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Lessons From a Writing Audit

BY TOM GOLDFEIN AND JETHRO LIEBERMAN

In early 1988, a senior partner invited us to his medium-sized law firm on the West Coast to audit its writing process. As an experiment, we were to interview a cross section of the firm's entire work force and then assess how effectively the firm's written assignments were carried through.

A fast-growing group of corporate litigators, the firm annually hires a large number of associates who understand that they will be spending long hours, often under intense pressure, in the office churning out documents. Senior members of the firm say that good writing is appreciated and rewarded, and because the firm is growing so rapidly, they worry about the quality of briefs, memoranda and other documents drafted by new associates.

But the partners are too busy practicing law themselves to devote much time to training their young lawyers. They are too busy even to review writing samples when recruiting new lawyers. Although no two firms are identical, this firm resembles many other growing firms with active business practices, and its deficiencies in writing are typical.

We found that the firm fell short of its professed goals. It tended to have higher-priced people doing lower-priced work. For example, several associates acknowledged that they overwrite documents, expecting partners to edit and revise. Much of that editing and revising should have been completed early on, by the associates themselves. Similarly, one associate said he would rather proofread documents himself than send drafts to central proofreading because it took too long to walk the papers to that particular office.

Although many associates said they believed the firm highly valued good writing, others said they thought the partners were whistling in the dark. We found a discrepancy between the partners' perceptions and those of the younger lawyers on the importance of good writing. This discrepancy arose because the senior partners differed about what constitutes good writing.

For some partners, it meant spelling words correctly and capital-
izing properly; for others, it meant well-reasoned, tightly written documents. The differing perceptions also arose because the partners often were too busy to tell associates that they valued good writing or to explain what they meant by that statement. We concluded that unless the firm demonstrates in every possible way its commitment to good writing, much of its written product, at least at the draft stage, will continue to be shoddy.

We found several ways that this firm—and other firms as well—can make explicit their commitment to good writing and substantially improve their lawyers’ skills.

1. **Upgrade proofreading and establish an in-house editing office.** Law firms are publishers, and they err when they neglect to assume the tasks that publishers necessarily must undertake. The most significant omission in most law offices is that of editor. Proofreaders are underemployed by some, employed badly by others. Lawyers are divided on the usefulness of proofreaders—those who object do so in part because they are confused about the proofreading function.

Several young lawyers suggested that their prose would not benefit from having a fresh pair of trained eyes look at it. Clearly that is a bizarre notion. Senior partners should discuss the proofreaders’ function with all incoming lawyers and, to the extent possible, standardize the proofreaders’ tasks.

Beyond proofreading, law firms should consider sending drafts to copy editors, who would check all written work substantively. Some lawyers already have their office proofreaders assume this extra function ad hoc. But copy editors perform a separate function: They check for a host of writing difficulties—syntax, grammar, organization, word usage, questions of fact—that proofreaders do not.

2. **Write and employ a stylebook.** Lawyers are stylistically inefficient, their prose riddled with inconsistencies. Few firms have a stylebook or even a uniform style informally followed—lapses unthinkable in publishing houses, newspapers or magazines.

It is wasteful for highly paid lawyers to worry about the simplest style considerations. Should the “c” in court be capitalized? Should the number “10” be written out? How should various documents be formatted? Like publishing enterprises, law firms need to make style decisions and then stick to them.

These decisions can easily be embodied in a uniform stylebook, distinguished from the “Blue Book”; it would include rules peculiar to the firm’s practice and particularized to its sense of style. It would be much
shorter than the "Blue Book," and not only lawyers but also proofreaders, word processors and secretaries would rely on it heavily. Because it would answer many niggling questions automatically, a stylebook would save considerable time.

Many lawyers to whom we have spoken think that a written stylebook is a good idea. Others are more skeptical. They feel they might be forced to memorize a host of useless rules. This objection is groundless, since the rules would ultimately be employed by others—proofreaders and secretaries. The skeptics also feel that those in the firm might never agree on what the rules should be. While a potential difficulty, this objection is wholly surmountable. The partner in charge, in consultation with an editor, would set style policy, just as other policies at the firm are established.

3. Start a writing newsletter. Considering the number of memoranda that float through even the smallest law offices, most large firms easily could produce a newsletter dedicated to writing. It would include samples of fine writing within the office and cite or reprint examples of persuasive or otherwise well-crafted briefs and documents written elsewhere. It would identify by name those whose writing is worthy of praise. It also would quote examples of bad writing (though names would not be attached) and explain the error and show how to avoid it.

Everyone we interviewed thought an in-house writing newsletter worth launching. It could be edited and produced by an in-house editor or by a partner with an interest in writing. That partner's time spent in producing the newsletter should be billed as administrative time.

4. Orient incoming lawyers. The firm we visited has a sink-or-swim approach to incoming lawyers, perhaps because many of the newly employed professionals are "lateral hires" from other firms, and it is assumed they know how to write. That assumption is faulty. Even a day spent discussing the importance of writing—the firm's expectations, how drafts are edited, what style to use, how to use proofreaders—will pay off later.

5. Launch a brown-bag lunch series. Law firms should consider inviting outsiders, such as writing specialists and judges, as well as partners or senior lawyers with a special interest in the written word, to talk about the elements of good writing over an informal lunch. Topics might include what a judge looks for in a brief, how judges read briefs, how to focus on the important topic in the statement of facts, or how to avoid writer's block.

6. Run regular writing workshops. Law firms should institutionalize writing workshops designed primarily for newer lawyers, though everyone could benefit. Running writing workshops would be a major task for a full-time editor, though they obviously can be undertaken without an editor on staff.

7. Create a quiet room for composing. The composing room would avoid the problem of working at home—inaccessibility—but offer at least some of its advantages.

8. Establish a work-product repository. Law firms should systematically collect all work products and enter them in a data base. Most lawyers we interviewed said that a work-product repository would save a great deal of time and mental energy, which could be better devoted to editing and rewriting.

For example, associates are often called on to research a question similar or identical to one that another lawyer has already examined. "Obtaining summary judgment" was an assignment we heard associates discuss frequently. It is foolish to send yet another associate to the library to begin at square one when the fully developed argument, supported by cases and submitted to other courts, sits in a manila file nearby and needs merely to be updated.

The job of collecting documents and overseeing the repository should not be undertaken casually. In firms
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of more than 25 lawyers, tending the repository should be a full-time job. (Obviously, not every piece of paper will be included; each office can dictate its own needs. But it is essential that the repository include all substantive research memoranda and all papers filed in court and with agencies.)

Even a solo practitioner can create a small but useful repository by investing in an inexpensive word-processing program that will enable a secretary to retrieve an indexed file of documents quickly.

9. Reallocate the division of labor. Law firms are profitable to the extent that they can delegate work to those who cost the firm less. Our audit uncovered several instances of work moving in the opposite direction: those whose time is relatively more expensive doing work that others should do. Junior associates write long-winded documents that senior lawyers then must spend extra time editing. Some lawyers refrain from using proofreaders because the proofing offices are inconveniently located, when a simple messenger system would suffice.

All associates must be shown the need to exercise judgment and spend their own time, rather than the more expensive time of partners, in composing and editing drafts. The original writers must learn to draft documents much closer to their final form than they do now.

10. Review writing samples from applicants. Reviewing writing samples of applicants is time well spent. If associates are to be hired on paper credentials, the screening process ought to include the paper that counts. The editor or the recruiting partner should collect and review writing samples routinely before inviting an applicant for an interview.

11. Give word-processing courses. Many of the lawyers we interviewed were enthusiastic about learning to use computers. A few were reluctant because they thought their typing skills were deficient. Law firms should enable every lawyer to take first-time or refresher courses in typing and word processing. We emphasize the plural “s” in courses. Learning word processing is in many ways like learning a new language (though much easier), and no lawyer should be expected to master it in one try. In the long run, these skills will save time far beyond the short-term training cost.

These recommendations obviously do not exhaust what can be learned from a writing audit. We encourage all law offices to audit their writing process by adapting our questions and adding their own. But every audit should start with a basic premise: Law offices are publishers and therefore should adopt the practices of publishers.

Questions for a writing audit

1. How do you write? By longhand, typewriter, word processor, dictation, other? Do you know how to type? If not, will the firm give you lessons? Would you use some other type of machine if you had it?

2. Are you encouraged to ask questions when receiving an assignment?

3. Are page lengths assigned? If not, how do you decide how long to make a document?

4. Are you given deadlines? Do you set your own deadlines? Do you have enough time to write? Edit? If not, are the assigned deadlines too short or do you tend to wait until deadline to write?

5. How many times do you edit your drafts? How many times is your work edited or rewritten by others? By whom?

6. Have you ever curbed the time spent on composing or editing because you felt you could not justify billing your client for more time?

7. Do you see the document again after you turn it in? Does the person who assigns it or anyone else discuss the edited work with you in detail?

8. Who reviews a document once it leaves your hands? For example, who does the heavy editing, the summarizing, the proofreading and the formatting?

9. Roughly what percentage of your time on any assignment do you devote to research, composing and editing? Do you record the time spent on such of these activities separately?

10. Does the firm have a commitment to good writing? If so, how has it made this commitment known? Describe anyincentives, career ladders, the writing process.

12. What do you think your writing problems are? What have you been told your writing problems are?

13. What writing reference books do you keep at your desk (e.g., dictionary, thesaurus, "Blue Book," stylebook, usage book)?

—Tom Goldstein and Jelso Leiterman
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