Don’t begin a sentence with “and” or “but.” Never end a sentence with a preposition. Splitting an infinitive is always bad. And those are just some of the myths folks ask lawyers to generally put up with. This two-part column explores The Legal Writer’s favorite fallacies.

Myth #1. Literary style isn’t important in legal writing.

**Reality:** You can’t be a great lawyer, whatever your other qualities, unless you write well. As Fordham Law School’s ex-Dean Feerick explained, “Without good legal writing, good lawyering is wasted, if not impossible.” Imperfect writing leads to imperfect results: “[A]bout as many cases are lost because of inadequate writing as from inadequate facts.”

Legal educators agree on little. But they all agree that legal writing is the most important skill future lawyers must acquire. Legal ethicists have their debates. But they all agree that legal writing must be competent. From University of Michigan Professor Cooper: “One of the singular distinctions of the legal profession is that lawyers have but one tool — language.”

Style is important. If good legal writing is critical to effective client representation — and it is — style is critical to good legal writing. A brief that “presents a sound statement of the law will hold its own regardless of its literary style .... But, the fact that substance comes before style does not warrant the conclusion that literary style is not important.” Good style for lawyers is that writing “should be constructed with good words, not plastered with them.”
Those who assume that style is unimportant see legal writing as complicated do’s and dont’s. The rules confound us, although the toughest are rules of legal style and general usage, not rules of grammar. Anyone who can speak English, though, can write English. To compose effectively, you don’t need to know every rule, which can be learned one by one anyway. Nevertheless, the sooner you learn the rules, the better. After legal style comes literary style, and “with some talent and practice, it’s not hugely difficult for a master of legal style to get comfortable with literary style.”

You don’t get experience until after you need it. But just as you can drive a car without knowing how an engine works, to write effectively you needn’t know the difference between syntax — the order of words in a sentence — and the parts of speech. With study, practice, and the right attitude, you can write as comfortably as you drive. Experienced motorists drive without thinking about every part of an engine. To fret constantly about an engine is never to arrive at the destination, or never to be happy with the trip. To fret constantly about usage is never to finish a document, or never to be happy with it.

**Myth #2. Legal writing is subjective. Lawyers see so much bad writing, they’ve little incentive to improve their own writing.**

**Reality:** Objective standards determine whether legal writing is good. People disagree only about the less important aspects of legal writing. Precisely because so much legal writing is poor, lawyers should strive to write well. Poor writing goes unread or is misunderstood. Good writing is appreciated. Great writing is rewarded lavishly.

Perfection in writing is impossible. But perfection should be the goal, so long as perfection doesn’t interfere with a deadline. Poor legal writing might result in an injustice for a client: a judge might misunderstand what a lawyer is seeking; an adversary might seize on an ambiguity. To avoid these problems, strive for perfection.

**Myth #3. Write in a comfortable setting. Then finish a section before you take a break.**

**Reality:** These are matters of personal preference. But most people find writing difficult. You’ll finish faster and more concisely if you write in an uncomfortable setting. Justice Holmes, who suffered from knee injuries, wrote standing at a high desk. He said, “If I sit down, I write a long opinion and don’t come to the point as quickly as I could.” Ernest Hemingway, who wrote to the bone, also often wrote while standing.

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10 Kent Haruf, Writers on Writing, To See Your Story Clearly, Start by Pulling the Wool over Your Own Eyes, N.Y. Times, Nov. 20, 2000, at E1, col. 1 (noting also that John Cheever wrote in his underwear and Thomas Wolfe over a refrigerator).
Writers who take a break between sections become complacent. They find it hard to resume quickly. A writer who takes a break in the middle of a sentence has an unenjoyable break but returns to work quickly. However you do write, do so at a time and place with few distractions.

**Myth #4. Reread your writing soon after you submit it.**

**Reality:** The time to edit your writing is before you submit it.

Rereading what you’ve written months later helps measure progress. Rereading something right after you submit it leads to frustration. Lawyers’ egos are wrapped up in their writing, and nothing can be improved after it is submitted. As Chief Justice Marshall wrote, “The past cannot be recalled by the most absolute power.”

It’s difficult to edit your work. To overcome that difficulty, distance yourself from your work. Doing so will make you objective and allow critical self-editing.

**Myth #5. Creativity is the essence of good legal writing.**

**Reality:** Except in hard cases, the law doesn’t reward creativity. It rewards logic and experience. Justice Holmes once wrote that “[t]he law is not the place for the artist or poet. The law is the calling of thinkers.” Thinkers follow format; they adhere to court rules. They don’t invent new methods of legal writing or argue positions that lack support.

Lawyers must rely on precedent. A scientist who invents a novel approach is an innovator. Not so the lawyer. Imagine, in response to a judge’s question “What’s your authority for that?” you say: “It’s my invention. No one ever thought of that before I did.” Your creativity will go unappreciated.

Legal writers gain nothing reinventing the wheel. The most they can do is urge a change in the law that only legal authority itself can justify.

**Myth #6. Good legal writers write for themselves.**

**Reality:** Good legal writers write for their readers: “[E]ffective writers do not merely express, but transform their ideas to meet the needs of their audience.”

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13 Oliver Wendell Holmes, quoted in Case & Comment 16 (Mar./Apr. 1979).

Lawyers, who write different documents for different audiences, must identify their audience. In a brief, the audience is the judge, not the client or opposing counsel. To write persuasively, a lawyer must grab a judge’s attention quickly, argue concisely, and express clearly the relief sought. Techniques that fail with judges are

- throwing in the kitchen sink instead of picking winning arguments and developing them;
- attacking opposing counsel and other judges (even when they deserve it);
- offering up a historical treatise instead of arguing an issue;
- writing facts in a conclusory way;
- using adverbs and adjectives instead of nouns and verbs;
- using intensifiers and qualifiers;
- shouting at readers with false emphatics like italics, underlining, bold, and capitals;
- not applying fact to law;
- overstating anything, because understatement is a key to persuasion;
- using long quotations or, worse, misquoting and misciting;
- not opening with an orientation, or roadmap, to tell readers where they’re headed; and
- dwelling on givens.

Dwelling on givens fails with non-judges as well. An associate writing to a partner specializing in an area of law shouldn’t include every step in the analysis. The partner will understand the writing in its legal context.

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15 Peter D. Baird, Persuasion 101, 15 Experience 26, 28 (Fall 2004) (“Use nouns and verbs to show rather than adverbs and adjectives to tell because ‘He raced his Cadillac at 98 miles per hour’ is stronger than ‘He drove his vehicle dangerously and at a reckless rate of speed.”’).

16 Adverbial intensifiers like “certainly,” “obviously,” and “undoubtedly” weaken writing. As Stephen King explained, “I believe the road to hell is paved in adverbs, and I will shout it from the rooftops.” Brendan T. Beery, Some Particularly Useless Words, 82 Mich. B.J. 56, 57 (2003) (quoting Stephen King, On Writing 125 (2000)). The same is true for adjectives that prop up nouns or even other adjectives: “Rather, very, little, pretty — these are the leeches that infest the pond of prose, sucking the blood out of words.” Id. (quoting William Strunk, Jr. & E.B. White, The Elements of Style 73 (4th ed. 2000)). Adverbial qualifiers like “generally,” “traditionally,” and “usually” are similarly harmful. They show a hesitant and doubtful writer. Make definite assertions. It’s better to be wrong than cowardly.


If your audience is unknown, “assume that your readers will be generalists unversed in special technicalities.”¹⁹ That way you’ll address not only lawyers and judges, who are familiar with legal technicalities, but also nonlawyers, who appreciate writing they understand.

**Myth #7. Boilerplate is good.**

**Reality:** Many legal-writing professors give students model briefs to imitate. That’s fine if students will copy format and see which techniques work and which fail but counterproductive if they pattern ideas on them. Allowing imitation gives “the erroneous impression that the writing process is separate from the thinking process and divorced from the analytical process.”²⁰ A lawyer’s real work is researching and fact-gathering. Thus, “most of [the] writing effort ... is done out of a sense of requirement on behalf of the client (‘this needs to be in writing’), not of opportunity on behalf of the writer (‘since I need to think this out clearly, I will write it out’).”²¹

To communicate research and fact to a judge, a client, or another lawyer, the lawyer must excel in legal writing. Writing is linked to thinking: “As you draft a legal document, you will find that the process of putting your thoughts in writing will sharpen and deepen your understanding of the analysis ....”²² Boilerplate forms speed mundane, routine work. They offer elements that a legal document must include. And they show required office or court format. But relying on them for an important or complex case can lead to malpractice.

**Myth #8. Writing a lengthy brief is harder and takes more time than writing a short one.**

**Reality:** Writing something short, concise, and pointed is harder than writing something lengthy or rambling. Pascal noted this phenomenon in the seventeenth century: “I have made this letter longer than usual because I lack the time to make it shorter.”²³ Although it’s more difficult to write something

²⁰ Pamela Lysaght & Christine D. Lockwood, Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Circular Implications, 2 J. Ass’n Legal Writing Directors 73, 95 (2004) (footnote omitted). Of course, legal-writing teachers are damned no matter what. Some first-year students will complain if they get models. Others will complain if they don’t. Still others will complain about the models they get if they get any.
²¹ George D. Gopen, The Professor and the Professionals: Teaching Writing to Lawyers and Judges, 1 J. Legal Writing Inst. 70, 80 (1991).
²³ Blaise Pascal, Proventual Letters xvi (quoted in *Hayes v Solomon*, 597 F.2d 958, 986 n.22 (5th Cir. 1979) (Hill, J.), *cert. denied*, 444 US 1078 (1980)).
short and concise, courts need short and concise writing. A lengthy brief suggests that a lawyer didn’t do “enough work on the finished product.”

**Myth #9. If you have little to say about something, even something important, don’t devote much space to it.**

**Reality:** If you’ve nothing to say, or nothing good to say, don’t say it. The same applies to writing. Consider James Russell Lowell’s comment about the loquacious: “In general those who have nothing to say, contrive to spend the longest time in doing it.” But something that must be communicated will get lost if little space is devoted to it. Because many courts enforce page limits on lawyers’ briefs, ensure that each word tells and that every sentence expresses something important. Expand your important points to give them the stress they deserve. And never take shortcuts at the expense of clarity.

**Myth #10. Know everything about your case before you begin to write.**

**Reality:** Some argue that “[a]n effective brief is fully thought through before a word is set to paper.” But you’ll never start to write, or you’ll start to write the night before your brief is due, if you insist on knowing everything before you begin. The key is to know everything by the time you’re done. You can always change focus in midstream, especially if you compose on a computer. Outlining in advance and constant editing will control your writing.

Lawyers and judges worry about different things. Judges don’t stay up nights wondering how a lawyer should argue a case. Lawyers don’t have to worry about deciding a case correctly. This means in a persuasive brief that you, as the advocate, should spot issues and apply and argue fact and law to those issues — and not think about stuff over which you’ve no control. If you argue issues and not case law or theory, you’ll see that unless you’re arguing before a high appellate court, you don’t have to understand

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24 "An attorney should not prejudice his case by being prolix.... Conciseness creates a favorable context and mood for ... judges." Joseph R. Nolan, Massachusetts Practice: Appellate Procedure § 24, at 11 (1991) (quoted in Commonwealth v Anguilo; 169 n.17 (Mass. 1993) (Liacos, J.)).


26 James Russell Lowell (quoted in William H. Ginsburg, Winning Strategies and Techniques for Civil Litigators, Prac. L. Inst./Ref-Civlit. § 7.6, at 231 (2001)).

27 Strunk & White, supra note 15, at 79.

28 Judith S. Kaye, Effective Brief Writing § 2:27.70, at 108, 109, unpublished paper printed in 1 John W. Cooley, Callaghan’s Appellate Advocacy Manual (Lawyer’s ed. 1992) (quoted in Albert M. Rosenblatt, Brief Writing and Oral Argument in Appellate Practice, 24 Trial Lawyers Q. 22, 22 (1994)). Truly talented writers like Judges Kaye and Rosenblatt are able to think through writing before beginning to compose. Mortals like me, and perhaps you, are better off just starting to write.
every nuance to get started and make your best case persuasively and ethically. Just pick your issues and figure out what facts, rules, and citations go with each issue.

**Myth #11. Finish early.**

**Reality:** Start early—and edit late. Your labor will be more efficient if you start before facts and argument get cold in your mind. Starting early lets you start over if you learn new facts, develop a new argument, or realize you went down the wrong path. Then take the time and make the effort to edit until your work is due. You’ll have fewer regrets afterward.

**Myth #12. Obsessive-compulsives make the best legal writers.**

**Reality:** Obsessing over what you write is time-consuming and stressful. It distracts from the main goal of legal writing: to communicate in a clear, concise, and organized manner. If you’re obsessing over just one element of your writing, you won’t accomplish your goal.

Not obsessing over what you write means never sweating the small stuff. It’ll paralyze you. Become obsessive, if at all, only at the very end, when attention to detail is important. Then submit your work and be done with it. As Howard F. Angione, the Journal’s ex-Editor-in-Chief, once told me, “Writing is like children. At some point you must let go and hope for the best.”

**Myth #13. Good legal writers rarely need time to edit between drafts.**

**Reality:** According to William Zinsser, “A clear sentence is no accident. Very few sentences come out right the first time, or even the third time.” Put your project aside a few times while you write and edit. You’ll catch mistakes you didn’t see earlier and make improvements you might not have thought of earlier. Read aloud: “By relying on your ear—not just on your mind’s ear—for guidance, you will also find more ways to improve your phrasing.” Self-editing requires objectivity. If you have an editor, take advantage. Welcome suggestions gratefully, and think about them, even if you ultimately reject them. Editors, unlike writers, always consider the only one who counts: the reader.

**Myth #14. No one cares how you cite—so long as your citations can be found.**

**Reality:** Legal readers can tell from the quality of your citation whether your writing and

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analysis will be good. If you’re sloppy about citations, you might be sloppy about other, more important things. Readers know that writers who care about citations care even more about getting the law right.

Some judges and law clerks insist they care not at all how lawyers cite, so long as lawyers give the correct volume and section numbers so that citations can be found. Judges and law clerks who insist they couldn’t care less about lawyers’ citing say so for one or more false reasons: as code to suggest they’re so fair and smart they can see through the chaff to let only the merits affect their decision-making; because they themselves don’t know the difference between good citing and bad; or to communicate their low expectations of the lawyers who appear before them.

Many judges and law clerks tolerate improper citation. But you should make the effort to cite properly, for yourself and your client. Improper citations detract from your credibility. And citing improperly won’t give you the chance to persuade now and to use your citations as future references. Citing properly “dictates that you include the information your readers need to evaluate your legal argument.”31 Use citations to strengthen, not lengthen, your writing, and use pinpoint citations to refer your readers to the exact page at which your point is made.

**Myth #15. Only perfectionists care about occasional typographical errors.**

**Reality:** Because lawyers want to catch their readers’ attention, “something as trivial as a typographical error can detract from the message.”32 Spell-check every time you exit your file. Proofread carefully on a hard copy as well. Proofreading reflects pride of authorship. Readers find proofreading mistakes easily—more easily than writers do. These are the same readers who pay little attention to what you write until you make a mistake. Proofreading mistakes adversely affect legal writing to a degree out of proportion to their significance. The importance of proofreading is reflected in the effect that the absence of proofreading has on readers: “Readers expect a level of competence, care, and sophistication in writing. When those elements are missing, [writers] presumably [do] not possess the necessary legal skills or fail to display consideration for [their] audience.”33

**Myth #16. Legal writing may be informal.**

**Reality:** Whatever the legal writer’s goal—to persuade, to inform—the correct tone when writing is formality without inflation. Formality and informality should be balanced. When writing, lawyers should use words they use only in polite conversation. Informal writing “suggest[s] a less

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31 Stacey L. Gordon, Legal Citation in Montana: Teaching Lawyers the Proper Format, 28 Mont. Law. 7, 8 (Sept. 2002).
32 Garner, supra note 2, at 34.
respectful tone, an impression you certainly do not want to give a client or a court.”

For example, contractions, which are warm and friendly, belong in e-mails and Legal Writer columns but not in briefs. Slang and colloquial and breezy writing, which indicate familiarity, don’t belong in briefs either.

**Myth #17. Prose in legal writing is best directed to the highest common denominator.**

**Reality:** Many lawyers mistakenly use legalese in their writing. But legalese is “verbose and gratuitously technical, serving no purpose other than to mystify and shroud the subject matter in a veil of overblown prose.” The problem is that many lawyers say to themselves, “‘If I don’t use legalese, I won’t sound professional.’ .... ‘If I change the specific phrases, the judge will rule against me.”

Lawyers, judges, and clients alike favor concise, simple writing. Legalese makes writing lengthy and difficult to understand, but “[c]ourts now demand brevity, and clients demand plain English.”

Legal writing should be directed to smart high-school students. If they understand you, so will a more educated readership. Keep your words, sentence structure, paragraphs, and organization simple. Complex prose is weak prose. The erudite explain difficult concepts in easy-to-read language. From Harvard Law’s Warren:

“[T]he deepest learning is the learning that conceals learning.”

**Myth #18. Legal writing has little to do with reading nonlegal subjects.**

**Reality:** Writing has everything to do with reading—from finding good models, to assessing the merits of a written argument, to learning to think clearly.

Reading cases isn’t the best way to learn legal writing. Frankly, some judges write poorly. Some law school professors select cases under the Socratic method to make their students feel inadequate or to make them think like lawyers: “Not many readers can defend the prose of judicial opinions selected for case books—a style students instinctively assume is ‘the way law looks.’”

Opinion writing sets the standard by which many lawyers write. According to Temple Law Professor Lindsey, “Unfortunately, court opinions influence the writing styles of students, lawyers, judges and even law professors. That [is] —

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34 Jacquelyn E. Gentry, The Dirty Dozen—And How to Defeat Them, 45 Orange County Law. 14, 17 (Sept. 2003).


36 Susan Benjamin, Attorneys: Cause or Cure?, 7 Scribes J. Legal Writing 47, 49 (2000).

37 Wendy B. Davis, Consequences of Ineffective Writing, 8 Persp. 97, 97 (2000).

38 Edward H. Warren, Spartan Education 31 (1942).

39 See, e.g., Steven Stark, Why Judges Have Nothing to Tell Lawyers About Writing, 1 Scribes J. Legal Writing 25, 30 (1990) (“If law schools really want to improve the writing of lawyers, they should make their students study briefs, complaints, newspapers, advertisements, even direct-mail letters. But no more opinions, please. No more opinions.”).

40 Terri LeClerq, Guide to Legal Writing Style xvi (2d ed. 2000).
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a distressing, or at least sobering, thought for all of us. If you are what you eat, you write what you read. Garbage in, garbage out.”

So what should you do if reading opinions won’t teach you about good legal writing?

University of Connecticut’s Professor Lindgren suggests returning to school, but “[i]f school is not the answer for most of us, what is? A few people may learn to write from their supervisors on the job, but most will have to learn the same way I am trying to—by reading style books.”

St. John’s Professor Falkow “combat[s] the onslaught of poor legal writing in part by using non-legal examples to illustrate concepts of good legal writing.” She tells her students “to engage ... in active reading, which can help them become better writers while simultaneously assuring them that models need not all derive from legal rhetoric.”

Only reading broadly and critically will lead a writer to study the vocabulary and rules of writing. Most great legal writers stress that reading nonlegal subjects is a prerequisite to good lawyering. This was Justice Frankfurter’s advice to a 12-year-old who wanted to become a lawyer: “The best way to prepare for the law is to come to the study of law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give.”

Myth #19. Outlining increases the workload. It’s just one more thing to do.

Reality: Organizing before writing avoids problems. One problem is not including important information: “A gap in your logic caused by poor organization can give your opponents an opening for

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41 John M. Lindsey, Some Thoughts About Legal Writing, N.Y.L.J., Oct. 27, 1992, p. 2, col. 2. Professor Lindsey overstated his case somewhat. Lawyers’ and judges’ writings have different functions. See William Domnarski, The Opinion as Essay, the Judge as Essayist: Some Observations on Legal Writing, 10 J. Legal Prof. 139 (1985) (arguing that judges’ and lawyers’ writings cannot be analyzed together). And if lawyers shouldn’t emulate judicial writing styles, they shouldn’t emulate law professors’ styles, either. See Judith S. Kaye, One Judge’s View of Academic Law Review Writing, 39 J. Legal Educ. 313, 320 (1989) (arguing that law professors “are writing for each other”). The last way to learn how to write a brief is to study the writing style of the law-review article.


44 Id., at 351.

45 Felix Frankfurter, Advice to a Young Man Interested in Going into Law, in The Law as Literature 725 (Ephraim London ed. 1960).
Another is repetition. The key to organization is to say it once, all in one place. Organizing before writing lets you focus on what to say and how to say it.

One form of organization is a written outline. An outline helps. It “not only provides the organization necessary to complete a complex writing task, but serves as a perpetual reminder of the ‘big picture.’”\textsuperscript{47} Organizing by outline conserves energy, especially if the case is complicated.

There are many different methods of generating an outline. The traditional method is the Roman-style outline. In this outline, main ideas are listed by Roman numerals, with supporting subpoints listed in the English alphabet and the sub-sub-points in Arabic numerals. The main points and sub-points are ordered according to your analysis.

For lawyers who think visually, a diagram or flowchart will work. The core idea is written in the middle of a blank page. Arrows connect the main points to the core point and sub-points to the main points.

Brainstorming works for lawyers who have many ideas but can’t connect them: list all possible points randomly, and then group the points. That leads to a group of main points and supporting points.\textsuperscript{48}

These are just a few ways to generate an outline. Experiment until you’re comfortable with a way to outline.

Those who hate to outline should be flexible, but outline they should. Not outlining often means spending more time overall. If you outline, you’ll have a vision before you start, you’ll know what goes where, and you won’t forget or repeat things.

Once you’ve outlined, organize. In the argument section of a persuasive brief, start with your strongest points — those on which you’re most likely to win. If two points are equally strong, go first with the point that’ll win the largest relief: dismissing the indictment rather than reducing the sentence, if, say, you’re representing a defendant in a criminal case. Alter that pattern to arrange your points logically, to order the elements or factors listed in a statute or seminal case, or to begin with a threshold argument, like statute of limitations before the merits.

\textsuperscript{46} Robert P. Charrow et al., Clear & Effective Legal Writing 135 (3d ed. 2001).
\textsuperscript{47} Toni M. Fine, Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors, 5 J. Legal Writing Inst. 225, 236 (1999).
Once you’ve ordered your arguments, order what goes within each argument. This, too, should be outlined. One way to do that in the argument section of a persuasive brief is to **CRARY** — The Legal Writer’s patent-pending formula— which stands for

<table>
<thead>
<tr>
<th>C</th>
<th>Conclusion on the Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>R</td>
<td>Rules of Law</td>
</tr>
<tr>
<td>A</td>
<td>Application of Fact to Law</td>
</tr>
<tr>
<td>R</td>
<td>Rebuttal and Refutation</td>
</tr>
<tr>
<td>Y</td>
<td>Conclusion on the Requested Relief</td>
</tr>
</tbody>
</table>

Start (“C”) by giving your conclusion on the issue (“The trial court allowed the People to offer inadmissible hearsay.”); then (“R”) state the law, giving your best rules and citations first; then (“A”) apply law to the facts from your fact section, giving your best facts first; then (“R”) present your adversary’s leading facts and legal arguments honestly and rebut them without dwelling on them, making sure not to repeat what’s in your Rule section; and then (“C”) conclude by stating the relief you seek (“This Court should therefore reverse the conviction.”).

**Myth #20. Lawyers should trust their supervisors when they’re told, “Just give me a draft.”**

**Reality:** Many new lawyers believe that a supervisory lawyer’s most common fib is to instruct the new lawyer to submit “only a draft.” The problem here is communication, not dishonest supervisors: “[When a supervisor tells you to] ‘Just give me a quick draft’, ‘Just whip off a draft’, or ‘Just dictate a rough draft’ ... [t]he emphasized words should trigger red lights in your mind.” A seasoned lawyer’s draft is a less-seasoned lawyer’s final product. A less-seasoned lawyer’s draft provides little help to a seasoned attorney, and especially a judge, who might’ve forgotten that it takes years to write well. The solution: New lawyers should hand in their best work even when they’re told to hand in only a draft.

**Conclusion**

**Confess:** You’ve fallen for some legal-writing myths. It’s not too late to change. Experiment with your writing. Incorporate realities. Edit your work. And do what good lawyers do: Separate fact from fiction.

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