

# Why Writing Matters

# 1

*For I am a bear of very little brain and long words bother me.*

—A. A. Milne, *Winnie the Pooh*

NOBODY UNDERSTANDS US. We lawyers are the topic of late-night jokes, the species most frequently compared to sharks, the supplicants least likely to pass through the pearly gates. We make too much money. We bill for breathing. And we dress like clones.

But the bigger problem, or perhaps the root of our problem, is that nobody can *understand* us. We speak in code or, as the columnist Dave Barry has written, in Martian. Our writing sounds pompous and superior. While the civilian world tweets away, we run on and on in circular marathons of words. We write documents, not papers. And those documents are not just baffling. They are ugly too.

Lawyers have always lived and died through their words. But today, those words are almost always written. Virtually everything we do—our negotiations, our legal arguments, our advice to clients, even our exchanges with colleagues—we now do in writing. Yet we often belittle the skill required to write masterfully. How often have we suggested that something be “*reduced* to writing?” But now that all lawyers are essentially in the writing business, the ability to write clearly and efficiently has become a survival skill. You cannot be an effective lawyer today if you cannot write.

Why is legal writing so important? Because legal writing drives deals, molds thought, sets rules, and governs relationships. Because once legal thought is *promoted* to writing, it becomes a permanent guide and reference. Because our writing

represents both our clients and our firm. And because our writing reflects on each of us as an advocate and a person. Our writing defines who we are.

Writing skills are particularly essential for young lawyers. Young lawyers' careers often rise—or fall—based on their ability to write. Therefore, writing is any young lawyer's best tool for advocating for his or her own skills. Writing is the way young lawyers build their reputations and begin to create their own story as sharp legal thinkers and promising advocates.

Our poor writing costs us dearly in both time and results. Indeed, it often seems contagious. New lawyers agonize over their writing. Senior lawyers waste years of their lives revising poorly written work from those junior attorneys. Clients struggle to decode their own lawyers' missives. Meanwhile, judges turn gray deciphering convoluted briefs, while lawyers struggle to make sense of dense judicial opinions.

And we haven't even mentioned the plight of the public. The people of a nation founded on the rule of law are entitled to understand the laws and rules that govern their society. Poor legal writing leads to poor decision making. So the least we can do for a nation that often questions the value of lawyers is to try to speak in a language that adds value—a language that makes legal thought accessible and that regular folks can understand. Open, readable language promotes justice and order.

We lawyers are not alone in our writing woes. The plague of poor writing infects the business world, as well. The recent National Commission on Writing reports that American businesses spend as much as \$3.1 billion annually to address writing problems in the workforce.

In the legal profession—where anxiety seems to run in our blood—we are particularly anxious about writing. But when lawyers fret about legal writing to me, they often focus only on the obvious concerns: the typographical errors, the occasional grammatical mistake, or the failure to proofread. But the real factors that drive excellence in legal writing are much more substantive.

What is excellent legal writing? Strong legal writing speaks a modern language—plain English. It respects our readers' time and intelligence by being concise but thorough. It takes complex ideas and makes them clear. It leads from the top. It builds on the mind's innate love of pattern and it tells our readers what to do next. The best legal writing earns both the readers' trust and the right to the readers' time. Above all, strong writing leads to easy reading.

Today, technology and the emergence of the Internet challenge us to find new ways to keep legal writing relevant and meaningful. Information now moves instantaneously. E-mail has become the engine for business communication, and PowerPoint has emerged as the leading medium for

presenting information. But while information on the Internet has become faster, flashier and more visual, legal writing often remains stuck on paper—even though that paper may be filed electronically—and mired in its ancient forms.

It is long past time for change. The same technologies that challenge our old ways of writing also provide the opportunity to bring legal writing into the modern age. Technology should make it possible to abolish cumbersome citation formats, to deep link to relevant information, and to redesign legal documents in new mediums that have the functionality of web pages and read like letters, rather than term papers.

But we must do more than simply adapt our traditional forms to take advantage of modern technology. The modern lawyer must also be fluent in modern mediums, such as newsletters, blogs, e-mail and PowerPoint. Fortunately, the techniques that make for powerful writing apply to all our forms of communication, from the lowly e-mail, to a casual blog or newsletter, to a weighty appellate brief.

It's a fast, loud world—a world in which virtually everyone has a voice in the collective conversation that is the Internet. Our fancy law degrees are no longer enough to make people listen to us, so we may no longer hide behind time-worn conventions of legal writing. We lawyers will forfeit our voice in the collective conversation—and much of our influence—if we don't learn to communicate more clearly.

Because English is the language of the Internet and international business, we English speakers are uniquely positioned to flourish in our Information Age if we can make ourselves heard through the noise. But we will be heard only if we speak clearly and with confidence, authority and integrity. Today more than ever, our times challenge us to be lawyerly—to play a thoughtful, useful role in our changing world and to be advocates for our clients and our causes, even when a cause may be as mundane as writing a clean, crisp motion or drafting an easily understood contract.

And if we can learn to communicate clearly, people may begin to understand us. If they understand us, they may begin to trust us more and, perhaps, even listen to and learn from what we say. We will have joined the conversation.

After all, communication, at its best, is about community.