The Practicing Writer (Book review)

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The Practicing Writer


The past decade has seen a boom in legal-writing books. Responding to complaints by influential alumni that recent graduates cannot write, many law schools have strengthened the first-year legal-writing programs; not trusting to the trickle-down effect of improved law-school programs, major law firms hire writing consultants at $200 an hour. Authors and publishers recognize a market, and legal-writing books are proliferating. Here are three of the better ones.

Growing out of a three-year project at the Document Design Center, Charrow and Erhardt’s *Clear and Effective Legal Writing* is intended for law students. While much of the authors’ advice applies to all writing, it is copiously illustrated with client letters, memoranda, appellate briefs, and agreements. These examples make this a useful book for lawyers as well as students.

The authors discuss writing as a three-step process involving prewriting, writing, and editing. This approach is useful for beginning legal writers because it forces them to recognize that much of the effort involved in writing takes place before they put pen to paper—a fact lost on many law students. By stressing this point, the authors are likely to help students reduce the amount of time they waste sitting
down and beginning a legal memorandum as a stream of consciousness. While the authors advise their readers to begin organizing the raw materials as soon as they have identified the matters to be discussed, they carefully caution against the opposite danger of overoutlining and becoming wedded too soon to an organization that may ultimately prove inappropriate.

Two complementary chapters cover the mechanics of effective writing. "Writing Clearly" consists of 13 writing guidelines that operate primarily at the sentence level. Here we find basic suggestions, such as "Write Short Sentences," "Put the Parts of Each Sentence in a Logical Order," "Avoid Intrusive Phrases and Clauses," and "Use Verb Clauses and Adjectives Instead of Nominalizations." The advice contained in the guidelines is sound, and the examples are helpful.

My only quibble concerns their advice to "Use the Active Voice Whenever Possible." Their discussion of the active and passive voice, together with explanation of the dangers of the truncated passive, is helpful. Moreover, their examples illuminate the problems that the unthinking use of the passive voice can create for unwary writers. Yet, even though their discussion concedes that in some circumstances the passive voice may be better than the active voice, the point remains undeveloped. The declaratory nature of the guideline claims too much and ignores those instances when the passive voice is preferable.

Moving from sentence-level matters to the larger organizational questions, the book devotes considerable coverage to matters of organization and rhetoric. Here, the authors raise the important but frequently overlooked point that much useful organization can be done through a document's physical layout and design, including using white space to highlight organization.

Unfortunately, in discussing the organizational structure of a legal memorandum, the authors use the syllogism
as a model. Because Charrow and Erhardt spend little time discussing legal analysis, this section omits any discussion of the problems in identifying the major premise and in defining the reach of the minor premise. This chapter may give the wrong impression about the role of deductive reasoning in law. Readers of this chapter—it is intended for neophytes—may be misled into thinking that legal reasoning proceeds with the precision and predictability of a syllogism.

All in all, though, the book is a good one for law students and lawyers who need to improve their command of the basics.

Richard Weisberg's book, *When Lawyers Write*, is intended for lawyers, although many of its examples are sufficiently concrete to make the book usable in law-school writing courses. One of the book's more valuable contributions is its effort to ensure that writing improvements are long-lived. The chapters on editing in the law firm and developing in-house editing departments suggest an organizational structure capable of sustaining the hard-won benefits of improved writing.

A lengthy book, *When Lawyers Write* covers a great deal of territory in four main sections: basic writing and grammar; the importance of the audience; the importance of organization; and the demands of different types of legal writing. Like Charrow and Erhardt, Weisberg uses the guideline (he calls it a rule) to capture the essence of good writing. He devotes attention equally to words, sentences, and larger organizational questions. He synthesizes many of the specific recommendations from each of the four sections of the book into 23 rules. An eclectic amalgam of usage, grammar, style, syntax, and general advice for surviving in the law-firm environment, the rules usefully encompass matters as general as organization and as specific as the split infinitive.

After phrasing the rules in general terms—"edit every sentence you write, to spot redundancy and to eliminate ver-
bosity"—he helpfully includes examples that illustrate and make the general advice concrete.

Dividing his discussion of organization between large-scale and small-scale editing, Weisberg emphasizes the former. Chapter 11 discusses organizing documents, and chapter 12 focuses on organizing paragraphs and sentences. I would have found this chapter more useful if its discussion of sentence-level organization had been as detailed as his earlier discussion of basic writing skills. It seems to me that most writers go wrong at the sentence level, and that poor large-scale organization problems build upon smaller problems. Weisberg's discussion of sentences does not contain the detail found in Charrow and Erhardt.

While there is much to recommend Weisberg's book, I was surprised by his persistent self-praise. In discussing earlier legal-writing books, he writes:

We owe much to those careful analysts of legal language who have published books in recent years: the David Mellinkoffs, Reed Dickersons, and Richard Wydicks who have loved the lawyer's peculiar verbal mannerisms enough to challenge them. It is time, nonetheless, to digest their offerings, to see where they have nourished us, and to integrate their contributions in a durable and sometimes vibrantly healthy corpus. [You are holding it in your hands, Weisberg implies; but why is it only sometimes vibrantly healthy?]

Does this mean that you will put my book down having learned little about the language you use everyday [sic]? I think not. Instead, you can anticipate learning much . . . .

Similarly, toward the close of the book, when addressing trial judges, Weisberg touts what has preceded: "Aside, once again, from recommending the body of this book, I would
stress to the trial-level judge the need to avoid the isolation that often characterizes his task." Although I agree that *When Lawyers Write* is a useful book, I wonder why Weisberg appears compelled to trumpet its value, when most readers would have discovered it on their own. Moreover, his tone wrongly suggests that there are no other suitable works to which a lawyer could turn for help.

Goldstein and Lieberman's book, *The Lawyer's Guide to Writing Well*, has a message: The consequences of bad legal writing are worse than we thought. Bad legal writing imposes costs on society, loses cases, leads to indifference to or disrespect for the law, erodes the self-respect of the lawyers who turn out bad writing, and impoverishes society! With an indictment like that, what lawyer can avoid being drawn into the book?

Intended for attorneys, *The Lawyer's Guide* is an enjoyable and profitable read. The more than 300 quotations on the causes of and cures for legal writing provide caustic, impressionistic, and highly idiosyncratic views on legal writing. *The Lawyer's Guide* has a lighter tone than Weisberg's book, but does not offer the same detailed advice and wealth of examples.

*The Lawyer's Guide* begins with what has become standard fare for books on legal writing. Drawing upon responses from the authors' writing survey, and laced with quotations from Mellinkoff, Rodell, and Jonathan Swift, the first section is largely the traditional retelling of the story of legal writing. There is little new here, but the authors present an enjoyable and engaging picture of legal writing. The remainder of the book is divided into three sections: "The Process of Writing," "Making Your Prose Serviceable," and "Making Your Prose Memorable." The book also includes a glossary that serves as a brief guide to usage.

The book's structure follows the authors' thesis that writing is a twofold process: composing and editing. The
goal of composing is to get one’s thoughts down on paper; the
goal of editing is to present those thoughts in a way that
communicates them clearly and effectively. From this dis-
tinction, the authors announce two principles of good writing:
Compose early and edit late. These principles, in turn, un-
derlie the ten steps in the writing process.

Two of the writing steps merit some discussion. The
sixth, “Compose,” is perhaps the most helpful for writers fac-
ing writer’s block. The advice is simple—write around the
blocks, get something down on paper. The tone of this chapter
is upbeat and reminds me of the current advertising slogan,
“Just Do It.” The authors do not claim that the stream-of-
consciousness approach is anything more than a device to
avoid sitting all afternoon in front of a blank sheet of paper.

Because the authors distinguish between the composing
and editing stages, they necessarily believe that writers can-
not begin with a detailed outline because the outline is too
orderly and commits one to a particular structure too early in
the writing process. The value of the outline appears after the
problem has been solved, when the writer needs to organize
material to present it effectively. Chapter nine is devoted
entirely to the importance of organizing documents to ensure
that the parts fit together into a harmonious whole, with ef-
fective transitions between the various parts.

Detailed writing advice is found in the chapters on edit-
ing. In “Editing I,” the authors follow the lead of Charrow
and Erhardt and deal with word and sentence problems. It is
here that we find brief discussions of usage, legalese, clichés,
and wordiness. The authors also discuss noun plague, nega-
tives, redundancies, nominalizations, problems with the
passive voice, split infinitives, pronouns and sexism, parallel-
ism, and misplaced modifiers. As with the other books re-
viewed here, the legal-writing suggestions are sound but
unexceptional. Unfortunately, though, the examples are not
as numerous as in Charrow and Erhardt or in Weisberg. The
authors provide only one example to illustrate most points. Without a greater opportunity for active engagement, many readers will soon lose much of the benefit of the advice.

In "Editing II, Revising Your Prose," the authors focus on editing at the paragraph and document level. They discuss structure, continuity, transitions, clarity, and punctuation. Their advice is more general than in the preceding chapter because it deals with larger writing blocks. Perhaps the most helpful piece of advice in this chapter is to edit in stages, looking first for one type of problem, such as spelling, and then editing again to look for other problems. By following this advice, the writer concentrates on one particular problem and increases the likelihood that problems of that kind will be found.

The book's final chapter, "Making Your Prose Memorable," is the most disappointing because it has the least to say. What distinguishes the memorable from the merely serviceable? If good writing is something that we recognize when we see it, without necessarily being able to define it, perhaps the best help one can provide to others is to provide examples of good writing. But what examples? If concision and trenchant statement are virtues, we can point to Holmes. But what of Cardozo's periodic sentences? Are they not equally memorable, but for different reasons?

The book's glossary, a brief guide to usage, is useful for writers with specific usage questions. Although the authors include many of the more common questions that arise in legal writing, the glossary is no substitute for the more complete Dictionary of Modern Legal Usage.¹

Any of these books would be a valuable addition to your library. If you are a lawyer, consider When Lawyers Write and the Lawyer's Guide. If you want detailed advice on the many different types of writing lawyers do, you should select

Weisberg. If you prefer a more casual and conversational approach to legal writing—an approach peppered with amusing quotations about bad legal writing—then Goldstein and Lieberman are for you. If you prefer a fairly detailed discussion of syntax, Charrow and Erhardt may be your best choice.

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