

Some writing tips

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Introduction

Barriers to self-development:

- Inertia. “I write the way I write.”
- False comfort / complacency. “No one has ever criticized my writing and look where I am today. My writing works for me.”
- Ego and status. “I’m an experienced and successful judge, lawyer, *etc.*, so my writing is just fine.” “Complicated prose shows how difficult the topic is and how smart I am.”
- Personhood. “Writing is an aspect of my personality and identity so leave me alone.”
- Workload. “Changing the way I write is hard work. I’ve already got too much to do.”
- Error and delusion. “Complex topics need complex writing.”

Introduction

Some hard truths:

- **How an idea is communicated affects how it is received, understood and accepted.**
- **The over-populated, mediocre middle: self-satisfied, pedestrian writers.**
- **Bad writing obscures great ideas, reduces citation of your work, and lowers the writer's reputation.**
- **Unlike most skills, this one can be developed quickly through lots of practice. Even if you are junior in your field, you can quickly rise to the top in this all-important area.**
- **By and large, lawyers and judges are mediocre writers: addicted to jargon, prolixity, lawyerisms, repetition, unnecessary detail and bulky constructions, with grave implications for access to justice.**

The golden rule of writing

- **Always write for your audience**
 - ▶ **It is all about your audience**
 - ▶ **It is never about you**
- **Writing can go terribly wrong when written for oneself or the wrong audience**

The audience: your objectives

- **Meet your audience's needs: educate, instill confidence, make it easy, inspire and empower the audience to adopt and spread your message.**
- **Don't cause your audience to wrestle with your writing and question it. That's "anti-persuasion".**
- **Rather, cause your audience to soak up your message effortlessly, with total trust and confidence, spurring it to act the way you want.**

The judicial audience

- **A special audience with special needs.**
- **This audience's traits: very critical, doesn't always know which side to trust, knows the law but not your facts, burdened by overwork (and some by old age and bad health).**
- **Your job: make it effortless.**

How to meet the objectives

- **Only one style in English meets these objectives and needs: at the sentence level, keep it clear, direct and brief.**

Summary: the way forward

- **At the document level, one main principle: point first or context before detail.**
- **At the sentence level, three practical tips to achieve clear, direct and brief writing.**
- **Writing is a series of judgment calls: sometimes departing from these two ideas for good reason is ok.**
- **Let's now develop these two ideas.**

Point first writing / context before detail

Two ideas:

- (1) Say what you are going to do, then do it. Make a promise. Keep it. This is often called “point first writing”.**
- (2) Provide necessary context early, at the right time.**

Should be done throughout the document, not just at the beginning.

Point first writing / context before detail

- **Why does “point first writing” work?**
- **Readers absorb information best if they understand its significance as soon as they see it, not afterwards.**
- **Readers should never ask, “Why are you telling me this?”**

Point first writing / context before detail

An experiment. Suppose I just set out these letters without any context or “point first”. What’s your reaction?

“A E I M Q U Y”

Point first writing / context before detail

Now, try again, this time with the introductory context or “point first”:

“I’m going to give you every fourth letter of the alphabet: A E I M Q U Y”

Point first writing / context before detail

What just happened?

- **Without point first or context before detail, you disengaged after a couple of letters and asked yourself, “What’s this person on about? What’s the pattern?”**
- **You wrestled with the “prose”, almost as an adversary. You asked, “Why are you telling me this?” This is “anti-persuasion”.**
- **With point first or context before detail, you change into a verifier and an ally, not an adversary. As you encountered each letter, you thought, “Yup, that fits the announced pattern.”**

Point first writing / context before detail

Headings:

- **Consider using a heading at the start of each section of the draft. A heading is like an orienting sign at the entrance to a room that helps first-time visitors.**
- **Many headings, and even subheadings and sub-subheadings too? That's like too posting many signs: readers might get confused and distracted, disengaging from the message as they try to keep all the signage in mind. Some might start to wrestle with it (anti-persuasion).**
- **In shorter drafts, headings can be confusing and distracting and ruin the flow, making the draft choppy. Strong opening sentences as you introduce new subtopics can work equally well.**

Clear, direct and brief

Constructing clear, direct and brief sentences is neither fun nor exciting... For that reason, many writing instructors minimize instruction on that and concentrate on more exciting topics.

But in writing, individual sentences matter most of all.

- **There are no gimmicks or shortcuts here. The key is to know how to construct a clear, direct and brief sentence, and make it second-nature.**
- **I offer just three ideas.**
- **Have them front of mind and you can speed draft a document that meets more of your reader's needs.**

The three rules

- 1. Eliminate wimpy words.**
- 2. Use one plain, good word if you can.**
- 3. Concentrate on connections.**

The three rules

Writing is always a judgment call

- There are circumstances where for good reason you might deviate from these three rules. For example, when you need more precision, emotional impact (using advanced writing techniques discussed later) and better connections (also discussed later).
- Sometimes brevity must yield to clarity—never sacrifice accuracy.
- But make these three rules your default style.

1. Eliminate wimpy words

- **The biggest wimpy word of all: the verb “to be”.**
- **Other examples of wimps: to make (“make a decision”), to arrive at (“arrived at a decision”), to have (“have a thought”), to receive (“receive an idea”), to bring (“bring an end to..”), to get (“get an idea that”).**

1. Eliminate wimpy words

- **As often as reasonable, get rid of wimpy verbs – replace them with stronger, more meaningful, communicative verbs, verbs with flavour and nuance.**
- **Flavours and nuances can seep into the brain, take root and germinate. This can help to persuade at the level of emotion.**
- **This rule eliminates passive voice and nominalizations.**
- **The rule applies to nouns too – but we'll concentrate on verbs.**

1. Eliminate wimpy words

- **Let's concentrate on the verb "to be"**
- **There's a whole family: am, are, is, was, were, be, being, been, becoming, became**

1. Eliminate wimpy words

Bad version:

“It **was said by the Supreme Court that the law must **be** changed.”**

Good version:

“The Supreme Court said that Parliament must change the law.”

- 13 words vs. 10 words (23% surplusage).
- Bad version: who does the saying (the Supreme Court) is slipped in as an afterthought; indirectness, evasion and doubt; a lowering of impact. This “passive voice” is “anti-persuasion”.
- Good version: active, crisp, confident and candid.

1. Eliminate wimpy words

Wimps, like the verb “to be”, can suck every bit of life from sentences.

Compare “You will **be made to **be** moved by this baseball bat” vs. “This baseball bat will make you move!”**

1. Eliminate wimpy words

- “Smith’s contention **is** that those shares **are** worth \$50 million”
- “Smith values the shares at \$50 million”

(nominalizations – turning verbs into nouns)

1. Eliminate wimpy words

Watch “there is” and “this is” constructions...

- “There **is** an appeal before the Court that may **make** a change to the law.”
- “A pending appeal may change the law.”
- Second version: 47% saving of words, sharper, more confident

After only the first rule: Taking stock

- **I've hardly asked you to do anything; it's easy to keep this rule in mind and apply it.**
- **Enormous gains in brevity: potentially pages of savings.**
- **Clearer, more direct and crisper: builds the reader's confidence, more persuasive.**

2. Use one plain, good word if you can

Write the way you would speak to a neighbour or a family member, especially one that is a little impatient.

For example, compare:

“X underwent three breath tests by means of a breath testing device”

- 12 words
- evasive, indirect and jarring

VS.

“X took three breath tests”

- 5 words (-58%)
- crisp and direct

2. Use one plain, good word if you can

Avoid useless, imprecise, legalistic phrases:

- Indicate = said, declared, testified (be precise)
- In the normal course of events = normally
- On an annual basis = annually
- As of this date in time = now
- Commenced = started, began
- A large number of = many
- In addition to the above = as well
- In the event that = if
- With respect to, in regard(s) to, with regard to = regarding, concerning, about
- Due to, due to the fact that = because
- As per your request = as you requested
- Adjacent to = next to
- In excess of = more than
- prior to = before
- pursuant to = under

2. Use one plain, good word if you can

Cut throat-clearing phrases, redundancy and meaningless modifiers

Examples (“bad” vs. “good”):

- **“It is important to note that the plaintiff lived in Toronto” vs. “The plaintiff lived in Toronto”**
- **“In this world of today, official government red tape is seriously destroying initiative among individual business executives” vs. “Today, government red tape destroys initiative among business executives”**
- **“Most students generally find some kind of summer work” vs. “70% of students find summer work”**

2. Use one plain, good word if you can

- **“It is almost certainly the case that, for the most part, totalitarian systems cannot allow a society to settle into what we would perceive to be stable modes of behaviour...” vs. “Totalitarian systems cannot allow a society to settle into stable behaviour or stable relationships”**
- **“There is no reason not to believe that engineering malfunctions in nuclear energy systems cannot always be anticipated” vs. “We can assume that malfunctions in nuclear energy systems will surprise us”**
- **“Energy used to power our industries and homes will in the years to come be increasingly expensive in terms of dollars and cents” vs. “Energy will cost more”**

2. Use one plain, good word if you can

The problem of self-commentary:

- **Examples: “Having considered the matter carefully, I conclude...” or “While I am not submitting that... I am submitting that...” or “In my view...”**
- **You are irrelevant. Only your message is relevant. Remove yourself and your credibility from the message. Let the message speak for itself.**

2. Use one plain, good word if you can

A warning sign: If your sentence begins with “In other words...”, “Said another way...” or “In short”, your earlier sentence(s) failed to do the job

- You are confessing that your first sentence didn't effectively and completely communicate the idea. This hurts your credibility with the reader.**
- Taking a second or third run at your idea is inefficient.**
- By offering multiple expressions of your idea, you might be creating ambiguity and confusion in the reader's mind.**

2. Use one plain, good word if you can

Concentrate on strong verbs and nouns, delete most adjectives and adverbs

- **“She was very, very angry” vs. “She was enraged”**
- **“This is quite puzzling” vs. “This is baffling”**
- **“The witness intentionally testified untruthfully about the cargo” vs. “The witness lied about the cargo”**
- **“Defendant’s sales agents maliciously and intentionally took advantage of people with little money and limited intelligence” vs. “Defendant’s sales agents preyed on the poor and the ignorant”**

Both rules together: examples

Although Smith Hall is regularly populated by students, close study of the building as an architectural work is seldom undertaken by them.

Better:

The students living in Smith Hall ignore its architecture.

Exercises

It was decided by them to submit their resignations as students on account of the fact that it was necessary for them to help support their family.

Better:

**They decided to drop out of school to support their family.
They left school to support their family.**

Both rules together: examples

By virtue of servicing the bank account, the bank was required to monitor activity in the account held by Smith. It was this that led the bank to uncover a number of clues that indicated that its customer was engaging in fraud.

Better:

The bank discovered Smith's fraud while monitoring his account, a task it must do.

Both rules together: examples

It is our opinion that Mary Brown, always being full of effort and with her mind always on the job when she is playing ice hockey, would be a very, very good lawyer in court if she shows those same qualities there.

Better:

If Mary Brown, a hockey player with focus and tenacity, brings those qualities to the courtroom, she will be the class of the Bar.

The first two rules: taking stock

- **Big gains in clarity, directness and brevity.**
- **Significantly more persuasive effect.**
- **Meets all the needs of the judicial audience.**

3. Concentrate on connections

- For “sentence + sentence,” you want “clarity + clarity.”
- To make “clarity + clarity,” sentences must be internally clear and the “+” element must be clear.
- Connections must be made within sentences and between sentences.

3. Concentrate on connections

Build clear brief and direct sentences. Then connect them.

- **Keep subjects and verbs right together. This creates a “strong sentence core.”**
- **Don’t challenge your audience with overly ambitious sentences. Divide information into bite-sized, connected chunks and then arrange the chunks logically.**
- **Glue sentences together. The reader’s journey from sentence to sentence should be as smooth as passing the baton in the 4x100 relay race.**

The following slides give examples to illustrate these ideas.

3. Concentrate on connections

Strong sentence core: keep subjects and verbs right next to each other.

Bad:

The panel, after careful consideration of all the evidence presented over three days of hearings, **decided** that the defendant breached the contract.

Good:

After carefully considering three days of evidence, **the panel decided** that the defendant breached the contract.

3. Concentrate on connections

Overly ambitious sentences: chunk and rearrange.

Bad:

The plaintiff, John Smith, having sought since July 2024 to recover losses for Acme's misrepresentations through its salesperson, Mary Brown, incurred in January of that year, sued Acme Co. for damages for breach of contract and also sued Mary Brown and Mary's employer, Acme, for whom it was vicariously liable, for damages for negligent misrepresentation.

Better:

Mary Brown works for Acme Co. In January 2024, she said certain things to John Smith. Relying on what Mary said, John contracted with Acme Co. But Mary was wrong and caused damage to John. In July 2024, John sued:

- Mary and Acme for damages for negligent misrepresentation; and
- Acme for damages for breach of contract and liability as Mary's employer.

3. Concentrate on connections

Create literal and conceptual connections between sentences:

- **Use words that “glue.” Transitional words: “for example”, “therefore”, “however”, “on the other hand”, “further”, “moreover”, “thus”, “consequently”, “accordingly.”**
- **Repeat the exact words, concepts and word structures used earlier.**
- **Sometimes contrasting words, concepts and word structures can create a connection.**
- **Rhetorical questions are connectors: they can summarize succinctly a problem developed in earlier sentences and then connect the problem to the solution.**

3. Concentrate on connections

Examples:

Connections can be made by building on and repeating a concept, here the metaphor of travelling down a road.

“In short, although in some cases specific text might take us **far**, it does not necessarily take us **all the way down the road** to the **final destination**. But often it can supply essential **guardrails and signposts guiding** our way and **keeping us on track**.”

([Canada v. Boloh](#), 2023 FCA 120 at para. 27)

3. Concentrate on connections

Repetition of words and concepts. In this example, literal and conceptual repetition is shown by using common colours.

“The Board has an important mandate. Given the importance of that mandate, the Board is dedicated and enthusiastic about pursuing it. That’s worthy of praise. But the Board must temper its dedication and enthusiasm with a firm and unwavering obedience to legality and the rule of law. Like all administrative decision-makers, the Board must stay within the constraints imposed by the Constitution, its governing statute (the Patent Act, interpreted reasonably in the administrative law sense), and the jurisprudence under each.”

Note the highlighted portion: a connection by contrast.

(Galderma Canada Inc. v. Canada (Attorney General), 2024 FCA 208 at para. 19)

3. Concentrate on connections

Literal and conceptual repetition is shown by using common colours:

“Regulations, municipal by-laws, orders in council, administrative rules and administrative rulings on the merits *appear* to be **different** from each other but only if we fasten onto **differences** in **form**: each has its **own, distinct, formal label** and each may have different, **formal** prerequisites for enactment. But in administrative law, in developing our **methodologies**, too often we have fastened onto **differences** in **form**. We have developed **different** rules for matters that, in their **real essence and true nature**, are **substantially the same**. The result? Unnecessary **complexity, confusion and incoherence**.

“*Vavilov* says this judicial fastening onto **differences in form** must stop. **Complexity, confusion and incoherence** must be replaced with simplicity, clarity and coherence: *Vavilov*, at paragraphs **7 and 10**. These are furthered if we use the same **methodology**—the **methodology** in *Vavilov*—to review matters that, in their **real essence and true nature**, are **substantially the same**.”

(Note the highlighted portion: a connection by contrast and repetitive structure—a triplet of words on either side of “must be replaced”. Also note the rhetorical question near the end of the first paragraph, which connects what is said right before it and what is said right after it)

(*Innovative Medicines Canada v. Canada (Attorney General)*, 2022 FCA 210 at paras. 35-36)

3. Concentrate on connections

Literal and conceptual connections shown by common colours:

“The Supreme Court’s recent, dual approval of the *Big M* approach has brought us more doctrinal **stability** under the Charter, at least in the area of civil cases. This is welcome. **Stability** furthers the separation of powers between the judiciary and other branches of government: it keeps the judiciary in a **predictable**, appropriate lane. **Stability** brings **us** certainty, **predictability**, and freedom: **it gives us consistent jurisprudence about what governments can and cannot do and about what they can be required to do**. **Stability** bolsters the rule of law and increases confidence in the legal system. **We** deserve to be governed by **lasting legal doctrine** carefully shaped and sculpted over the years by many—not by the personal diktat of whoever happens to sit in a particular judicial chair at a particular moment of time.”

Note the highlighted portion: connection by contrasting concepts, with the hyphen separating the two.

([Canada v. Boloh](#), 2023 FCA 120 at para. 24)

3. Concentrate on connections

- For much more on connections, see D. Stratas, [Some thoughts on Legal Writing and Written Advocacy](#) (on SSRN.com). There is a basic discussion at first and then a more advanced discussion later.
- Strategically made connections can plant ideas at the level of the subconscious and further the message.

All three rules working together

Bad:

It is important to note that it was determined by the panel, after careful consideration of all the evidence that was presented over three days of hearings, that the shares were worth \$50 million and therefore the plaintiff should be awarded damages in the amount of \$50 million.

Better:

After hearing evidence over three days, the panel awarded the plaintiff the value of the shares: \$50 million.

Wimpy verbs and passive voice gone. Plain words used. Overly ambitious sentence eliminated. Ideas in the sentences/phrases are logical and connected. 62.5% word reduction.

Quick self-editing checklist

The three rules are easy enough to remember. But here is a practical checklist to catch common problems:

- **Ctrl+F weak verbs (is/are/was/were/being/been/there is/this is) — replace wherever possible**
- **Use one plain, good word or phrase instead of legalese, bulky phrases, throat-clearing, or redundancy?**
- **Read it aloud — would an impatient neighbour or family member understand?**
- **Subjects and verbs right next to each other? (strong sentence core)**
- **Sentences chunked into single ideas and properly glued? (transitions + repeated key terms)**

Advanced techniques

Techniques that stick ideas to the reader's brain without using clumsy things like CAPS, **bold**, underline, or *italics*.

Drawn from the ancient discipline called “rhetoric”, these techniques can help your ideas seep into the reader's brain—sometimes unknowingly—and stay there.

“Unknowingly” matters: persuasion works best when it is invisible.

But don't over-spice the soup! Use these techniques sparingly.

Advanced techniques

Some of the techniques:

- Using prime real estate
- Skilful use of detail
- Understatement
- Special punctuation
- Lists
- Lists and point-first combined
- Artful modifiers
- Varying sentence lengths
- Asking questions
- Aliteration; assonance
- Repetition of words/structures
- Structures leading to climax
- Abrupt transitions; ironic twists
- The tricolon
- Extra plain speaking
- Metaphors and analogies
- Mental images
- Quote snippets
- Rhythm, cadence and beat
- Advanced connections

Advanced techniques

This presentation covers only the basics of clear, direct and brief writing.

For a full explanation, discussion and examples of these advanced techniques, see the full presentation, [Some Thoughts on Legal Writing and Written Advocacy](#), (on SSRN.com).

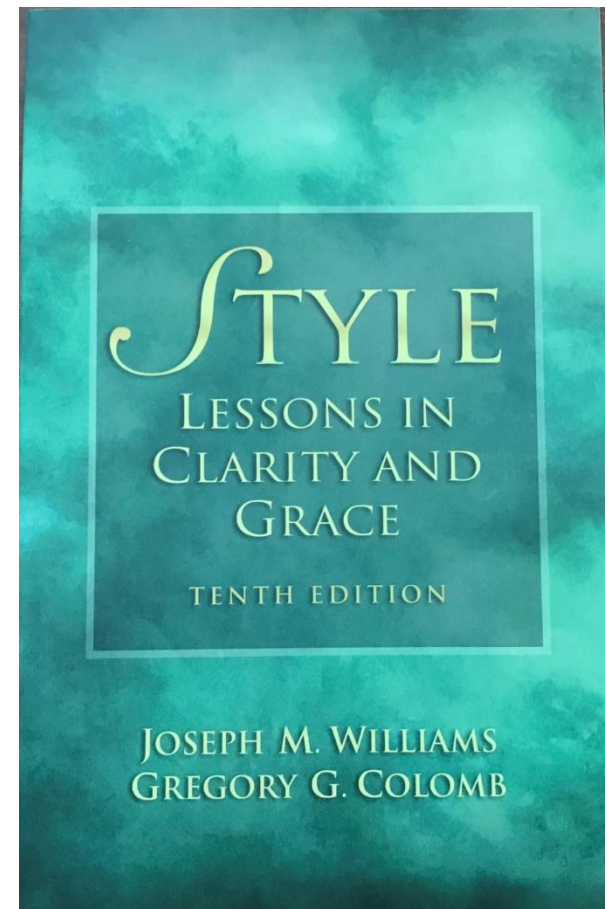
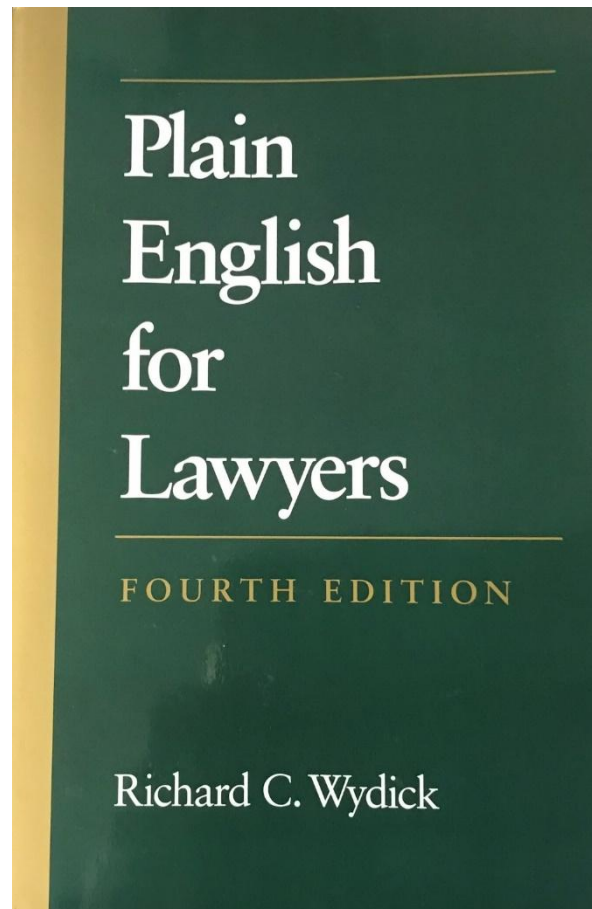
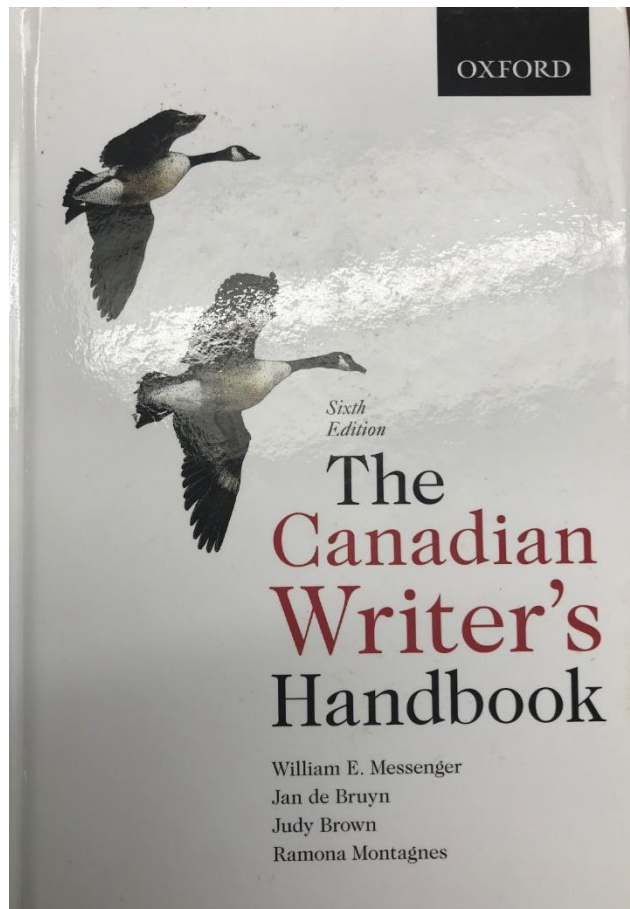
Further study

Some of my other instructional pieces about written advocacy:

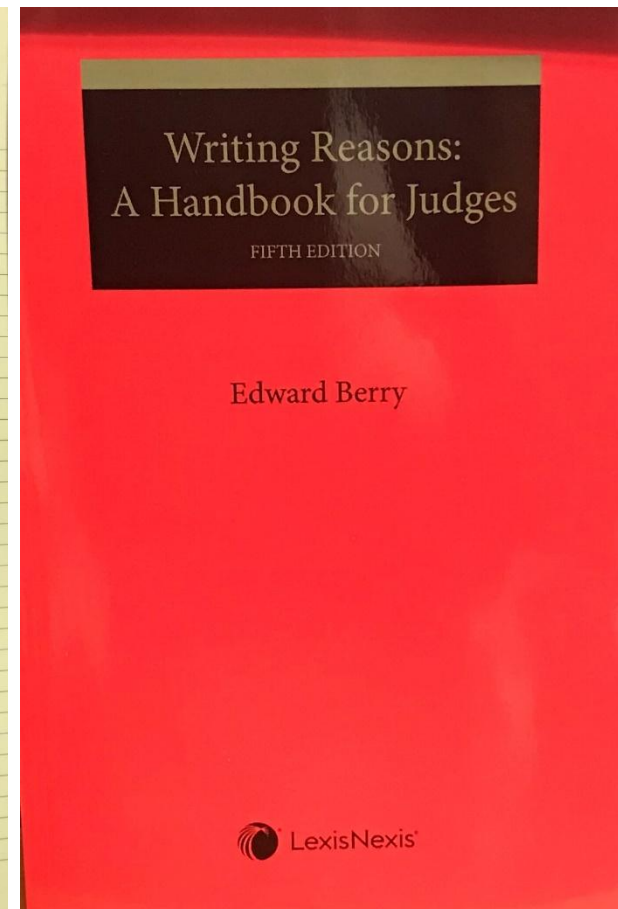
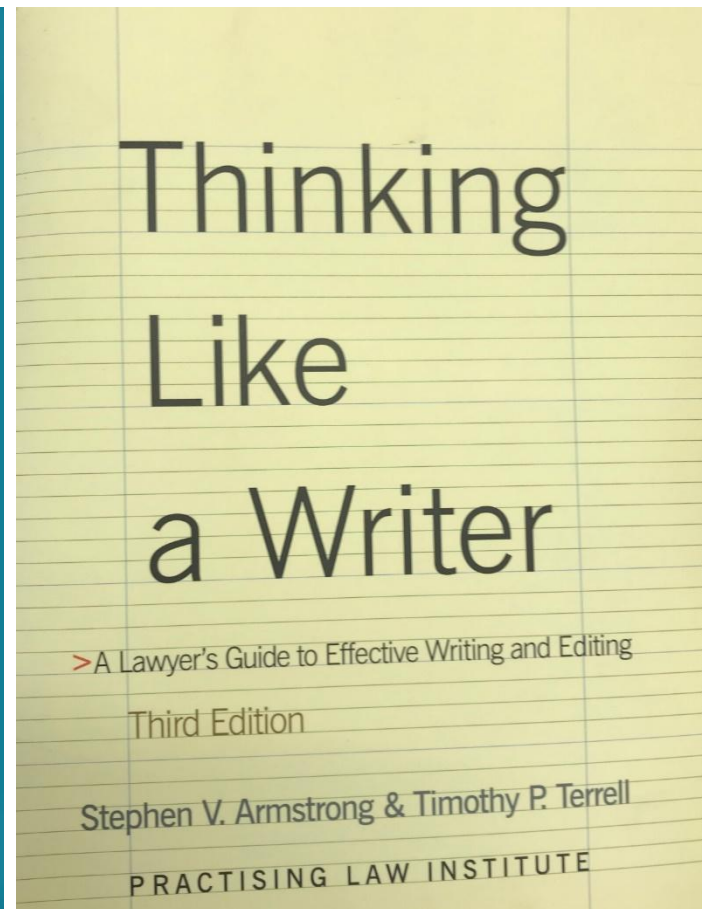
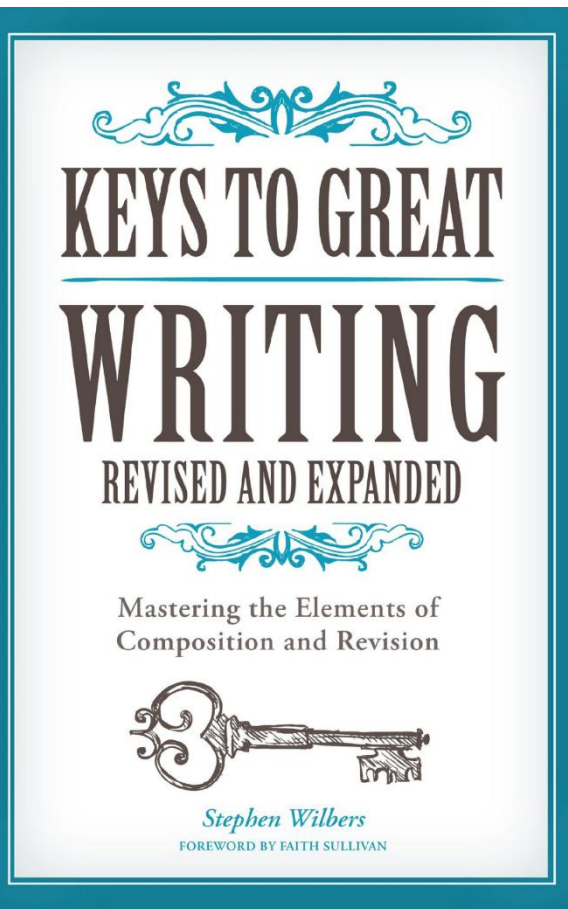
- [Appellate Advocacy: My Latest Take \(2016\)](#)
- [Writing Up the Facts and Winning Big: Some Secrets of the Best Writers of Legal Submissions](#)
- [Some thoughts on advocacy in judicial review proceedings \(2011\)](#)
- [Some Factum Suggestions](#) (with Feldman and Simmons JJ.A.)

Further study

There are many great books on writing. These are the ones I happen to like, in no particular order. Get the latest editions.



Books on writing I happen to like



Books on writing I happen to like

