In-House Editor

By Karen Larsen, Ph.D.

Another in our series on the market value of plain language, or plain language in action.
—JK

In instituting programs of writing instruction for their lawyers, many firms have found that it's not enough to present a series of videotapes, an occasional workshop, and a spate of lectures. Such resources make the partners feel good, secure in the knowledge that they're doing something, but there is ultimately little real improvement in the letters, memoranda, and briefs that the attorneys produce. What, then, is to be done?

Some firms have asked selected partners to review newer lawyers' work. But usually (and naturally) the partners get so caught up in the fine legal points of the writing that form goes by the board, and they may resent the time such supervision takes away from their own work. Generally, after the firm has spent both time and money on sophisticated techniques and lawyer-to-lawyer tutoring, the feeling is that somehow the associates must teach themselves. Many do just that, with varying degrees of success. As far as summer clerks and brand-new associates are concerned, it is often expected that their secretaries will familiarize them with firm style, but if a new secretary is assigned to a new attorney, firm style is probably going to get short shrift.

The firm I work for, employing more than a hundred attorneys in its main office alone, had a better idea: Why not hire someone who knew grammar, punctuation, and writing and who would always be at hand, unlike the instructors in the traveling workshops?

In 1981, the firm decided to hire me as its live-in professor. I had been a professor of languages and literature for 12 years, but always in an academic setting. Because the position of writing consultant had not existed before, I had to invent my role as I went along.

For the first few years, I worked with anyone in the firm who needed me, doing the simplest proofreading as well as light and heavy editing. Learning to trust an academic type didn't come all that easily to this firm, and I often found my hands tied. "Correct my punctuation, but don't change my writing," I was told. It occurs to me now that I haven't heard that warning for years.

Having eventually proved that I could edit, smooth, and improve anyone's work without changing its substance or giving offense, I was asked in 1986 to train new associates and summer clerks, and I still do that work. In addition, I continue to read the writing of senior attorneys (several of whom refuse to send out any work I haven't seen).

One of the greatest assets I bring to the firm is my status as a layperson. I have no vast body of legal knowledge to get in the way of the shape of the writing. I know enough to identify a non sequitur, a contradiction, or an irrelevancy, and I know an opinion letter from a complaint and a memorandum from a motion. If I can't follow an argument, probably a jury can't either. If I have to read a sentence four times to get the sense of it, perhaps the client will have trouble there too.

When new associates arrive, I tell them about the help I'll be providing for the next six months—longer if they so elect. They are surprised and pleased to learn that our interaction is entirely confidential; no records are kept, no evaluations are made—in short, no one can find out from me "how they're doing."

Because all instruction is private, I never have the unfortunate situation in which someone feels a need to best the professor in the classroom. Lawyers (for once) are not tempted to show off for their colleagues. And because I use no textbook but the lawyers' own writing, I can be sure that every word on every page will be relevant to them.

I like to see a document when it's nearly final—there's little sense in my fine-tuning a memorandum and polishing citations if the attorney is likely to delete whole paragraphs later and add new ones. As I read, I mark for errors in punctuation and spelling; I routinely change nonparallel structures and misplaced modifiers. On the second reading I comment on organization, economy of language, and firm style. Finally, I send the project to our editorial staff, who will verify citations and quotations. The attorneys must do their own shepardizing. At last I see the lawyer privately and explain what I've done and why. After a few months, the personal visits grow fewer as new associates become more familiar with firm style and begin to write more clearly and cleanly.

Turnaround time is important to the clerk or associate trying to meet a partner's deadline. The speedy delivery I've been able to maintain ensures that no one will be tempted to forgo my services merely because of time constraints. Usually I will edit a seven-page document in an hour or two, depending on its content and how many times I'm interrupted. In order to satisfy everyone, in a rush situation I ask the new lawyer to photocopy his or her work for me and to then go ahead and give the document to the waiting partner with the information that it has not yet been seen by me. Then the lawyer will have met the deadline and still have the benefit of my instruction.

Absolutely essential to my position is the ability to change people's work without offending them. There is no room here for a big ego—or, conversely, for a small nature. Arguing bitterly over whose comma

"Plain Language" is a regular feature of the ***Michigan Bar Journal,*** *edited by Joseph Kimble for the State Bar Plain English Committee. 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.*

placement is correct is destructive and wasteful. Developing a comfortable relationship with each lawyer permits me to reduce what might be automatic resistance to my suggestions. Being "right" avails me nothing if lawyers feel duty-bound to defend and protect their own errors.

Where does all the bad writing come from, anyway? From tradition, from poorly written law school texts, from statutes and case law, and from other attorneys. "Law schools," says Gregory A. Chaimov, partner of this firm, "usually teach students how to communicate with other attorneys, using the arcane language of the profession. The *best* attorneys can also communicate clearly with clients and witnesses." Turgid writing is what young lawyers are exposed to, and many of them believe they must go and do likewise if the supervising attorneys are to be impressed with them. Writing to impress, rather than express, seems to be The Big Sin.

At this firm, we have expended enormous effort in bringing our forms into the twentieth century, and few tears have been shed at the ousting of "comes now the plaintiff," "aforesaid," "same," and "such." We've mercilessly hounded those who continued to say "enclosed herewith please find" and those who wanted to hyphenate *tonight* and *goodbye*. We've gotten comfortable with the active voice instead of clinging to the passive, and we are proud of our brevity and economy of language.

What is the market value of clarity? We find that difficult to measure, but we do know we've gained a reputation for excellence. People assume, correctly, that we're as careful about our legal research as we are about our language. We know that bad or weak ideas can't hide well in plain English, and we believe we think better when we write better. We're still thought a bit stuffy in the legal community, but now it's only because of our old-fashioned ethics, not our language. ■

Karen Larsen is the resident writing consultant for the Portland, Oregon, firm of Miller, Nash, Wiener, Hager & Carlsen. She is also well known as Miss Grammar, whose column appears in a number of legal newspapers and journals.

Sample Paragraphs

1. It should be noted that the reason for filing the motion for summary judgment without an accompanying memorandum with it was because the undersigned was advised by the court that if it was desired to schedule the motion for summary judgment hearing on the same day that another hearing in a companion case was scheduled for, a motion needed to be filed right away.

Better:

I filed the motion for summary judgment without an accompanying memorandum because the court stated that if I wanted to schedule the hearing on the same day as another hearing in a companion case, I would have to file a motion immediately.

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2. I continued to have some concern that Mr. Smith might in the future develop a theory of the case which acknowledges at least the possibility of some fault by Mr. Ray, if that theory is the most likely to result in a recovery by Ray against the Martin estate, this would conflict with the firm's desire, of course, that the result be a finding that there was no fault on the part of Mr. Ray and, therefore, no liability would be on the part of the firm.

Better:

I was concerned that Mr. Smith was willing to acknowledge some fault by Mr. Ray, if that meant Ray might recover from the Martin estate. This would conflict with the firm's wish for a finding that Ray was not at fault and the firm was not liable.