

# In-House Editors: Letting the Experts Do It

By Mark Mathewson

I have heard it said that language is to the lawyer as the scalpel is to the surgeon, brush and paint to the painter—the tool of our craft (or profession, or art, depending upon how the day is going). A cynical one-liner usually follows the analogy, along the lines of: "If doctors did as poorly with scalpels as lawyers do with words..."

No doubt about it, lawyers do poorly with words. The pen is an unwieldy tool in the hands of most lawyers, a medieval instrument of torture in the hands of many.

What, then, is to be done? I used to think the answer was simple: Train lawyers to write well. They are intelligent men and women, so they will understand the value of good prose. While it takes time to master the techniques of good writing, lawyers will understand that it serves their interest to take the time.

I know that something else needs to be done. Lawyers are intelligent; they understand the importance of good writing. They do not want to sound pompous and forbidding to clients. They do not want to be ambiguous. They do not want to waste their colleagues' time (or have colleagues waste theirs) with prose that must be parsed, charted, or translated before it can be understood. They do not want to be laughed at. They laugh at those 230-word sentences from the statute books, full of embedded clauses within embedded clauses.

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The problem is not that lawyers fail to understand the problem. The problem is that most of them think they have no time to do anything about it. At the risk of being labeled a heretic, I am beginning to think they are right. The practical answer is not for all lawyers to learn to write well, but for lawyers to pay editors to help them prepare better documents.

Don't get me wrong. Everyone should strive to be a better writer, lawyers included. Some lawyers already write well; maybe they learned from an inspirational (or fearsome) grammar-school teacher, maybe from articulate parents, or maybe they just have an ear for language. Perhaps they were even set down the path to good writing by one of the writing programs, texts, video workshops, and the like that have appeared in countless numbers over the last few years.

But most lawyers write poorly and will continue to write poorly. It would be a miracle if they did not, considering that few lawyers learn to write well at any stage of their education, least of all in law school, where we are steeped in wretched prose for three mind-numbing years.

In short, it is painfully hard to break old, bad habits. Only the most dedicated lawyers will make a serious effort. When you think of the great press of matters competing for lawyers' time—all of which are more urgent, if not more important, than the need to write better—you appreciate how futile is the hope that lawyers will hide themselves away for hours polishing their prose.

That is why I think the lawyer who hopes to improve the documents that flow in such profusion from his or her

office would be money ahead to enlist expert help; that is, lawyers should pay editors to review and help revise their writing. Solo practitioners and small-firm members could hire editors by the hour for important projects, as their budgets permit; large law firms could create publications departments to help with everything from proofreading to major revisions.

While this is not a new idea, it is new to me, so my thoughts are not fully refined. Nonetheless, I offer them for what they are worth, in the hope that those in the trenches will explore the possibilities further.

The first question is obvious: Is an expert editor worth the money? Granted that lawyers recognize a value in good writing, but how much is it worth to them, assuming that the benefits are largely intangible? I do not know the answer. But I cannot imagine a competent lawyer unwilling to allocate some portion of the budget to producing better documents. Think of thousands of dollars lawyers spend for attractive offices; think how much you, the lawyer reading this, have spent on various accouterments and trappings, the expensive stationery and furniture and paintings. Is the writing you produce—arguably the greater part of your work product, and

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certainly the most tangible to clients—really any less a reflection of who you are than the office you inhabit?

As it happens, you can get expert editorial help at bargain-basement prices. Bachelor-level and master-level business- and technical-writing programs are proliferating, turning out more and more hungry graduates. While journalists' pay scale is rising, it is still far below that of lawyers. Most firms could hire a highly skilled, highly experienced editor for far less than the salary of a beginning associate.

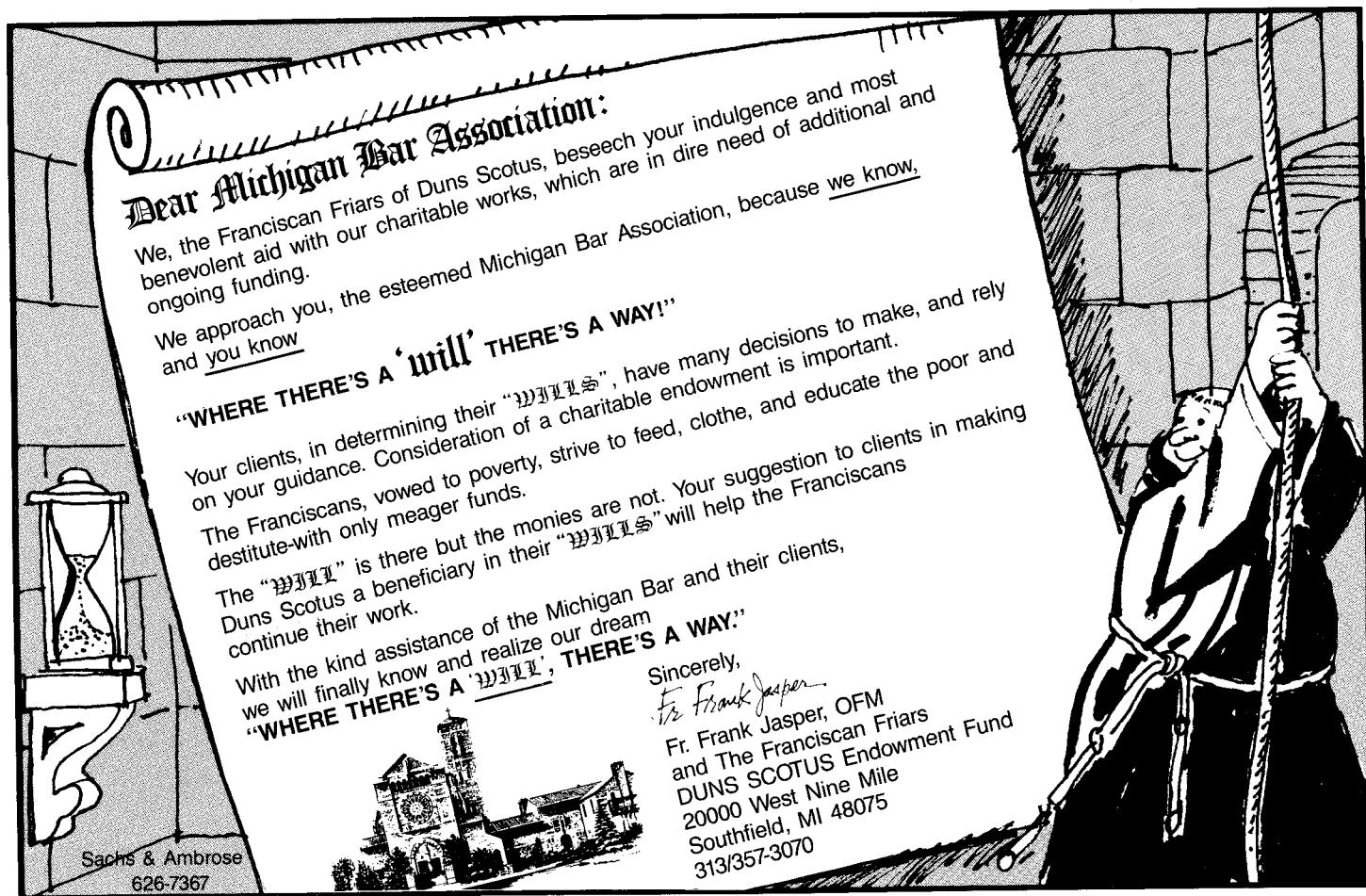
Finally, an in-house publications department can also serve as a writing instructor; indeed, every skillful editor delivers a lesson in good writing each time he or she reviews a document. After the editor purges the unnecessary passive voice from your associates' prose for the 50th time, the

lawyer-authors will begin to produce better writing in the first instance.

So much for the sales pitch: Assuming that you have decided to seek expert editorial help, whom should you seek? Since no university I know of has a "legal editor" program (dozens soon will if this idea catches on), you must think creatively about filling the position. The most important quality is editing experience. College composition teachers are editors of student prose and will have a command of grammar and style, assuming they are trained in composition and not just conscripts from the literature department. On the other hand, an English major—or Ph.D.—is not necessarily a skillful writer or editor. Students of English literature focus their efforts on literary criticism, not composition. It is one thing to discern 12 new levels of meaning in *Billy Budd*, another to

write cleanly and tautly. Indeed, journals of literary criticism are brimming with classic acadamese. Look for the English major who concentrated, or has a strong grounding, in composition, or the graduates of those proliferating business- and technical-writing programs.

Obviously, professional copy editors from newspapers, magazines, book publishing houses, and other reaches of the publishing world are good candidates. Just make sure that their standards are up to yours. In addition to requiring résumés and work samples, give candidates a standardized test in grammar, mechanics, and usage. You can even hire a placement firm in the field to administer a test for you. Also, look for someone with at least a passing knowledge of publication design and layout—almost anyone with a journalism background will—and



enough facility with computers to learn a simple desktop publishing system. Researchers are learning more each year about the importance of document design to readability, and you want editors who can apply some of the emerging principles.

Perhaps you are thinking that law review editors would make wonderful in-house editors. I doubt it. Remember that most law-review members at most schools are chosen for their analytic skills (i.e., their ability to do well on final exams), not for their writing ability. Even those who write their way on to a review have met a standard of "good writing" that you hope to surpass. Obviously there are some excellent writers on law review, but more by accident than by design.

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Ironically, legal training might handicap a legal editor. One of the few in-house legal editors in the country, Karen Larsen of Portland, Oregon, considers her lay status an advantage. "When [lawyers] pass their writing among one another, or even to a lawyer trained in writing, the lawyers get bogged down in the substance and do not pay enough attention to form," she told me. She went on to say that legal training could be a plus for the lawyer "well-trained in editing and style who could put the lawyer part aside to the proper degree."

Once you have an editor in place, what should you ask of him or her? Were it my firm, I would have my in-house editors review every document the office produced, from client letters to motions and pleadings, from briefs to form contract provisions—everything. If I found this comprehensive approach too expensive, I would send my most important documents to the editors first, but wise lawyers would impose as few limits as time and budgetary constraints permitted.

Similarly, wise lawyers would encourage editors to suggest revisions on all matters of style, grammar, and mechanics, and to edit aggressively, not gingerly. Editors need not be rude or judgmental, of course, but lawyers should set aside their authorial pride—how many lawyers have cause for authorial pride? My experience as editor is that most lawyers accept even heavy editing willingly, as long as they see that it improves the documents going out over their names.

But do not ask your editors, even legally trained ones, to second-guess the lawyer-author's legal analysis, to frame arguments in briefs, or to perform other lawyerly tasks. Your editors will be most effective at improving the quality of your prose if they concentrate on that effort and leave lawyering to the lawyers. Of course, editors should question weak analogies, logical inconsistencies, and the like. For the most part, though, the editor's job will be to take the substance as he or

she gets it from the lawyer and shape it into a leaner, cleaner, better-organized form.

More precisely, the editor's job is to suggest revisions that the lawyer-author may accept or reject. For ethical reasons, if for no other, final responsibility for any document must rest with the lawyer. But the shop rule should be that lawyers generally—i.e., almost always—defer to the editor's stylistic revisions, second-guessing the editor only when stylistic changes somehow compromise the document's legal quality. And editorial changes will rarely—i.e., almost never—compromise legal quality. If they do, your editor is not doing his or her job.

At my firm, I would insist that authors submit all documents to the editor as computer files rather than hard copy. Editors would save the author's original version, make revisions at the video display terminal, and send the edited version to the lawyer for review. (I find that it is much easier for authors to stomach aggressive revision when they are not confronted with marked-up hard copy.) Lawyers could read the edited version first, then check it against their original for accuracy of names, facts, and figures if necessary. (Again, if your editorial staff is good, you should have almost no re-revisions of this sort.)

I could go on, but I think I have provided enough in the way of food for thought. I hope solo practitioners, small firms, and corporate and government law departments adapt the in-house editor idea to their circumstances. Judges ought to experiment with the idea; think of the benefit if each appellate district had an editorial staff to help judges produce better-written opinions.

I am a realist, and I know that few in the profession have money to throw away. But I hope lawyers will look carefully at the prevailing buyer's market for expert editorial help, and consider hiring a skilled editor to help them hone the tools of their profession. ■