



## GETTING THE MOST OUT OF YOUR FIRST DRAFT\*

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*“We all have emotional equity in our first draft; we can’t believe it wasn’t born perfect. But the odds are close to 100 percent that it wasn’t. Most writers don’t initially say what they want to say, or say it as well as they could. The newly hatched sentence almost always has something wrong with it. It’s not clear. It’s not logical. It’s verbose. It’s clunky. It’s pretentious. It’s boring. It’s full of clutter. It’s full of cliches. It lacks rhythm. It can be read in several different ways. It doesn’t lead out of the previous sentence. It doesn’t...The point is that clear writing is the result of a lot of tinkering.”*

- William Zinsser, *On Writing Well* (1976)

Even the most experienced legal writers frequently struggle with getting down a first draft. It can sometimes be so intimidating that it leads to writer’s block or procrastination, or some combination thereof.<sup>1</sup> No matter how painful it may be to actually sit down and write a draft, it is an opportunity that should not be wasted. This handout is designed to provide some tips and advice for using the draft writing process to your maximum advantage.

### 1. Set Deadlines and Allow Sufficient Time

Research and planning can go on and on and on if you do not put a stop to it. It can be so much easier to keep reading cases and other research materials that many of us just keep researching and outlining in order to avoid the tougher job of drafting.<sup>2</sup> It is important to resist that temptation to make sure that you have enough time to draft, rewrite, revise, and polish before proofreading and turning in your assignment.

Set a deadline to start drafting by looking at your due date and working backward.<sup>3</sup> Decide how much time you will need to draft/rewrite/revise/polish. Then add 20 percent. Then add an additional 20 percent.<sup>4</sup> Good writing takes time and almost always more time than you think!

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<sup>1</sup> For help with overcoming writer’s block see Writing Center Handouts: “Just Do it - Tips for Avoiding Procrastination,” <https://www.law.georgetown.edu/wp-content/uploads/2018/06/Kaavya-Just-Do-It-Tips-for-Avoiding-Procrastination.pdf> and “Writer’s Block and How to Work Through It,” <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Writer-s-block-FinalMelanie.pdf>.

<sup>2</sup> JOSEPH M. WILLIAMS & GREGORY G. COLOMB, *THE CRAFT OF ARGUMENT*, 40 (2003).

<sup>3</sup> *Id.* at 41.

<sup>4</sup> *Id.*

Providing ample time will help ensure that you will not be scrambling to finish and cut corners because you are working against the clock.

A buffered deadline allows for flexibility concerning additional research. You may find, as you are drafting, that your conclusion is not as clearly and substantially supported as you thought in the outlining stage. Leaving enough time to draft lets you sneak in that extra research without getting off track.

## **2. Stay Focused Through Single-tasking**

The ability to multitask is often a useful skill, but it is an ill-advised thing to do while writing your first draft. A focused mind is a powerful mind – put your phone out of sight, log out of Facebook, and do not check your email while writing. If you have roommates or live in student housing, you might even consider putting a well-tailored Do Not Disturb sign on your door forbidding interruption.<sup>5</sup> If that does not work, consider hiding away in a corner of the library or some other place where you are unlikely ever to be found.<sup>6</sup>

Great writing requires great concentration.<sup>7</sup> By single-tasking, you will be able to write the first draft better and quicker than you would by trying to do other things at the same time.

Try to write in stretches of at least 30 minutes<sup>8</sup>, and preferably closer to an hour. If timing doesn't seem like a working block that is natural for you, try to commit to writing in length blocks – like writing a page or a particular section of your outline before breaking. When you pick up momentum by getting words down on the page, you risk losing it by stopping after a few minutes! The longer you write continuously, the easier it is.<sup>9</sup> It is also important to make sure you are not writing so long that you feel tired – your writing can certainly be hurt by too much time continuously working, just as it can be hurt by too little time continuously working.

## **3. Try to get your “Madman” to take over for your “Architect”**

Overcoming writer's block and just putting pen to paper can be one of the greatest challenges for a writer. Even after the outlining stage, as perfectionists, many writers struggle to start because they agonize over each sentence and phrase. But for your first draft: let your “madman” take over.<sup>10</sup> The “architect” that created your outline will be back when it comes to revision. You will have to revise. That is a certainty. For now, commit yourself to getting your first draft out as swiftly as possible.

Making progress and moving ahead is important, but that does not mean you end up staying on the path you expected to travel from the beginning. We know that first drafts can feel like getting

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<sup>5</sup> Suzanne E. Rowe, *The Legal Writer: The Discipline to Become a Better Writer: Thinking About Writing*, 74 Ore. St. B. Bull. 13, 13 (2014) (Rowe's sign instructed readers not to interrupt her unless they are “1) Offering Me a Raise, 2) My Husband, or 3) Under 10 Years Old”).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> ANDREA A. LUNSFORD, *THE EVERYDAY WRITER*, 39 (2002).

<sup>9</sup> *Id.*

<sup>10</sup> BRYAN A. GARNER, *THE WINNING BRIEF*, 17 (3rd ed. 2014).

stuck in a traffic jam, and sometimes when you hit a traffic jam, you need to take a different road to go around it! If you see that your plan is not working, do not hesitate to alter it.<sup>11</sup> What may have seemed important and valuable and perhaps even indispensable at first often does not hold up when you are putting together your draft. That is a good thing! It means you are discovering weaknesses in your document and addressing them.

Similarly, the process of writing itself can generate new ideas. “Don’t become a prisoner to a preconceived plan.”<sup>12</sup> Part of the value of the first draft is its brain dump function. By letting your “madman” put every thought on the page, you articulate ideas that may have value later in the writing process. Your architect may cut some of those ideas, may merge some of those ideas, but getting everything you have on your mind or in your outline onto the page may serve you in later stages of your revision process. Preserve your first draft version when you begin to revise so you have the opportunity to return to your initial ideas, even after you’ve moved on to draft two or three.

#### **4. Experiment with Your Process if You Feel Stuck**

Even when you know you want to find new paths, it can be hard to figure out how to find that elusive route around the drafting traffic jam. That is when you should be willing to get creative and try things you have never tried before. This goes hand in hand with the importance of flexibility discussed above – you should have flexibility not just for what you are writing but how you are writing it.

Creative experimentation could take a number of forms. Perhaps dictating a draft into a voice memo will spark your thinking more than sitting down at a keyboard and typing.<sup>13</sup> Maybe using charts and colored pens on paper is a better way for you to start getting down a draft.<sup>14</sup> Or it could be something completely different that no one has ever thought of before. Whatever it is, experimentation can pay big dividends when typing at the computer is giving you very little.

#### **5. Keep Your Objectives in Mind**

Getting all your ideas down on paper in your first draft is the goal, but you do not want to risk talking *around* the problem. You want to pierce the center of it. Articulating your thoughts on the page for a reader, while you may still be trying to hone and clarify them for yourself, is a constant challenge for writers. However, keeping in mind your overall objectives and overarching argument ensures your first draft has value.

As you write, and particularly when you get stuck, ask yourself: what is this piece of writing supposed to accomplish? And, most crucially: What is your thesis or position?<sup>15</sup> You can also ask more specific questions depending on what type of legal writing you are working on: Are you identifying a problem and proposing a solution to an academic audience in a legal journal?

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<sup>11</sup> ANDREA A. LUNSFORD, *THE EVERYDAY WRITER*, 39 (2002).

<sup>12</sup> WILLIAMS ZINSSER, *ON WRITING WELL*, 53 (7th ed. 1976).

<sup>13</sup> LINDA H. EDWARDS, *LEGAL WRITING AND ANALYSIS*, 70 (2011).

<sup>14</sup> *Id.*

<sup>15</sup> WILLIAMS ZINSSER, *ON WRITING WELL*, 52 (7th ed. 1976).

Are you drafting a brief to persuade? A memorandum to predict the legal outcome of a problem? Asking yourself these questions as you write will guarantee your draft and your overall writing process are geared toward your goals.

## **6. Expect the Ugly Duckling, Not the Beautiful Swan**

The advice in this document is designed to help you create the best first draft of which you are capable. As writer Anne Lamott says, we all write “shitty first drafts.”<sup>16</sup> It is important to write with care, even when you know that the first draft will be far from perfect.<sup>17</sup> The key is not to be discouraged, even if the draft is not the flawless document that you were hoping it would be.

Maintaining diligence while tempering expectations also helps calm the panicked editor in your head.<sup>18</sup> It means a lot to get words down on the page. It means you are closer to the ultimate finished product. Taking the task seriously and following the guidelines here will leave you wellpositioned to cleanse the document of ugly flaws later in the process.

Writing a first draft is often a painful process even for the most talented practitioners, let alone law students still mastering the trade. Do not get discouraged! The pain means that the process is working. Keep these tips in mind while drafting, and you will be in a good position to cruise to your final destination.

### For Further Reading

Linda H. Edwards, Legal Writing and Analysis, (Aspen Publishers, 2011).  
Bryan Garner, The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts, (Oxford University Press, 2014).  
Ernest Hemingway, On Writing, (Simon & Schuster, 1984).  
Anne Lamott, Bird by Bird: Some Instructions on Writing and Life, (Anchor Books, 1994).  
Andrea A. Lunsford, The Everyday Writer, (Bedford/St. Martin's, 2002)  
Beverly McLachlin, *Legal Writing: Some Tools*, 39 Alberta L. Rev. 695 (2001)  
Suzanne E. Rowe, *The Legal Writer: The Discipline to Become a Better Writer: Thinking About Writing*, 74 Ore. St. B. Bull. 13 (2014).  
Joseph M. Williams and Gregory G. Colomb, The Craft of Argument, (Addison Wesley Longman, 2003).

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<sup>16</sup> Rowe, *Thinking About Writing*, 74 Ore. St. B. Bull. at 15.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*