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In This Issue:

6

*Dana Rooks on Using
viDesktop for Evaluations*

9

*Ellen Callinan on Librarians
and Legal Research Training*

16

*PDQ Classics: Valerie Fitch
on Substantive Law Training*

19

*Learning Lab: Interviewing
Practice Group Leaders*

21

*New publication: The online
Capital CLE Calendar*

22

*Professional Developments:
Events & Resources for PD
Professionals*

24

*MCLE Watch: IL, NY, OR,
PA, SC*

Subscription form

Why Johnny, Esq., Can't Write: Ten Causes and Ten Solutions

Ross Guberman

At 4:06 A.M., John Associate prints out his 23-page summary-judgment motion and walks down the hall. When he reaches Jane Partner's office, he smiles proudly and deposits the motion in the middle of her desk. Then he rubs his eyes and goes home.

He returns to the office six hours later. On his chair sits the draft, covered in red ink. Jane's large scrawl at the top catches his eye: "Good start. Too long. Analysis confusing. Hard to follow. Can you redo by the end of the day?"

"Just who does she think she is?!" John fumes. For the past two weeks, he had pushed everything aside for this motion. The research was impeccable, the argument clever and assertive. Besides, everyone has always told him what a great writer he is. He sure has the resume of one: *summa cum laude* in English from Cornell, a prestigious journal at Columbia Law, plaudits all through school. The firm must have agreed. Jane and her fellow partners appeared to love his writing when he was a summer associate. "And this was so much better!" he thinks.

On the red-inked pages of John's would-be masterpiece, you can find two of the great mysteries of law-firm life. First, why do associates see writing as their greatest strength, while partners often consider it the associates' greatest weakness? Second, if partners are such great writers themselves, why can't they teach associates to produce drafts that make them happy?

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As a professional-development expert, seeing associate after associate with writing problems, you've probably pondered these same mysteries yourself. The good news is, you can do a lot to improve associates' writing. But let's first consider the bad news: the many reasons why law-firm writing is such a tough skill to master.

Ten Causes

1. **A cursed genre.** As a famous law-school dean once said, "There are two things wrong with almost all legal writing. One is its style. The other is its content." Indeed, you couldn't find a better recipe for bad prose than legal writing: Start with dry subject matter, mix in dense and abstract legal standards, and add endless citations and quotations from writing that's not so terrific in the first place. It's no wonder why many of us lawyers struggle to make our writing readable and clear.
2. **Confident in all the wrong places.** Associates consider themselves smart, and they believe that smart people write well. So while they'll concede that they need to learn how to take depositions or to negotiate stock-purchase agreements, they don't expect to devote much of their career to perfecting their writing skills. Yet "writing needs improvement" figures on evaluations of even the best associates.
3. **The limits of law school.** The standard law school first-year research-and-writing course is too ambitious. Professors are expected to teach students how to reason, how to cite, how to conduct online research, and how to incorporate cases and secondary authorities. They must also teach students what a legal memorandum and appellate brief look like, and they must introduce the basics of oral advocacy. Little time remains for style, structure, or any of the other skills so dear to law-firm supervisors' hearts. Yet many new associates believe that their legal-writing training is finished simply because they took the same introductory course everyone else did and then churned out a few papers or a journal article.
4. **"Look how smart I am."** Many associates see writing projects as a chance to show partners how much research they have done. But partners don't want to see the work that went into the memorandum; they want to solve the problems on their desks. Nor do partners want the intellectual pontifications that many associates include to make themselves look clever.
5. **"Who wants to be plain?"** In the words of a Wisconsin judge, "Great legal writing does not sound as though it was written by a lawyer." The "Plain English" movement arose from such sentiments, and it has done wonders for legal writing. But when associates hear partners say, "use plain English," they think that means "dumb everything down." And so they resist. In some cases, they fill their prose with jargon, legalese, and 50-cent words that serve only to obscure their points. In other cases, they use abstract, ponderous language because they're not sure what their points are in the first place. In the process, they misunderstand the message of the Plain English movement: that crisp, clear, uncluttered prose allows readers to focus on substance rather than form.

6. **Scoring points on the page.** Law school exams reward students for spotting issues—for what educators call “ideational fluency.” But law firms reward associates not for spotting problems, but for solving them. Partners want associates to distill complex ideas and cut to the chase. One of the most frequent complaints I hear from partners, in fact, is that associate drafts read like an answer to a law-school exam. Many associates take years to make this shift from law-school writing to law-firm writing.
7. **Priorities out of whack.** Associates obsess over idiosyncratic style differences among partners (“Does she like ‘notwithstanding or ‘despite?’”). That wouldn’t be a problem if they didn’t spend so little time worrying about the 95% of writing traits that all partners want to see improved: cluttered prose, awkward clauses and sentences, rambling structure, faulty usage, ineffective use of authorities.
8. **“Beneath my pay grade.”** Many associates tell me they see themselves as “idea people.” Because of the way law firms are structured, however, they should first try to be “detail people.” Many partners at elite firms say that usage-and-grammar mistakes figure among the most common flaws they see in associate work product. Even more complain about typos and proofreading errors. The causes here are many. Law-school professors rarely penalize students for mechanical errors. High schools and colleges no longer teach grammar. Many associates believe that support staff or other attorneys will correct their citation and proofreading errors. And let’s face it: Today’s computer, email, and Instant Message culture doesn’t encourage polished prose.
9. **“You call that feedback?”** Partners play their own role in associates’ writing problems. In most firms, “feedback on writing” means two things. On day-to-day projects, a partner often marks up drafts so ferociously that the associate has no way to make sense of the edits: which changes matter most, what messages should I take away for the next project? At evaluation time, many partners veer to the other extreme, offering such vague pronouncements as “Your writing needs improvement” or “Your arguments need to be better organized.” Unless the partner offers specific solutions, such advice generates much anxiety but little growth.
10. **“Why even bother?”** Associates often have a passive-aggressive approach to mark-ups. Like all of us, when they say they want “feedback,” what they really want are “compliments.” So when assignments come back drowning in red ink, associates become defensive. They tell themselves the changes are arbitrary—or worse, that there’s no point in working hard on drafts because the partner will change everything anyway.

Ten Solutions

You can meet these challenges on many fronts. Some creative solutions you can carry out alone; for others you’ll need support from partners and from the associates themselves.

1. **What is “writing” anyway?** Help your firm define what “writing” means in each practice area. Partners agree more than you might think when you ask them to break down “writing” into specific, trackable skills. Ask your firm’s partners for the three or four writing skills they’d most like to see improved, then communicate the results to your associates. As the sidebar on the next page shows, you can predict what you’re likely to hear: cutting clutter, drafting active sentences and clauses, streamlining structure, incorporating authorities, and proofreading.

Question: “What are the three writing problems you see most often in associate work product?”

Most popular answers, in order:

1. Poor structure/rambling organization
2. Passive voice/awkward sentences/ambiguous clauses
3. Clutter/wordy
4. Grammar/usage/proofreading/attention to detail
5. Ineffective use of authorities

Source: Guberman 2006 Survey of Law Firm Partners in Selected Major Firms

2. **Evaluating without tears.** Hearing that “your writing needs improvement” is painful and unhelpful. Develop a better form for feedback on writing projects. When associates get mark-ups, you want them to focus on big-picture writing techniques they can use the next time, not on style quirks or pronouncements about their talents. Most partner changes fall into four distinct categories: stylistic (cutting clutter and making provisions and sentences more forceful); structural (staying “on message” and using authorities effectively); mechanical (wording, usage, and formatting); and substantive (understanding nuances in the law and making judgment calls about which arguments are best). Using a form that encourages partners to put their feedback into these categories will help them provide the editing guidance associates need.
3. **Do you follow me?** Collections of model agreements and litigation documents are overrated. Unless the firm explains exactly what makes each model a model, the associates will

simply copy or guess. Ask your most dedicated partners to annotate model documents in their practice areas with clear, practical advice. *What* makes the heading good? *Why* is the indemnity clause drafted this way?

4. **Stop usage fights.** Get every associate a legal-usage manual. Attorneys waste too much time arguing over usage issues and correcting common errors. Unless your firm has its own style manual, buy every lawyer a good desktop guide. The best all-purpose reference is Bryan Garner’s *Dictionary of Modern Legal Usage*. For corporate attorneys, consider Kenneth Adams’s *A Manual of Style for Contract Drafting*, published by the ABA.
5. **I’ll scratch your back.** Encourage associates to seek feedback from peers. Most of us are better editors than writers. Associates should consider asking one another to review drafts before sending them up the food chain. Even if the “editors” can’t bill the time, trading drafts is a great way to build skills and relationships.
6. **Give me five!** Encourage partners to follow the “five-minute rule.” If an associate has billed more than 20 hours for a project, urge the partner to sit down with the associate for five minutes to go over big-picture writing issues rather than simply review the individual changes on the draft. You may think five minutes isn’t long, but it’s much better than nothing, which is how much face-to-face mentoring most associates get after they turn in a writing assignment.
7. **The perfect partner program.** In the best in-house programs I’ve seen, partners sit down with the associates in their practice group and go over a document point by point. In a corporate department, for example, they lead a discussion on why each contract provision is there and why each one reads as it does. This approach is much better than the typical one-hour lunch meeting during which the

partners speak in generalities about good writing or simply tell war stories.

8. **So what do you want me to do about it?** Urge partners to tell associates what they should “do,” not how their writing should “be.” Although telling associates to “be concise” or to “be clear” may sound helpful, it’s not. Much better advice: “Cut 10% of your words by deleting adjectives and adverbs,” or “Start by listing three specific reasons why the judge should grant the motion.”
9. **Triage time.** Discourage everyone from dwelling on idiosyncratic tics. You can attack this problem on two fronts. Try to get partners to distinguish between their favorite wording quirks and the make-or-break writing skills that their clients need. If they say, “But everything I want is important,” remind them that if associates are left to choose, they will focus on subjective wording preferences and ignore what matters most. Urge the associates themselves to divide mark-ups into two groups: (1) changes that are idiosyncratic or cosmetic; and (2) changes that are stylistic or substantive. They should keep a running list of changes in the second group that they use for all future assignments. Of course, if several partners make the same edits, they should add them to their list even if they think they are idiosyncratic.
10. **A fresh voice.** Go outside the firm when necessary. If you want to book an external writing workshop, look for an interactive course that’s short on generalities and long on specific tips and examples. Make sure the associates will spend at least half their time writing, editing, or otherwise interacting. If you’re looking for a long-term curriculum, here’s a good start: an overview program for new associates, practice-specific workshops for midlevels, and then a supervising-and-

- editing course for senior associates. For associates with serious writing problems, group courses aren’t enough. Seek one-on-one coaching as needed, but make sure the associate has committed to a specific plan for working with the consultant on long-range goals, not on next week’s memo deadline.

Concluding words

As the famous litigator Floyd Abrams once said, “The difficult task, after one learns how to think like a lawyer, is relearning how to write like a human being.” Law firm writing is always a sensitive topic, all the more so when associates and partners disagree so fervently about the quality of associates’ writing skills.

That said, by encouraging your colleagues to provide better models, practical guidance, and detailed feedback, you can boost morale, spur associate development, and help all attorneys produce the sort of writing that their clients and judges will love.



*As the President of Legal Writing Pro, **Ross Guberman** conducts nearly 200 writing programs a year for many of the nation's top law firms, governmental agencies, and bar associations. He holds degrees from Yale, the Sorbonne, and The University of Chicago Law School. A former professional musician, Ross is also an award-winning journalist and has commented on legal issues for major newspapers and television networks. He can be reached at ross@legalwritingpro.com.*