

## The "Writer-in-Residence": A New Solution to an Old Problem

By C. Edward Good

Since its founding in 1965, the intellectual-property law firm of Finnegan, Henderson, Farabow, Garrett & Dunner in Washington, D.C., has prided itself on the quality of its written work product. The firm's founder, the late Marcus Finnegan, insisted on recruiting and training attorneys who showed they had the talent needed for clear expression in all of the firm's documents—from patent claims for the United States Patent & Trademark Office to briefs for federal judges in its expanding patent-litigation practice.

From those early days 29 years ago, Finnegan, Henderson has steadily grown to an organization of 52 partners, 100 associates and counsels, and a support staff of over 300 people. As more new attorneys came on board, the firm's partners began to see a need for continual training in effective writing. Though each partner knew what he or she wanted in the writing produced by associates, none were warm to the task of developing and then conducting the necessary courses. The partners, after all, wanted to practice patent law or trademark law or copyright law or international-trade law or any of the other specialties of a large intellectual-property practice.

In the early 1980s, the firm sought out the services of Mr. Charles Hall, a former counsel with Burroughs Corporation whose background in English had helped him become a consummate editor and writer, specifically within the field of patent prosecution.

This on-site training in patent-prosecution work expanded with the addition of other experienced counsels. The focus remained, however, on patent prosecution and not the overall work product of the firm: the written word.

In 1993, the firm turned its attention to this broader goal. It began to look outward to the growing number of professionals who provide on-site consultation and training in effective legal writing. After interviewing a variety of candidates, the firm charged me with developing a series of courses for the firm's 100 associates and ultimately for all its partners.

### Tailoring the Course Materials

From the beginning, I knew I had to tailor the course materials to the unique audience of intellectual-property attorneys. I asked the firm's partners to review their files for examples of good writing and not-so-good writing. Several had been keeping files marked exactly as I hoped: "Good Writing" and "Bad Writing." These they turned over to me with the permission to use them in the course materials. With these examples I then fashioned the first edition of the Finnegan, Henderson course book for the course called "Persuasive Writing for Litigators," which each of the 100 associates is now required to take.

In May of 1993, the pilot program began with an 18-hour program for two groups of 20 associates. This first course consisted of three day-long sessions stretched over a period of three weeks. At each session, the associates were asked to rewrite a variety of exercises drawn from the partners' samples and then to compare their answers with the suggested rewrites provided in the course book.

As part of the course, the associates agreed that redacted excerpts from their own writing samples could appear as exercises in future editions of the course book. The individual written feedback each associate received, along with suggested rewrites, could then be shared among all as-

sociates, benefitting many, not just the one person receiving the critique.

### An Ongoing Resource: The Interim Solution

The reactions of the pilot group of 40 associates proved most positive. The firm's partners began exploring the possibility of a more permanent arrangement. In September, the firm retained me to be its in-house "Writer-in-Residence" to provide a series of programs for associates and partners. In September, another 20 associates completed the 18-hour training program. This time, however, instead of the one feedback session, associates could drop by my office at the firm and receive feedback on memos, briefs, client letters, patent applications, and many other documents.

### The Course for Partners

In February of 1994, the partners themselves received their own training program. Drawing from the Finnegan, Henderson course book and from additional samples reviewed throughout the fall, I put together a 10-session course for the partnership. Held over 10 weeks, the program consisted of 90-minute sessions, each attracting anywhere from 20 to 35 of the firm's 52 partners. The sessions covered the entire spectrum of legal writing, from matters of organization and structure to ways of honing a powerful writing style, from matters of punctuation to ways of producing a standard firm "look" in various legal documents.

### Training New Associates

Finnegan, Henderson now plans to use the Course in Persuasive Writing for Litigators as the centerpiece of its new-associate training program. Each fall, the new associates meet regularly to complete the core training program. During that time, they will also submit samples of writing they produce during their first few

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"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

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months. These samples will receive individual written comments on areas in need of improvement, and each new associate will meet personally with me for one-on-one sessions.

### Publication Program for Associates

Coincidentally with hiring its Writer-in-Residence, Finnegan, Henderson launched its Associate Publication Program. It requires each new associate to produce two publishable articles within the first four years. Recognizing the opportunity for training, I said that I could serve to help associates choose topics, to suggest some deadlines, to begin identifying likely journals, and ultimately to help the associates with writing and editing the articles. By centralizing its publication effort, the firm believes it can more readily encourage associates to publish and to participate in professional and scholarly activities. Plans are already under way to expand the program to journals overseas, especially in areas where growing technology is likely to produce significant interest in intellectual-property law.

### A New Position in the Legal Profession?

A growing number of law firms around the country have hired full-time writers to improve their written work and to provide a training resource for attorneys. In New York, Shearman & Sterling retains Stephen Armstrong, coauthor of *Thinking Like a Writer—A Guide to Effective Writing and Editing for Lawyers* (Clark Boardman Callaghan 1992). Also in New York, Windels, Marx, Davies & Ives has employed Professor Richard Miller since the early 1980s as its in-house writing consultant. In Portland, Oregon, the firm of Miller, Nash, Wiener, Hager & Carlsen retains Dr. Karen Larsen as its in-house editor. Mr. Armstrong, Professor Miller, and Dr. Larsen use their journalism and English backgrounds to critique the writing of associates and partners and to provide continual training in the field of effective writing.

Another firm with an approach like Finnegan, Henderson's is Crosby, Heafey, Roach & May in Oakland, California. Crosby, Heafey, which has over 200 attorneys, hired Clyde Leland to act as its Writer-in-Residence. Using his law degree and background as a legal reporter and journalist, Mr. Leland gives seminars and workshops for associates and partners, acts

as a "cold reader" and rewriter on significant appellate cases, oversees the publication efforts of the attorneys, and just recently took command of the firm's entire training effort.

When he accepted the position with Crosby, Heafey, Mr. Leland insisted that his opinion of a particular associate's writing ability remain confidential. Coincidentally, Dr. Larsen at Miller, Nash and I at Finnegan, Henderson asked for the same condition. We all realized we could only attract associates to use our services if the associates viewed us as positive resources, not as a political force to contend with in the firm.

### Plain English Pays

In October 1994, the Securities & Exchange Commission announced its intent to explore the possibility of requiring prospectuses to appear in language that the ordinary investor can understand. Law firms practicing securities law will have to begin to learn an entirely new way of writing about the law. To do it successfully, they will have to consider retaining someone with professional writing experience, perhaps even a Writer-in-Residence.

Firms in other countries have already learned that a plain-language capability not only helps to comply with various plain English laws but actually attracts new business. The firm of Phillips Fox in Australia has a Plain Language Department. So does Mallesons Stephen Jaques, Australia's largest firm (600 attorneys). Both have full-time Writers-in-Residence, whose mission is to change the culture of written expression.

In the summer of 1994, Phillips Fox sent the Director of its Plain Language Department, Christopher Balmford, on a tour of the United States to present seminars to large firms in Los Angeles, Chicago, Detroit, Grand Rapids and Washington about its approach to legal drafting and using it to attract new clients. According to Mr. Balmford: "Once corporations and banks and insurance companies realize that plainly written documents can help increase their business, they begin to seek us out and retain us to translate their forms into understandable English." (See Mark Duckworth and Christopher Balmford, *Convincing Business that Clarity Pays*, 73 Mich B J 1314 (1994).)

### Quality Counts

It makes good business sense to develop some quality-control mechanism to review

the legal profession's primary product: the written word. In the past, the profession has treated its product as something unique, produced by each individual practicing attorney. The profession has felt that writing is something personal, that styles differ, that "good writing" or "bad writing" is just a matter of opinion. The profession has even believed that some lawyers are born with the talent to write and others just aren't. If they don't have it, they'll never develop it. That was the conventional wisdom.

In virtually every law firm in the country, each associate is expected to have his or her written work reviewed by a partner, a partner who likely possesses considerable talent and experience in a particular field of law. But many firms have now begun to recognize that these seasoned attorneys are not necessarily well versed in the art and science of writing. Firms are recognizing what associates have known all along: The review they receive on their writing depends on who is performing the review; one partner will say one thing, while another says exactly the opposite.

Perhaps as more firms begin to hire full-time writing professionals—writers with and without law degrees—the legal profession will change much of the conventional wisdom of the past. Law firms will recognize that their primary work product serves as their most important asset. Efforts to strengthen that asset can only strengthen the firm's position in the increasingly competitive legal marketplace now taking shape for the next century.

Finnegan, Henderson thinks its program points the way to the future. Shearman & Sterling; Windels, Marx; Miller, Nash; Crosby, Heafey—these and other firms share that view. One day, so will many more, as law firms recognize the market value of clear writing. ■



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