

Book Notices

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Effective Legal Writing for Law Students and Lawyers. 5th ed. By Gertrude Block. New York: Foundation Press, 1999. Pp. 315. \$27.20.

In its fifth edition, this book remains among the sounder law-school texts on the market. Despite its title, most practicing lawyers won't find the book particularly useful, except perhaps for organized writing classes or groups. As suggested by the accompanying instructor's manual, which is new for this edition, *Effective Legal Writing* is a traditional text for first-year law-school writing classes.

While it includes some new material, the fifth edition closely resembles the fourth. Unfortunately, it retains several shortcomings from its earlier editions, such as:

- In discussing briefs, Block again unsoundly tells students that they must frame the issue “as an indirect question beginning with *whether*” (p. 193). She offers no explanation for this mandate. Most courts require nothing of the sort, and a 1994 article in this *Journal* effectively debunked this notion.
- The “model brief” contains the same inscrutable “model issue” — a 51-word rambling phrase in all capital letters, beginning with “WHETHER” and using the word “DECEDENT” five times (p. 210).
- This edition again includes a complete model answer for the only memorandum assignment, thus tempting students to read the model first (pp. 184–87). Instead, the model should have appeared only in the instructor's manual.

- Like earlier editions, this edition fails to discuss letter-writing.
- Again, this edition begins with several pages of legal definitions, including definitions of several obscure Latin terms (pp. xiii–xxi). Seemingly selected at random, the terms are prefaced by a tip to consult a law dictionary for all other legal terms.

Chapter 3, on style, now briefly discusses “politically correct” language, sexist language, and plain English. But the discussions are disappointingly superficial.

The book does have some good new examples of student writing. And much of its advice is sound — especially on the typical topics of legal-writing texts, such as the memorandum, the thesis, and the brief. What distinguishes it are the less common, but genuinely helpful, sections on understanding opinions, writing case briefs, and studying for law-school exams.

Despite its drawbacks, this fifth edition of Block’s popular text remains a defensible choice for law-school writing courses.

The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts. By Bryan A. Garner. New York & Oxford: Oxford University Press, 1999. Pp. 444. \$50.

Because the author of this book is also an editor of this journal, the editors decided — as in the past — not to print an original review but merely to excerpt all published reviews as of our press date.

- “*The Winning Brief* is a treasure. The author has gleaned valuable points on persuasive writing from a great number of sources. For each point, he provides helpful explanation

or analysis. He presents good examples from famous legal authors and from active appellate practitioners who are not so famous. Sometimes, he makes his point with an example of bad writing. When he does this, he always provides a contrasting model of good work. . . . Mr. Garner demonstrates admirably the brevity and clarity that he teaches.” — Dennis Owens, *ABA Appellate Practice Journal*.

- “With a sense of mission tempered by occasional wit, Garner exorcises the semantic sins that lawyers fall prey to: passive constructions, heavy connectors (consequently, subsequently, notwithstanding), wordy prepositions (with respect to, in connection with), throat-clearing phrases (It is respectfully submitted that . . .), and the use of emphatic adverbs that often signal weak arguments (clearly, obviously, undeniably). This is, quite simply, one of the best books on legal writing available today. It is an eminently practical, occasionally inspired guide that should help all lawyers — whether they are mediocre or brilliant writers — to become clearer and more persuasive on paper.” William C. Smith, *Lawyers Weekly USA*.
- “Although *The Winning Brief* is designed for practicing attorneys and would not be suitable as the exclusive text for first-year students, it is a terrific reference for writing instructors, and it would be a fine text for students in an advanced brief-writing seminar. In writing this book, Garner has practiced what he preaches, because he advocates his tips persuasively.” — Charles R. Calleros <<http://www.jurist.law.pitt.edu>>.
- “Again and again in its pages I found myself nodding my head in agreement with various points and, in a few places, with pleasure at Mr. Garner’s effective defiance of empty convention. Mr. Garner’s book, however, suffers from the primary defect present in even the best contemporary legal-

writing texts: while they do a terrific job of describing well-written legal documents, they are ineffective at teaching the skill of legal writing to someone who has not already gained considerable control over it. It is as if one were to teach painting by describing the best paintings.” — Peter Friedman, *Journal of Appellate Practice and Procedure*.

- “Garner’s 100 most important tips on brief-writing . . . cover a variety of subjects, including paragraphing, word choice, punctuation, text design, and persuasive strategies. These are not pulse-quickeners, but Garner makes the best of them by writing with a style and flair that makes his book easy — and enjoyable — to read. *The Winning Brief* is organized so that it is suitable for either leisurely reading or quick consultation for when working under a deadline.” Doyle Baker, *Prosecutor*.

Writing to Win: The Complete Guide to Writing Strategies That Will Make Your Case — and Win It. By Steven D. Stark. New York: Doubleday, 1999. Pp. 283. \$15.95.

This good new writing guide will appeal to practicing lawyers, particularly trial lawyers. Remarkably, Stark manages to weave into this relatively small paperback book two divergent traits — it is at once practical and thought-provoking.

With specific rules and good examples, Stark coaches readers on how to draft facts, arguments, trial and appellate briefs, complaints, answers, discovery, technical explanations, memos, letters, and even e-mail. These sections offer wisdom gleaned from practical trial and appellate experience. Indeed, the book’s focus is litigation, not corporate law. Many of its examples come from U.S. Supreme Court briefs. And drawing from his newspaper and broadcasting experience, Stark includes *maxims*

and some lively examples from journalism, advertising, and fiction.

The section on contract drafting, however, is perplexing, starting with its very first heading: “When Bad Writing Might Be Acceptable but Is Still Avoidable” (p. 248). The confusion continues, as Stark posits that “poorly written agreements can still be serviceable ones if they promote your client’s interests” (p. 248). Stark even suggests that lawyers are sometimes justified in “copying the format and language of what has worked before in similar circumstances, no matter how badly written it is” (p. 250). This chapter doesn’t begin to cover its broad topic. The treatment is both limited and suspect.

Like the chapter on contract-drafting, the one on oral argument might better have been omitted. While it contains generally sound advice, there’s nothing particularly new here. And the topic seems misplaced in a book devoted largely to persuasive writing.

One disappointing feature is the book’s frequent use of examples drawn from other writing books and journals. While the examples are properly attributed, this practice significantly diminishes the book’s originality.

With the exceptions noted here, Stark’s own comments are generally original and provocative — sometimes even controversial. Instead of focusing single-mindedly on legal writing, Stark provides related insights into lawyers, law practice, ethics, and popular culture.

