

Book Notices

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The Elements of Legal Writing: Quick Answers to Questions of Structure and Style. By Martha Faulk and Irving M. Mehler. Minnetonka, Minn.: Professional Education Group, Inc., 1991. Pp. 127. \$14.95. Four of this little paperback's six parts — encompassing all but about 20 pages — concern basic elements of grammar, punctuation, and capitalization. The remaining two parts, on sentence construction and paragraphs, are so brief and so vague that they provide little useful guidance. The authors say next to nothing about style.

Resembling a junior-high-school grammar text, the book lists concise rules and provides simple examples. But many examples would be too simple even for junior-high-school students. In a book for lawyers, illustrations seem dotty when replete with knick-knacks and paddywhacks:

- “She gave her dog a bone” (p. 4).
- “Stormy weather is great for ducks” (p. 18).
- “The meat was juicy and tender” (p. 44).
- “I play. She dances. He turns red” (p. 38).

Despite the subtitle, if you need a quick answer to a question of structure or style, this book is not the place to look.

How to Write the Winning Brief: Strategies for Effective Memoranda, Briefs, Client Letters, and Other Legal Documents. By Frederic G. Gale and Joseph M. Moxley. Chicago: Section of General Practice, American Bar Association, 1992. Pp. 177. \$39.95. The subtitle rightly makes a liar of the main title: this is not a book on brief-writing. Instead, it contains a hodgepodge of topics.

Although the authors do not identify their intended audience, passages like this one are so obvious that the book could not be meant for anyone who has actually worked at a law firm:

No one in your firm will care about your writing as much as you do. Other associates or partners simply do not have the time to carefully critique your manuscripts. (P. 13.)

In the context of a hypothetical case about a child who has been hit by a bus, the book provides explanations of the various forms of legal writing, including letters, memoranda, and briefs. Although this method might be appropriate for a class in legal writing, few practicing lawyers will have the time or patience to wade through the facts, some of which appear in various documents in the appendix. The last part of the book, on revising and editing, provides some good practical tips.

The most troubling aspect of the book is that the authors' own writing often lacks the rhythm and flow of effective prose:

If you truly take our suggestions to heart, over time, you will, we are sure, write as successfully as winning lawyers do. (P. 4.)

Since the authors have achieved such limited writing success after presumably taking their own suggestions to heart, this assurance provides little incentive to devote much time to their book.

Legal Writing: Getting It Right and Getting It Written. By Mary Barnard Ray and Jill J. Ramsfield. 2d ed. St. Paul, Minn.: West Publishing Co., 1993. Pp. 361. \$19. In purporting to serve as a textbook, reference book, and self-help guide, this alphabetically arranged book tries to do a great deal. In the end, that proves to be too much. As a textbook, it is not just unsightly but also unwieldy, requiring teachers and students to follow a separate outline that skips from entry to entry.

As a usage guide, it fares no better. The usage entries peek from among long passages on broad topics such as briefs, computer research, and jury instructions. And most readers would never look for some of the headwords, such as "Desperation," "Saying No," and "When to Stop."

The book is a self-help guide only in the sense that writers who already know their weaknesses can consult relevant entries. And even then, the consultation probably won't really help. Under "HELP," for example, the reader is told: "If you have turned to this, you are probably in the midst of your writing process and under pressure. . . . Do not panic."

The advice is sometimes silly. To cite but three examples:

- use *vehicle*, not *truck*, to "de-emphasize an unfavorable fact";
- restrict *since* to relationships in time; and
- use several short sentences in a row when you want to "sound tough."

The tone is condescending, even for first-year law students. The authors suggest, for example, that in writing to other lawyers, you can "often relax your correspondence style . . . because they share your profession and may be personal friends."

The one thing you can indisputably say about this book is that the authors got it written.

The Legislative Drafter's Desk Reference. By Lawrence E. Filson. Washington, D.C.: Congressional Quarterly Inc. 1992. Pp. 450. \$85 (cloth), \$34.95 (paper). This attractive book promises much on the cover, where it is billed as a practical guide to drafting federal and state laws; writing amendments to legislation; analyzing drafting problems; and changing federal law. Filson brings 40 years of experience as a legislative drafter and, until recently, served as deputy legislative counsel in the U.S. House Office of the Legislative Counsel. That experience is evident throughout the text.

But many of the specific drafting recommendations and linguistic judgments are quirky if not faulty. Readers are told, for example, that the words *hereunder*, *thereby*, *thereof*, *thereunder*, and *thereafter* "should be part of every drafter's arsenal," that they "are highly useful, and the need for them arises with great frequency" (p. 265). By contrast, *herein*, *thereto*, and *whereof* "should be

avoided, simply because their archaic sound outweighs their usefulness” (*id.*). With *therefor*, *therein*, *whereas*, and *whereby*, “it’s a matter for your own subjective judgment” (pp. 265–66). The author gives no reasons for these idiosyncratic judgments. Readers apparently must simply memorize which words fall into which group. But, of course, many professional drafters and drafting teachers recommend avoiding all such *here-* and *there-* words altogether — a recommendation easily carried out in practice.

Elsewhere, Filson waffles unhelpfully: “The author would encourage you to use ‘the’ or ‘that’ in place of the demonstrative ‘such’ as long as you can do so consistently and are satisfied that the meaning is clear. . . . But you should feel free to use ‘such’ without apology if you are comfortable with it, and you should always use it when you suspect that the alternative would jeopardize the clarity and precision of your product” (p. 250). What is missing here is analytical rigor: the context doesn’t exist in which *such*, used as a demonstrative adjective, makes the drafting clearer. In fact, it almost always makes a sentence ambiguous. Does *such property* mean “the very property just referred to” (as most lawyers loosely use it) or “property of that kind” (as most speakers of English understand it)?

These are not isolated instances of poor advice. Other examples abound:

- The section on passive voice is badly overstated and facially false: “The use of the passive voice in a sentence invariably leaves one or more of its material elements unspecified” (p. 232).
- Filson attempts to justify the serpentine sentences characteristic of federal legislation by rejecting one drafter’s attempt at a plain-language redraft, but he never considers several methods that would be superior to the before-and-after models (p. 94–95).
- The guidance on *shall* — a cornerstone of the preceding issue of this journal — is to use it by following “visceral instincts” (p. 233).

In sum, this book is helpful if you need to know about current drafting practices on Capitol Hill. It is largely unhelpful if you want to improve your drafting style.

The Little Book on Legal Writing. 2d ed. By Alan L. Dworsky. Littleton, Colo.: Fred B. Rothman & Co. 1992. \$9.95. The author boldly claims that with this thin paperback, one can “learn legal writing fast with a minimum of effort.” Can anyone learn quickly how to write well? Can anyone learn it with minimal effort?

Despite these questionable premises, this volume will teach law students some of the basics of legal writing without the dry, pedantic style of many other books on this topic. Dworsky’s witty, irreverent tone is refreshing. For example, in a list of often misspelled words and ways to remember them, he says: “*Subpoena*. I can’t help you here. Just stare at this one until you memorize it” (p. 47).

The book begins with a concise, down-to-earth chapter on plain English. Students will find helpful the explanations of specific types of legal writing, such as case briefs and office memoranda. Dworsky offers sound guidance on specific legal-writing issues such as referring to cases, courts, and parties and using citations, quotations, and authority.

The three chapters on style, usage, and spelling should have been omitted. Other sources cover these topics with greater wisdom and detail. Dworsky believes, for example, that “because the law is steeped in tradition,” lawyers have been reluctant to use “new typefaces.” He then advises law students to follow the lead of these backward-thinking lawyers. According to Dworsky, even if students have sophisticated computers and laser printers, they should make their work look as if it’s been produced on a typewriter. Dworsky further advises students to use underlining instead of italics and to avoid graphics, such as bullets for listed items.

Despite those perversely Luddite views on document design — an issue of critical importance in good legal writing — Dworsky’s

book offers considerably more to law students than many of its competitors.

The Oxford Dictionary of American Legal Quotations. Edited by Fred R. Shapiro. New York, N.Y.: Oxford University Press, 1993. Pp. 582. \$49.95. This book, as the editor is quick to tell us on the first page of his preface, “is the most scholarly legal quotation dictionary yet published” (p. ix). The book’s virtues greatly outweigh its vices, the principal one being that many of the quotations are genuine clunkers — deathly dull and badly phrased. But the book is comprehensive, accurate, and bibliographically precise. It therefore deserves a place on the shelf of any serious legal writer.

Who said the following?

- “Injustice is relatively easy to bear; what stings is justice.”
- “There is no surer way to misread any document than to read it literally.”
- “Some circumstantial evidence is very strong, as when you find a trout in the milk.”
- “Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction.”

For these and thousands of others, this book supplies the answer.

Persuasive Writing. By Irving Younger. Minnetonka, Minn.: Professional Education Group, Inc., 1990. Pp. 103. \$12.95. Irving Younger was almost as engaging a writer as he was a speaker, and these essays — which originally appeared in the *ABA Journal* in the mid-1980s — needed to be collected.

Unfortunately, both the production and the promotion of this anthology are disappointments. As for production, unless the reader has plenty of imagination, Younger’s urbanity and charm do

not come through: the book is an inexpensive-looking, spiral-bound affair with one-sided printing that looks like a mediocre photocopy. The lack of an index makes it especially difficult to use. As for promotion, the book has remained obscure: the editors of this journal, though they work hard to find every publication on legal writing, first discovered this book more than three years after its publication.

Apart from the retrograde views that Younger expressed in his essay on sexist language, his words are generally insightful and inspiring. But those words were presented much more aesthetically in the pages of the *ABA Journal* than they are here.

Rodell Revisited: Selected Writings of Fred Rodell. Edited by Loren Ghiglione, Janet Rodell, and Mike Rodell. Littleton, Colo.: Fred B. Rothman & Co., 1994. Pp. 265. \$42.50. Although Fred Rodell must be one of the most widely quoted of 20th-century law professors, his writings merit even more attention than they have received — especially within academe. So the editors of this volume have done the legal world a great service by collecting many of his best writings into a convenient volume. One finds not only such classics as *Goodbye to Law Reviews — Revisited* and a chapter from *Woe Unto You, Lawyers!*, but also hard-to-find essays, book reviews, and even verse.

Loren Ghiglione's biographical introduction is both informative and evocative. We learn, for example, that during Rodell's last year as a student at Yale Law School, Dean Charles E. Clark arranged to have a four-hour legal-aptitude test administered to the faculty, the staffers of the *Yale Law Journal*, and the first-year students with an A average. The Dean scored 76. The highest grade other than Rodell's was 79. Rodell, who took only two hours while the others struggled to finish in twice that time, scored 94.

That intelligence — that genius — fairly radiates from the pages of this book.

