

## **THE CASE FOR EFFECTIVE LEGAL WRITING**



# The Case for Effective Legal Writing

*Court Opinions, Commentary,  
and Exercises*

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## About the Authors

This book's authors are endlessly fascinated by lawyering and legal language. Between them, they spent more than 30 years in private practice and saw firsthand how legal writing impacts every aspect of the law. They've also spent more than a combined 40 years helping students grow into standout legal writers and lawyers. Their great joy has been to watch that growth and to play some role in nurturing it.

Diana J. Simon is Associate Clinical Professor of Law at the University of Arizona's James E. Rogers College of Law. She is author of *The (Not Too Serious) Grammar, Punctuation, and Style Guide to Legal Writing* (Carolina Academic Press 2022). Her articles have appeared or are forthcoming in the *Charleston Law Review*, *Duquesne Law Review*, *Legal Communication & Rhetoric: JALWD*, and elsewhere. She is Managing Editor of the *Journal of Appellate Practice and Process* and won the Global Legal Skills Award for scholarship on cross-cultural education in 2019. Before teaching full time, she practiced for 23 years, focusing on commercial litigation.

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# Preface

## Why devote yourself to legal writing?

In law school, you'll learn how to "write like a lawyer." We hope so. And we hope not. The phrase *legal writing* carries both import and baggage. For all its potential to foster positive change and embody our best ideals, legal writing has drawn scorn. When most people think of legal writing, they likely picture fine print (hiding trap doors), bloated legalese, dense walls of text with only occasional indents, and so on. Indeed, legal writing's reputation has suffered since our nation's founding. But exceptional legal writers have emerged along the way—writers admired for their lucidity. You can be one of them.

So let's get practical and talk about what legal writing means to you. What about your future, your career? Will it matter whether you impress readers? Let's give it some thought. Besides opposing attorneys assessing your arguments (and skill), when you write in the legal profession, your readers will be:

- potential employers considering whether to hire you;
- employers paying your salary and assessing your worth;
- clients paying you hundreds of dollars per hour to write;
- vulnerable parties depending on you for effective representation;
- constituencies or other public interest groups working toward a common goal;

- judicial clerks recommending how your case/issue should be decided; and
- judges deciding your case.

Important readers, indeed. You'll want their good opinion. You'll want them to praise and value your work. You'll want them to be persuaded and find you credible. In short, you'll want them to feel a bond of goodwill with you. That's a bond that forms if, and only if, you have taken pains to do every part of your job—writing included—well.

Writing well takes time. It's not easy. But you can do it with dedication, and it's worth the effort. Every time you put fingers to keypad, think about a person on the above list. Imagine sitting next to them while they're reading your document, processing what's on your page. Let yourself feel that sense of shaky optimism. If you do that—if you constantly think about your reader while you write—you'll already be ahead of many practicing lawyers.

## Why a casebook approach?

Among the many topics covered in your legal-writing courses will be style, grammar, and punctuation. And you may wonder why you're learning techniques that you covered in grade school. The reasons are simple.

The rules of writing are challenging and require lifelong attention. Those rules are as multifold and nuanced as the legal rules you'll learn in other courses. Besides that, lawyers, even experienced lawyers, often struggle with their writing and ignore the advice of legal-writing experts. Some of those lawyers have (as you'll soon see) suffered courts' wrath because of it. Courts and clients expend substantial resources resolving issues caused or clouded by thoughtless writing.

So the purpose of this casebook is two-fold: (1) to guide and instruct you on getting it right in your own writing; and (2) to demonstrate that writing style and mechanics should not be afterthoughts. We want you to see that style and mechanics are essential to effective legal writing and effective lawyering. Failing to master these skills can have legal or professional consequences.

Our choice of a casebook method for teaching you these skills is unusual—unique, even. We know of no other casebook on legal writing. But we see value in changing that. Rather than listing a set of writing techniques for you to follow without context, we're giving you examples of court cases that hinged, in

whole or in part, on the quality of a legal writer's work product. In other words, this book will connect technique to real-world consequences.

Above all, we hope and believe that this book will prompt rich and useful conversations in and out of the classroom. And if we allow ourselves a fanciful wish, we hope that experiencing this material in a casebook format, with the attendant drama of actual cases, will spark some readers to become true legal-writing fanatics (like us).

## What should you know about the selected cases?

We've tried to select interesting cases. And we've tried our best to avoid areas of law that pose extra layers of complexity, such as tax law or secured transactions. We've also tried to avoid cases that address especially sensitive issues, such as sexual assault or other acts of violence and cruelty.

We've tried to use recent cases, too. Almost all our principal cases were decided after 2000, and many, if not most, are newer than 2010. A fair number are from the 2020s. Our aim was to capture the current state of the law and the profession. But you'll spot a few older cases.

We have heavily edited the cases for succinctness and readability. Courts and authors often augment citations with parenthetical notes acknowledging that they've "cleaned up" the quoted passage. Well, we've done *lots* of cleaning. Among other things, we've often altered or removed footnotes, citations, bracketed notes, parentheses, italics, and multi-level quotation marks. We've also unbolded courts' headings to avoid confusion with this book's section and subsection headings. In just a few places, we've made other minor alterations for flow, consistency, or clarity.

We also didn't want our principal cases to be burdensome. Thus, what you'll see here is heavily truncated. We have a chapter on the ills of verbosity, and we've tried to practice what we've preached.

A final but important point: we've avoided cases in which the offending legal writer was a *pro se* litigant. Learning the fate of untrained lay writers would muddy our message and do little to inspire law students to dedicate themselves to their craft.

And with that, welcome to a textbook that brings the courthouse to the legal-writing classroom.





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