

PRESENTED AT

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Lawyers are Editors

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Lawyers Are Editors

If you're like most lawyers, you probably "edit" your work by reading over it after you've finished to make sure it "sounds okay" and to check for typos. That's understandable: On an average document, that may be all the editing your client wants to pay for. But on an important document, your editing should be more systematic.

You may have heard of the book *If You Don't Know Where You are Going, You'll Probably End Up Somewhere Else*. Editing is like that. If you don't know what you're editing for, you'll probably end up editing for something else. To avoid haphazard edits that do little to improve the quality of the document:

- develop a process for editing;
- employ techniques that will help you see what you've actually written; and
- use an editing checklist.

Process

To edit effectively, you need to take multiple passes through your document, each time looking for something different. Otherwise you will fix easy-to-spot errors, but likely miss other flaws. Of course, having time for multiple passes through the document means finishing the initial draft early, something many lawyers don't do.

The first draft: Writing early—and quickly

To allow yourself adequate time for editing, you need to finish a working draft well before your deadline. (No, that doesn't mean finishing at noon for a 5 p.m. filing.) Calendaring an initial draft deadline a week before the actual deadline might help. To meet that early deadline, you may need to speed up your writing process. Some lawyers push deadlines because they suffer from writer's block—or perfectionism—when they sit down at the computer. They spend so much time trying to get started, or trying to get those early paragraphs just right, that the end of the document and the editing process suffer.

Instead, force yourself to get the initial draft down on paper quickly, without letting the voices in your head slow you down. Free yourself to write what writer Anne Lamott calls the "shitty first draft."¹ As Lamott says, "All good writers write them. This is how they end up with good second drafts and terrific third drafts."² (Unfortunately, lawyers may need four drafts to get to "terrific.") The reason we need to write shitty first drafts (or, as they are called in more polite company, "dump drafts") is that we learn by writing. Lamott notes "Very few writers really know what they are doing until they've done it."³ Sure, she's talking about fiction writing. But the same holds true for legal analysis. We think we have a good understanding of the law when we finish our research. And sometimes we're right.

¹ Anne Lamott, *Bird by Bird* 21 (1994).

² *Id.*

³ *Id.*

But often we really understand how all the pieces of the law fit together only after we've written about it. So if we force ourselves to write perfect first drafts, the process will be painfully slow as we learn and re-arrange and struggle with the material. Instead, write the first draft without aiming for perfection. Drop footnotes or margin comments to yourself as you go, noting thoughts about needed revisions. Then you can use what you've learned in the writing process to make your second draft good, your third draft better, and your fourth draft terrific.

Starting with an outline can also help speed up the writing process. As Wayne Schiess has written in *Austin Lawyer*:

A good outline, especially one that has complete sentences, will make the composing go faster. The more detailed the outline, the faster the composing will go. The better the outline, the less time you'll have to spend re-ordering. The earlier you start the outline, the more payoff you'll get from outlining.⁴

Outlining works because it forces you to grapple with the material before you start trying to write, so you write with a better understanding of what you're writing about. It can also help you overcome writer's block, because turning points on an outline into sentences and paragraphs is less intimidating than staring at a blinking cursor on a blank screen.

The second draft: Substantive revision

Once you have a working draft, you're ready to begin the editing process. Before you begin polishing sentences, you need to edit for substance. As with each stage of edits, this will probably take several passes through the document.

On your first pass through the document, make sure you included everything you meant to address. Remember, you rushed yourself on the first draft, so this is a good time to slow down and make sure you said what you had in mind. If you outlined, is every point on your outline included? Of course, you may have decided to omit some points, or combine others. But check to make sure you can actually find in the document every point you meant to include. Look at the roadmaps you wrote. If you identified three reasons in the roadmap, did you state three reasons in the argument? This is also a good time to check any document to which your document responds. Does your memo include everything your supervisor requested? Does your letter answer all your client's questions? Does your response address each of your opponent's points that merits a response?

Now that you're sure the document includes the points you wanted to make, take another pass to check your explanation of the law governing those points. If there's statutory language at issue, did you quote the statute? If the issue is governed by case law, is that case law adequately explained? Beware of plucking quotations from cases without context. The quotation tells the reader that a court wrote those words, but it doesn't

⁴ Wayne Schiess, *Write Better Faster*, *Austin Lawyer* 15 (Feb. 2009).

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