

## BEYOND THE FIRST DRAFT



# **Beyond** *the* **First Draft**

EDITING STRATEGIES FOR POWERFUL  
LEGAL WRITING

Second Edition

**Megan McAlpin**



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*To Jay, Jillian, and Charlotte*  
*Still and always*



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# Acknowledgments

## *to the* **Second Edition**

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# Acknowledgments

## *to the* **First Edition**

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# Introduction to the Second Edition

*We think of English as a fortress to be defended, but a better analogy is to think of English as a child. We love and nurture it into being, and once it gains gross motor skills, it starts going exactly where we don't want it to go: it heads right for the goddamned electrical sockets."*

—KORY STAMPER, *Word By Word: The Secret Life of Dictionaries*

Because language is diverse and evolving, any attempt, like the one in this book, to capture it is necessarily a snapshot of just one version at just one moment in time.

The strategies in this book are focused on editing formal written English. But formal written English is simply one version of the English language. It isn't the best version or the true version. It's just one version. In fact, though the strategies in this book focus on editing formal written English, the book itself is, perhaps ironically, written in informal English. When I wrote it, I decided that informal English was the best version of English for the particular purpose given the audience and the subject matter. In other words, grammar<sup>1</sup> can feel like an inaccessible topic, so I wanted the book to sound like I was talking to students. Informal written English was the best language for the job.

While I wanted the book to sound like I was talking to students, given that it's in writing, it can't quite accomplish that goal. After all, if we were to sit down and have a conversation about grammar, you would inevitably hear that I speak a dialect of English and it may or may not be the same dialect you speak.

A dialect is simply a version of a language that is spoken by a group of people. We all have a dialect, whether we recognize it or not. Different dialects have different vocabularies (linguists call these lexical differences), have different accents (accent is a much-simplified version of what linguists call phonolog-

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1. This book is really as much about spelling, punctuation, and usage as it is about grammar. So the use of the word grammar here is more about expedience than precision.

ical differences), and even have grammatical differences. Dialects vary across regions, social and ethnic groups, and age groups. In fact, you almost certainly speak more than one dialect of English and move in and out of those dialects depending on who you're talking to. (Linguists call this code switching.) And while this language variation is completely natural, we seem to be unable to see these differences for what they are—just differences—and instead judge some dialects as “correct” and others as “incorrect.”

But labeling language or even grammar as correct or incorrect completely ignores context and purpose and audience. So rather than thinking about whether our language or grammar is right or wrong, we should be thinking instead about what is right for the context and for our purpose and for the audience. The editing strategies in this book assume a particular context, purpose, and audience. It's a guide for helping law students and lawyers edit their legal writing and it mostly presumes that the audience is law trained and the context is formal. While many of the strategies may work well in other contexts, some probably don't. That doesn't make those editing strategies wrong. They are just wrong for the particular context, purpose, and audience.

This judgment about language and “proper English” gets played out not only around different dialects but also around the evolution of language. Certainly, we've all heard at least one person bemoan the decline of the English language and proper grammar. But just as language naturally varies amongst different groups of people, language must also evolve over time.

As technology and society advance, we need more language. The telephone was invented and we quickly adopted the shorthand *phone*. We then started to take our phones with us and Americans adopted the term *cell phone*, which we then shortened to *cell* or *phone*, and Brits adopted *mobile phone*, which they then shortened to *mobile*. And of course, what used to be the telephone became the *home phone* or *landline*. And what used to be a cell phone became a *smartphone* that was also a camera and so someone invented the word *selfie*.

Not only do we add to our vocabularies, but the meanings of words can change and usage can evolve. After the singular *thee* and *thou* fell out of fashion, we were left with *you*, which had up until that point been only a plural pronoun. Most English speakers never give a second thought to this change in the language, probably because this evolution occurred so very long ago.

However, for some reason, while we seem quite open to letting the spoken word evolve, we are much slower to change the written word, particularly in formal contexts. (I imagine that *thou* hung around in the written word for at least some time after people stopped using it when they spoke.) For example,



we've long used *they* as a gender-neutral, singular pronoun when we talk about generic nouns. It just makes sense. After all, English is missing a gender-neutral, singular personal pronoun. In recent years, that usage has evolved so that we now use the singular *they* not only with generic nouns but also where we don't know a person's gender or where we know that the person uses the singular *they* as their pronoun. But there is a disconnect between spoken English where we fluently use *they* as a singular pronoun and formal written English where we tie ourselves up in knots trying *not* to use *they* as a singular pronoun.

In the first edition of this book, I gave several options for avoiding the singular *they*. And, while I took my own advice in formal writing, I regularly used *they* as a singular pronoun every day, even in informal writing. And so, in this second edition of the book, I bring my advice in line with my practice and recommend using *they* as a singular pronoun, even in formal writing. It's time to stop tying ourselves in knots.

I'm excited to see how our language evolves next. In her book, *Word by Word: The Secret Life of Dictionaries*, Kory Stamper describes the evolution of language, saying, "Humanity sets up rules to govern English, but English rolls onward, a juggernaut crushing all in its path." So, while this edition of the book holds on to the distinction between *like* and *as*, I suspect the next version will do away with that distinction, which seems to be on its way out. And there are almost certainly other things that will change in the third edition and still more that will change in a fourth edition as the juggernaut that is the English language continues to evolve.

