing? Who is your audience? Are there any restraints on the composition? What is your plan?

A paper’s general purpose is often obvious. For example, your boss may ask you to write a memorandum on the law of constructive eviction in Virginia. However, can you go into more detail? Has your boss asked you to write the memorandum so that he can learn the general law on constructive eviction, or does the assignment concern a particular case? Should you look just at Virginia law or also at the law of other jurisdictions? If a case

1. You are a self-directed learner. If you weren’t, you wouldn’t have bought this book. Self-directed learners are constantly looking for ways to improve themselves.

is involved, what is the procedural posture? Having a clear picture of the writing's purpose not only saves time, but helps you focus and organize your writing.

Defining your audience is vital. Communication involves two persons: the writer and the reader. Your writing will be significantly different depending on whether it is for a client, a supervising attorney, or a judge. Most clients do not know legal language.² In writing for a client, you must explain all unusual terms and even avoid certain terminology. Writing for lawyers and judges also differs. In writing an objective memorandum for your boss, you should present all sides of an issue, so that your boss can assess the strengths and weaknesses of your client's case. When writing for a judge, you want to persuade the judge to rule in your client's favor. While you should not misrepresent the case to the judge, you will want to present the law and facts in the best possible light in order to obtain a favorable judgment for your client.

Third, you need to know the restraints on the writing. A legal writing professor may require a particular format and set a page limit. Court rules may create similar requirements. Moreover, in the real world, there are usually time constraints and sometimes price constraints.

Finally, it is important to plan what you are going to write.³ You should think about the substance of the writing before you start writing. What do you already know about the subject matter of the assignment? This will help you plan for how much reading you need to do before you start writing. Of course, a lawyer will research the law in the planning stage. After doing the reading and research the lawyer will need to synthesize that research. How do the pieces of the law fit together? Finally, the writer will apply the law to the facts in her head. (Of course, you can also use outlines or charts to help you organize your thoughts.) You should never start writing before you have fully thought through the assignment or problem. Otherwise, your analysis will be poor, your writing will be poorly organized (see Chapters 7 and 8), and your prose will be hard to understand.

2. Of course, there are also many different types of clients.

3. For more on the importance of planning as a part of thinking and learning, see Michael Hunter Schwartz, *Expert Learning for Law Students*, 35–53 (Carolina Academic Press, 2008).

Creating a strategy is also an important part of the planning stage for lawyers writing persuasive documents. Which issues will you argue? How will you argue each issue? These questions affect how you organize a document.

Exercise 1-1

Take a brief or other expository document you have recently written. In writing that document, how much time did you spend on the pre-writing stage? Did you consider the purpose? What was the purpose of the document? Did you consider the audience? Who was the audience? What were the restraints on the writing? Were there time constraints? Money constraints? Page limits? Stylistic requirements? How did the restraints affect how you approached the writing?

How much planning did you do before you started writing? Did you complete the research before you started writing? (Of course, you can go back and do additional research while you are writing if there are gaps. However, you should thoroughly research your issue before writing.) Did you synthesize the law? Did you clearly understand the law before you started writing? Did you do the analysis in your head before you started writing? Did the document require a strategy? If so, did you create a strategy before you started writing? How did the strategy affect the organization of the document?

Exercise 1-2

Consider the following problem. Your client wants to sue a department store for false imprisonment. Your client was shopping at a department store. As she stepped into the parking lot, a security guard stopped her, claiming she had stolen some perfume. The security guard took her to the security office, which was a windowless room, and he told her to wait while he got the manager. She heard the guard lock the office's only door as he left. After approximately 15 minutes, the guard returned with the manager. The manager asked to see your client's purse. He inspected the purse, and

he concluded that your client had stolen nothing. He apologized to your client, and she went home. When she got home, she cried for an hour. Does your client have a case for false imprisonment?

How would different purposes, audiences, and restraints affect how you would write up the above problem? Assume that, after having met with your client and researched the facts, your boss asked you to write an objective memorandum on the subject. How would this affect the purpose, audience, restraints, and other aspects of planning? Assume that, after having read your memorandum, your boss asks you to write a letter to your client. How would this affect the purpose, audience, restraints, and other aspects of planning? Assume your boss has asked you to write a brief in support of a motion for summary judgment. How would this affect the purpose, audience, restraints, and other aspects of planning?

The Editing Stage

Concerning his approach to musical composition, Maurice Ravel wrote, “But one must spend much time in eliminating all that could be regarded as superfluous in order to realize as completely as possible the definitive clarity so much desired.”⁴ A critic similarly wrote of Eric Satie’s music, “His works might be said to have been completed beforehand, while he meticulously unpicks them, note by note.”⁵

These composers’ approaches to composition apply to legal writing. When you have finished a memo or a brief, you must carefully edit it (unpick it word by word) to realize the definitive clarity that helps you communicate to your readers. Nobody writes a perfect brief, but you can make that brief communicate better to your readers through the editing process.

Many of the exercises in this book concern the details of editing. However, editing also involves certain general principles. First, you should edit a draft several times, concentrating on different aspects of the writing. For example, the first time through you might focus on whether the ideas are laid out in a logical order and whether the ideas flow together. The second

4. Maurice Ravel, “Contemporary Music,” in Margaret Long, *At the Piano with Ravel*, 72–73 (Dent, 1973).

5. Jean Cocteau, *Cocteau’s World*, 310 (trans. by Margaret Crossland, Dodd Mead, & Co. 1972).

time through, you might concentrate on wordiness, overuse of the passive voice, and awkward constructions.

A key to editing is to read the paper aloud, listening closely to what you are reading. When you read a paper aloud, you will uncover wordiness, awkwardness, choppiness, and lack of coherence and flow. Also, try to stand in your readers' shoes, realizing that your readers will be reading your writing for the first time. You should also reflect on what you've written.

Proper citations are an important part of legal writing because proper citations show your reader that you are a careful writer. This book will not treat citation format in detail. The best sources for citation style are *Harvard Law Review*, *The Bluebook: A Uniform System of Citation* (19th ed., 2010) and the Association of Legal Writing Directors' *ALWD Guide to Legal Citation* (5th ed., 2014).

Finally, proofreading is a vital part of writing. Misspellings, typos, and bluebooking errors subtract from the effect of your writing. When a judge finds numerous proofreading errors in a brief, she will assume that the legal research and reasoning is also sloppy. You should proofread any paper you intend for others to read at least three times. You should never depend on spell check because it is incomplete and imperfect.

Exercise 1-3

How much do you edit your writing? Do you have an editing strategy? Did you go through it several times? What do you start with (large-scale organization, proofreading, citation, etc.)? Do you emphasize different aspects of editing each time? Do you see how reading your paper out loud helps you edit? Do you see how putting yourself in your readers' shoes helps your editing? When you've finished your first draft, do you check to see if it corresponds to the parameters you set in the pre-writing stage?

A Holistic Approach to Writing

While learning the mechanics of writing and editing is important, one also needs to view writing as a whole. Writing is not mechanical; it is an art. Knowing all the rules and mechanics of editing and writing will not help you become an excellent writer if you cannot see the big picture and if you can't reflect on what you have written.

The first habit in becoming a holistic writer is to plan very carefully before you start writing, as suggested in the Pre-writing section. Know what you are going to write before you start writing. Do you have in your head what you want to write? Are you confused about anything? Never start writing if you are confused about the substance.

The second habit of becoming a holistic writer is to read what you have written very carefully. Pay attention to everything. Think about what you have written. Be a harsh critic of your writing. Be detail oriented. Don't skim when you edit. As I will develop more fully throughout this book, you need to think about every word, phrase, clause, sentence, paragraph, subsection, and section. Did I use the best word here (the word that best expresses my meaning)? Do the sentences flow together? Is this paragraph unified? Is this section well organized? Is the essay well organized?

The third habit of becoming a holistic writer is to challenge your writing. Question everything you write. Don't accept the first answer; consider alternatives.

The fourth habit of becoming a holistic writer is to read what you have written out loud and really listen. Reading your writing out loud helps you become more aware of what you have written and of the mistakes you have made. It also helps you challenge your writing. You should listen to all levels of your writing, from the word to the whole. Does my writing sound overly formal, or does it sound natural? How does this sentence sound? Do the paragraphs seem to flow together? Does everything I have written in this section belong in this section?

The fifth habit of becoming a holistic writer is to put yourself in the shoes of your reader. One of the hardest things to do is to step outside of your writing and discover the flaws in what you have written. You need to force yourself to adopt an objective view of your writing to become a complete

writer. How would my opponent view my brief? How would my partner view this paragraph? How would my legal writing professor critique my writing? Would a judge fully understand what I have written? Would he have problems following my argument? Have I made the judge's job easier?

Finally, when you finish writing you should reflect on what you have done. Ask the big questions. Does the paper say what I intended it to? Is it convincing? Is it well written? Will the reader have any problems following my thoughts? Can I still do better? To be an excellent writer you must develop your inner voice. You must become a writing introvert. You must also be a harsh critic of your writing. One way to help you develop your inner critic is to criticize your writing as if you were your boss (a demanding boss) or a legal writing professor.

In conclusion, there is one question to ask above all others in holistic writing: Have I fully communicated my ideas to my reader as clearly as possible?

Exercise 1-4

Reflect on the following to help you develop your holistic approach to writing.

Who am I? What kind of lawyer am I? What things do I like about being a lawyer? What things do I dislike about being a lawyer? How can I improve myself as a lawyer? Do I strive to do better, or do I take the easier route?

Step back. How do others view me as a lawyer (or as a law student)? Do other people think I am a hard worker? Are they right? Do other people think I am ethical? Are they right? Do other people think I am a good writer? Are they right?

What are my strengths as a writer? What are my weaknesses as a writer? Do I spend time trying to improve my writing? Do I reflect on what I did right after I have finished an assignment?

Do I spend sufficient time on an assignment, or do I rush through it? Do I depend on others to correct my writing? Do I make sure I fully understand the assignment before I start writing? Do I make sure I fully understand the law before I start writing? Do I make sure I fully understand how the

law applies to the facts before I start writing? Do I draft an outline before I start writing?

Am I a writer-oriented writer or a reader-oriented writer? If I am not a reader-oriented writer, how can I become one? Am I a detailed-oriented writer? If I am not a detail-oriented writer, how can I become one? Do I devote my full attention to the assignment?⁶ Do I allow things to distract me while I am working? How can I concentrate better (focus) on an assignment?

How much do I think about an assignment before I start writing? How can I improve the pre-writing stages of my planning routine?

How much time do I spend on editing? Do I have an editing strategy? How can I improve my editing strategy and routine?

Do I challenge my writing? Do I consider alternatives, or do I accept the first answer or solution? Do I read my writing from the viewpoint of others? Can I step outside of my writing? If not, how can I develop this skill?

When I finish the assignment, do I reflect on how I have written it? Do I think about how I might write the next assignment better?

Do I have an inner writing voice? How can I develop my inner writing voice? Am I a harsh critic of my writing? How can I become a harsh critic of my writing?

Think of an attorney you admire. Why do you admire that attorney? Think of an attorney or legal writer you admire for their writing. What makes him or her a good legal writer?

6. The key to learning and thinking is working memory. Working memory has two functions: temporary storage and processing of information. Duane F. Shell et al., *The Unified Learning Model: How Motivational, Cognitive, and Neurobiological Sciences Inform Best Teaching Practices*, 2, 19 (2010). Working memory is devoted to a task when slots are available for input and attention or processing is directed to the slot. *Id.* at 22. However, working memory cannot handle all sensory input that is vying for its attention; according to recent research, working memory has only about four slots. *Id.* at 11, 27. One of working memory's roles is "attention"—to process some of the input and ignore other parts. *Id.* at 11. In other words, attention directs sensory input. *Id.* at 21, 24. Humans can focus attention, and this mainly depends on concentration. *Id.* at 20, 29. Therefore, you should focus on the task when you are working and avoid distractions. This is also why it is dangerous to talk on a cell phone when driving.

Retrieval Exercises

Education scholars believe that the act of retrieving information from your brain causes information in your long-term memory to be retained better than rereading or restudying. In other words, you should be testing yourself on material as you learn it. After reading each chapter in this book, see if you can write down the main principles of that chapter. If you can't, reread the chapter and try again. Repeat the process until you can remember the main principles of that chapter.

Conclusion

Now that you understand the general principles of writing, it is time to learn the mechanics of writing to develop the habits you will need to become a successful writer. However, do not get lost in the mechanics—use them in connection with a holistic approach.