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The Five Principles of Legal Writing

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Wayne Schiess is a lecturer in legal writing at The University of Texas School of Law. He is author of Writing for the Legal Audience, and is associate editor of Scribes Journal of Legal Writing.
Writing Well, 75 (U. Cal. Press 1989). And notice that I used the word “publishes.” That’s what you’re doing when you prepare and issue a written document: publishing. If you’re in the business of publishing written documents, you’re a professional writer.

Professional writers take writing seriously, and lawyers should, too. Too often, though, lawyers are so focused on getting the substantive law right that professional writing takes a back seat. This article aims to show how to make professional writing as important as substantive law. In this article, I’ll discuss five principles that professional writers live by and that lawyers can live by, too. As you read them, think of yourself as someone who gets paid to write: a professional writer.

**PRINCIPLE NUMBER ONE: USE WRITING RESOURCES**

- Print journalists—who are undoubtedly professional writers—have style manuals on their desks. Book editors—all of whom are writing professionals—have dictionaries and usage manuals handy. And technical writers of all sorts, from those who write corporate newsletters, to those who write informative magazine articles, to those who publish instruction manuals—all of them would not presume to work without access to guides, references, and writing sources.

But lawyers do it all the time. In fact, it’s the most common symptom of the failure to recognize that you are a professional writer: not consulting writing sources. Practitioners could eliminate many mistakes if they would consult the right sources. But most lawyers don’t have the right sources and many don’t know what the right sources are. Why? It’s hard to say, but I’ll offer three reasons:

- First, legal writing is not emphasized in law schools. Most law schools give scant time to legal analysis and persuasive writing. Most do not spend much if any time on letters, motions, and complaints. And even fewer have courses in legal drafting. If law schools don’t cover the subject, how would law students know the relevant sources? They wouldn’t and don’t;

- Second, much of legal writing relies heavily on forms. If you copy a form, with minor changes, there is little need to consult a writing guide because you won’t be changing the writing in the form. Just re-create the document in the same form that it was created before. Not much room for writing improvement there, so not much need for writing sources;

- Third, lawyers are bright, successful people whose writing skills are in the upper percentiles of writing skills nationwide. So lawyers don’t think they need to consult writing sources because they can already write well. Or, at least, they can write well enough. I call this the “good enough” syndrome. “My writing is good enough, so why spend time studying writing or trying to improve? I’m fine.”

But isn’t a lot of legal writing just plain bad? Yes. So how can lawyers say that they are good writers? Well, I think that most lawyers probably are good writers, or at least above average. But lawyers happen to be in a profession that is writing-intensive; a profession that, unknownst to its naive applicants, demands good writing or even great writing. Journalists are generally good writers, but everyone expects them to be; it’s part of the job. Grocers, for example, are generally not known to be good writers, but everyone expects that great writing is not expected of grocers. Lawyers, on the other hand, often go into the profession unaware of how crucial good writing is to the field. So to make your writing better than “good enough,” know and use writing sources. I can suggest some excellent books in two categories.

**Legal Writing References**

These are books that you don’t read straight through; they’re for looking things up. Keep
them near your desk and consult them every time you have a question:


### General Legal Writing Style Guides

Do read these books straight through; all of them are excellent guides to contemporary legal writing style: how to phrase clear sentences, how to eliminate legalistic tone, and how to avoid common grammar and punctuation problems:

- Terri LeClercq, *Expert Legal Writing* (U. Tex. Press 1995);

So please think of yourself as a professional writer, because you are one. Remember that professional writers stay up on their craft. And when professional writers have a question about punctuation, or word usage, or writing style, they don’t guess. They look it up. You should, too.

**PRINCIPLE NUMBER TWO: ADAPT TO YOUR AUDIENCE**

- I believe that the best way to improve legal writing is to teach lawyers to focus more carefully on the audience: those who must read what we write. Too often we lawyers churn out documents in a mindless, rote fashion, without thinking much about the people who will have to read them:
  - If we are writing a motion, we create a document that looks like a motion—or like all the other motions we’ve seen—and we do not much care whether it will be easy to read and understand;
  - If we are drafting a contract, we drag out a form and duplicate it, not stopping to consider if the details of this form are right for our transaction; and
  - If we are writing a letter, we make sure it sounds lawyerly, whether we are writing to a client, to opposing counsel, or to a supervisor.

If you realize that you are one of the many who writes legal documents in a robot-like, unchanging style, stop it. Think about your audience and adapt. In legal writing, lawyers face a broad and diverse range of audiences that fall into two general categories—primary and secondary—and into several specific types.

### Primary and Secondary Audiences

For every document you produce, there is a primary audience and a secondary audience. The primary audience is the audience to whom the document is addressed. For letters, it’s the intended recipient. For a discovery document, it’s the opposing counsel. For a contract, it’s the other party or the other party’s lawyer. The secondary audience is anyone else who might see the document. Typically, the secondary audience is judge, jury, supervisor, colleague, or client. Keeping the different audiences in mind will help you focus your writing and strengthen it.

### The Variety of Audiences

More important than the difference between the secondary and primary audiences is the sheer number and variety of audiences that you must consider when writing. Take litigation practice, for example. Here are some typical litigation documents and the possible audiences:

<table>
<thead>
<tr>
<th>Document</th>
<th>Primary Audience</th>
<th>Secondary Audience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaint</td>
<td>Trial judge and opposing counsel.</td>
<td>The opposing party, your supervisor, your client, and, if the case were appealed, appellate judges.</td>
</tr>
</tbody>
</table>