

WHAT TO DO WHEN A STUDENT SAYS “MY BOSS WON’T LET ME WRITE LIKE THAT”?

BY WAYNE SCHIESS

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The Question

I’ve taught a course called Writing for Litigation for five years. It covers the most basic documents used in litigation practice: letters, motions, and trial briefs. Students learn what those documents look like and how they are used, and they also get detailed writing advice. I spend a fair amount of time on words, sentences, and paragraphs, not to mention document design and format.

I also preach clarity, brevity, and simplicity in the course. In fact, I tell students that when they see something in a form or a model document that they think is odd, archaic, or unnecessarily legalistic, they should question it: look it up, do some research, ask around. If they conclude that it doesn’t have to be that way, I tell them, then change it. Students seem to appreciate this advice, and many take it to heart.

Still, every time I teach the course, I get at least one student who says something like this: “I like your advice, professor, but at the law office where I’m working this summer, my supervisor doesn’t want me to write like that. Either I’m told to rewrite it the old way or my supervisor just changes it back. What should I do?”

For any legal writing instructor who emphasizes a modern approach to writing style, it’s probably a common question. I get similar questions from new attorneys, too. For example, here’s a similar concern expressed by a former student, who sent me this question in an e-mail message:

“I work for a very small firm in southern California. The partner I work for is frequently overbearing and even more frequently wrong. Virtually every motion, memorandum, brief, or other document I draft comes back with incorrect and antiquated ‘corrections.’ After working here for

a little more than six months, I decided to draft documents in the style of the partner I work for, even though I knew much of what I was writing was grammatically incorrect or stylistically antiquated. Now that I have taken some writing courses, I have come back with a new desire to write better. Unfortunately, the partner I work for is upset with my new-fangled writing. I have shown him modern books, but he is still set in his ways. Aside from quitting, do you have any recommendations?”

As another example, a participant in one of my seminars sent me this question: “Why are so many attorneys wedded to the old ways of writing motions? How can I make them (supervising attorneys, for example) not insist on using ‘COMES NOW’ and ‘this its motion?’”

And I’m not the only one getting questions like this. In *Plain English for Lawyers*, Richard Wydick says that “[t]oo many law students report back from their first jobs that the clear, simple style they were urged to use in school is not acceptable to the older lawyers for whom they work.”¹

So what do you say to these students and new attorneys?

A Possible Answer

At first, I took the concerns lightly and suggested to my students that they ought to follow the advice of the writing expert: me. In my job—safely insulated from the realities of law practice—I don’t have to answer to a boss for my writing techniques the way a junior attorney does. So it was all too easy for me to say “Do it the way I told you, of course.”

But that answer didn’t seem to satisfy them, and I noticed. I began to see that their concerns were not merely about words and sentences and writing style, but about keeping their jobs and pleasing their bosses. Their questions were really about survival.

So I began to think that the right advice was to adopt the writing style that pleased the boss. In fact, at least one writing teacher has recommended that new lawyers conform to their boss’s outdated expectations for legal writing. In his humorous essay, *Pursuant to Partners’ Directive, Lawyer Learns*

¹ Richard C. Wydick, *Plain English for Lawyers* 4 (4th ed., Carolina Academic Press 1998).

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to *obfuscate*, Ken Bresler says that he approached his old legal writing teacher with a “my boss wants it the old way” dilemma. His teacher responded, “I teach legal writing. I don’t run an outplacement service. Write how they want you to write.”²

A Better Answer

But I’m now persuaded that neither of the extremes is helpful. I can’t in good conscience recommend that new lawyers blindly follow archaic models that reflect poor writing style. Neither can I recommend that new lawyers risk their jobs by insisting on a modern style that antagonizes the boss. So I’ve developed a stock, three-part answer that takes a middle ground. This is what I tell my students.

1. Don’t sacrifice your job or your work relationship over a point of writing.

The plain-English movement and the modern trends in legal writing are aimed at making legal writing clearer, easier to read, and precise. Those are important goals. But even though as a legal writing teacher it pains me to say this, *they are not important enough to risk a job over*. And they aren’t important enough to justify antagonizing the boss. That relationship is more important than document format or word choice. So I tell students and new attorneys not to take a stand if they think it will put their job or work relationship at risk.

2. When you have control over the document, write it the way you want.

I always tell students in my advanced classes the following story: When I practiced in a large law firm’s bankruptcy department, I was usually at the mercy of the attorney I worked for. The documents we filed—even if written by me—looked the way my boss wanted them to look and used his language.

But once my boss gave me a small bankruptcy case and told me to handle it on my own. I tried new formats for the pleadings, new language for the introductions, and a more relaxed tone in the text. (By the way, nothing imploded.) I used that case to experiment with newer, plainer legal

writing. It was great, and I didn’t upset my boss at all.

Sometimes new attorneys will be asked to handle a case or matter on their own. So I tell my students that when they’re in charge, they should write it the way they want: they’ll learn, and they won’t risk offending the boss.

3. Take a stand—occasionally—but have backup.

I still want to see legal writing improve in the practicing bar, and I still want to teach students about clarity, simplicity, and plain language. So I tell students that they can take a stand for modern legal writing style, but only when it won’t offend the boss.

If they have a strong and positive relationship with the boss, then new attorneys can sometimes persuade bosses that the modern way is better. Sometimes the boss will listen. But I always point out that the boss is not likely to listen if the junior attorney is the only source. A novice lawyer’s opinions, thoughts, and feelings about legal writing aren’t convincing enough.

In short, I tell my students, don’t take a stand without backup.

New attorneys should never say that the way they write is superior because it looks better or sounds better or feels better. They need to point to a source, cite some authority, and tell the boss what the experts think. That way, when they decide to take a stand, their own credibility is not the only thing supporting them. Recognized experts on legal writing support their point of view, too.

For example, if new attorneys need backup on a point of grammar, punctuation, usage, or style, they can rely on one of the following excellent legal style manuals. Please note that I am distinguishing here between legal style *guides*, of which there are many, and legal style *manuals*, of which there are only a few. These are comprehensive references on points of grammar, punctuation, usage, and style in legal writing.

- Bryan A. Garner, *The Redbook: A Manual on Legal Style* (West Group 2002)
- Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* (Aspen Law & Business 2001)
- Mary Barnard Ray & Jill J. Ramsfield, *Legal Writing: Getting It Right and Getting It Written* (3d ed., West Group 2000)

² Ken Bresler, *Pursuant to Partners’ Directive, Lawyer Learns to Obfuscate*, 3 Perspectives: Teaching Legal Res. & Writing 18 (1994), originally published in Chi. Daily L. Bull. (Aug. 16, 1990), at 2.

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If they're in litigation practice, new attorneys might rely on the following sources. Of course, there are others, but these books are particularly focused in writing litigation documents in a contemporary style.

- Irwin Alterman, *Plain and Accurate Style in Court Papers* (ALI-ABA 1987)
- Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (Oxford U. Press 1999)
- Steven D. Stark, *Writing to Win: The Legal Writer: The Complete Guide to Writing Strategies That Will Make Your Case—And Win It* (Main Street Books 1999)

Plus, there are many other good sources; this is only a short sampling of my favorites. If you don't care for these sources, there's nothing wrong with doing a little research to find support for writing in a contemporary style.

The Result

This three-part advice to students has gone over well. I occasionally get phone calls and e-mail messages asking for a good source. That usually means someone is looking for backup. I sometimes get a report that someone's boss has come around. It's rare, but it happens.

And I'm happy to say that no former students have called to tell me they got fired because of their "modern" writing.

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