



GETTING THE MOST OUT OF YOUR FIRST DRAFT¹

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Interviewer: And then when you actually sit down to write a draft, do you try to write briskly?
*Justice Antonin Scalia: Mmm . . . I don't write briskly; I write painfully. And I do each paragraph one at a time and try to make the point clearly there and then go through it again and again when I'm done.*²

Even the most experienced legal writers frequently struggle with getting down a first draft. If writing a legal document is a journey, working on a first draft can often feel like getting stuck in a traffic jam. Articulating raw ideas into words and sentences and paragraphs can sometimes be so intimidating that it leads to writer's block or procrastination or some combination thereof.³

No matter how painful it may be to actually sit down and write a draft, it is an opportunity that should not be wasted. First drafts are writer-based documents that will be revised and rewritten before submitting to a teacher or supervisor, and this handout is designed to help you make the most progress on the long road to that final destination.

Below are some tips and advice for using the draft writing process to your maximum advantage, including: 1) setting deadlines and allowing appropriate time; 2) staying focused through singletasking; 3) being willing to explore new paths; 4) experimenting with your process when stuck; and 5) expecting the ugly duckling rather than the beautiful swan.

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 in order to avoid the tougher job of drafting.⁴ 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.

¹ Written by Sean McLernon.

² Interviews with United States Supreme Court Justices: Justice Antonin Scalia, 13 *Scribes J. Legal Writing* 51, 70-71 (2010).

³ For help with overcoming writer's block see Writing Center Handouts. Just Do it - Tips for Avoiding Procrastination, and Writing Block and How to Work Through It.

⁴ Joseph M. Williams and Gregory G. Colomb, *THE CRAFT OF ARGUMENT*, 40 (Addison Wesley Longman, 2003).

Set a deadline to start drafting by looking at your due date and working backwards.⁵ Decide how much time you will need to draft/rewrite/revise/polish. Then add 20 percent. Then add an additional 20 percent.⁶ Good writing takes time, and almost always more time than you think it will take! This 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 Singletasking

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.⁷ 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.⁸

Great writing requires great concentration.⁹ By singletasking, 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 minutes¹⁰, and preferably closer to an hour. 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.¹¹ 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. Be Willing To Explore New Paths

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 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.¹²

⁵ *Id.* at 41.

⁶ *Id.*

⁷ 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").

⁸ *Id.*

⁹ *Id.*

¹⁰ Andrea A. Lunsford, *THE EVERYDAY WRITER*, 39 (Bedford/St. Martin's, 2002).

¹¹ *Id.*

¹² *Id.*

It may be tempting to keep some information you went to great lengths to obtain during research, but it is important not to give in to that temptation.¹³ 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.

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.¹⁴ Maybe using charts and colored pens on paper is a better way for you to start getting down a draft.¹⁵ 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. 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.”¹⁶ It is important to write with care, even when you know that the first draft will be far from perfect.¹⁷ 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.¹⁸ 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 well positioned to cleanse the document of ugly flaws later in the process.

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

¹³ *Id.*

¹⁴ Linda H. Edwards, *LEGAL WRITING AND ANALYSIS*, 70 (Aspen Publishers, 2011).

¹⁵ *Id.*

¹⁶ Rowe, *Thinking About Writing*, 74 Ore. St. B. Bull. at 15.

¹⁷ *Id.*

¹⁸ *Id.*

For Further Reading

- Linda H. Edwards, Legal Writing and Analysis, (Aspen Publishers, 2011).
- 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).