A NEW COLUMN on the Legal Written Word

Three Key Plays for the Writing “Coach”

By Kirsten K. Davis

A new reality series, MTV’s Made, reminded me how important a good coach is in achieving success. Made chooses young people who want to be “made” into something—cheerleader, BMX biker, high school graduate—and gives them “coaches”—tutors, trainers, nutritionists and others—to help achieve their goals.

After viewing a few episodes, I was persuaded that, though natural ability was important to the teens’ success or failure, good coaching could make the difference. Poor coaches did little more than identify the teens’ skill level and give them things to do. But good coaches gave feedback on performance, provided opportunities to develop and improve skills, instilled confidence and encouraged independence. Ultimately, good coaching resulted in success.

The same is true in law. Although supervisors want to get new lawyers “up to speed” to produce quality legal documents with minimal supervision, the transition is less likely to occur without good coaching from experienced lawyers. After all, most law students are still legal writing novices.

Being a good writing coach requires only a moderate amount of time and effort and can result in a big payoff: rapid development of new lawyers’ writing skills.

1. Give opportunities to rewrite and to see the finished product. Often, a new lawyer gets an assignment, completes it and never hears about it again. This system never gives the new lawyer a chance to improve the work and to see what she did well or did poorly. A better approach is to spend a few moments talking with the new lawyer about the shortcomings of the work, give her a chance to rewrite the assignment and share the finished product with her. Not only will the young lawyer learn by repetition, you will have shared some of your expertise with her that will build her writing skills and give her a good model for writing.

2. Give constructive feedback. Many draft documents are full of crossed-out text and handwritten comments like “Move this paragraph up,” “I don’t think this is right,” or “Cut this argument: weak.” But a good writing coach should work toward giving constructive feedback. It is more challenging to write but reveals the thought process behind revisions. Constructive feedback has two requirements. First, it should be well-balanced; it should let the writer know what he did well and what he did poorly. This is essential to instilling confidence and motivation. Second, constructive feedback should give an explanation of what was lacking and how to improve the draft. For example, try these comments:
   • “This paragraph adds discussion of the case. Discuss the case entirely before applying it to our client’s facts because the reader will be confused by additional information later. Try combining these paragraphs and start with the court’s holding, the point of the paragraph.”
   • “This statement seems contrary to my understanding of the duty to protect. Check the Jones case to be sure you’ve read it correctly.”
   • “We want to focus on our most persuasive arguments. We’ve got two strong arguments; let’s not dilute them with an argument that can’t be supported with Arizona law. Cut this argument.”
   • “Great description of the law. The factors test you pulled from the cases is persuasive and thoroughly developed.”

Crafting detailed comments requires time. But they need not be written in the margins. Rather, spend five or ten minutes dictating your comments, and the associate can review them with the assignment before rewriting. Requiring line numbering in drafts or referring to page numbers can facilitate this process. Remember, too, that not all comments need to be this detailed. Focus on the two or three most significant problems and give detailed guidance on those.

Or make a few notes to yourself and meet one-on-one with the new lawyer. As a young lawyer, my most vivid recollection of writing training is meeting with the supervising partner to discuss my attempt at drafting a reply brief. And as a teacher, my experience suggests that a face-to-face meeting, even a short one, can be very productive. The new lawyer can ask questions, allowing him to focus on the areas where he has the most confusion. Also, he can explain his legal analysis to you orally. A regularly scheduled lunch meeting can be a great way to incorporate face-to-face coaching into your schedule.

3. Provide new lawyers adequate resources for success. Resources for writing are important but are often overlooked. Additional formal writing training from in-house writing specialists or through legal writing CLEs are great ways to reinforce basic skills and add new
writing and analytical techniques to the new lawyer’s arsenal. One caveat: Formalized training can never take the place of one-on-one coaching; it can only enhance it. And each lawyer’s personal library should include writing guidebooks. In an upcoming column, I’ll talk about choosing a legal writing style manual that works for you.

**Progressive Penmanship**

**BOOK REVIEW BY GARY FRY**

**Effective Writing: A Handbook With Stories for Lawyers**

by John Phelps Warnock, with Harold C. Warnock

ISBN 0-9724772-7-6


$20 (paperback), $40 (cloth)

“Lawyers are writers. They live the writing life under hectic working conditions, often under extreme pressure—hardly the comfort E. B. White enjoyed when typing his column for The New Yorker in his rural Maine boathouse retreat.

“Lawyers write all day long, all kinds of things”—briefs, bills, letters, leases, wills, pleadings, daily time sheets—notes this excellent new handbook, Effective Writing. The book is the product of a collaboration between father and son, one a distinguished member of the Arizona Bar for nearly 60 years, the other an English professor with a love of rhetoric and composition who has a law degree and has worked with judges and lawyers on writing in the United States and Canada for more than two decades.

The authors obviously care deeply about the practice of law, about language and about writing. They also consider lawyers to be “good people and good company who tend to tell a good story.” Effective Writing skillfully blends story with craft to convey its succinct lessons. Besides its wealth of solid practical advice on the art of legal writing, there are scores of sidebars packed with wonderful stories and humor from judges, practitioners and other writers. These stories add piquancy to the text and illuminate the subject, effective legal writing.

“Good” writing (correct, clear, logical, “law review” writing) is not necessarily effective writing, argue the authors. Effective writing may not even be particularly “good” writing. Effective legal writing is “what is good for the varied purposes and readers that practicing lawyers have.” It is what best gets the job done. It does not guarantee success but, the authors say, it gives one the best chance of winning. And “in situations where there are no clear winners and losers, writing effectively will help achieve the best result all around.”

To become more effective writers, lawyers “must cultivate certain habits of mind and writing practice.” Habit One: “Notice writing that seems particularly effective.” Pay attention!

The chapter on what makes a letter effective is superb and alone justifies the purchase of the book. The authors recognize that lawyers—even litigators—spend a very large part of their time writing letters and are known by their letters.” Said the trial lawyer in one of the sidebars, “After a couple of letters, I know what kind of lawyer I’m up against.” The authors offer these general guidelines for letters that get things done: “Know precisely what you want a letter to D.O., keep it short, be alert to tone, wait a day to reply to any letter, don’t sneer or threaten.”

The authors emphasize the importance of rewriting. Rewriting is crucial to effective writing. The very best writers, they note, revise more than the rest of us. The lawyer’s mantra should be “Write headlong, rewrite tirelessly.” But rewriting goes beyond “polishing” or proofreading the first draft. Rewriting involves “rethinking of the whole project, rearranging the material, editing for style, syntax, and diction, and [finally] proofreading.”

Effective Writing considers the many kinds of writing lawyers do for their daily routine, for the trial through the appeal, and “for the future” (contracts, wills, trusts). It addresses available technologies—and points out their limitations. This book will be an invaluable resource for judges and practitioners at all stages of their careers. And it will offer the reader plenty of good company.

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