Book Reviews

Style Matters: A Review Essay on Legal Writing

Writing from a Legal Perspective. By George D. Gopen. *St. Paul: West Publishing Co.*, 1981. Pp. xii, 225. $11.95.
Effective Legal Writing: A Style Book for Law Students and Lawyers. By Gertrude Block. *Mineola: Foundation Press*, 1981. Pp. vi, 152. $5.95.

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Lawyers are, among other things, professional writers. Because they are paid well for their prose, it is reasonable to assume that most of them write well. This assumption may be reasonable, but it is false.

Most lawyers—even many who have risen to the top of the profession—write badly. Let us look at three examples of the kind of writing we read every day. Each was written by a successful lawyer—one judge, one professor, and one practitioner.[1] I selected the judge and the practitioner because they have published articles on legal writing, the professor because he has been praised for his prose.

My first example comes from an opinion discussing the withholding of federal revenue-sharing funds. A judge of the United States Court of Appeals wrote in dissent:

† Associate Professor of Law, University of Connecticut. I would like to thank the people who commented on an earlier draft of this essay: Lori Andrews, Robert Birmingham, Jan Brakel, Shirley Bysiewicz, George Christie, Harry Dubnick, Patrick Finegan, David Jones, Robert Levy, Norval Morris, Richard Reynolds, Clements Ripley, Janet Shapiro, Janet Spegele, Joseph Williams, and Franklin Zimring. But I am even more indebted to two friends who have not read drafts: Andrew Kull, who first introduced me to style books, and Randy Block, with whom I have spent many hours discussing writing. If Randy, who is recovering from a coma, had been able to read this essay, undoubtedly it would have been better.

1. I will not mention their names. To do so would place too much emphasis on identities when I want to emphasize their writing. Anyone can, of course, look up the cited works. Although the sentences I selected for criticism are among the worst in each work, many other sentences are of roughly the same quality.

> Irrespective of whether the district court had the power it exercised with regard to these funds, and I generally entertain the idea that a federal court acting in equity inherently must and does possess the power to fashion a remedy appropriate to the accomplishment of proper ends, it appears to me from a review of the reported proceedings that the district court, assuming for the sake of the argument that it possessed the power it exercised, prematurely and improvidently exercised it.[2]

This sentence is all bumps. With so many false starts and stops, it is easy to lose our way. And, although the judge's sentence is 81 words long, we do not encounter the most important verb until the last two words.[3] When we finally do reach the end, we have forgotten what he said at the beginning. Unfortunately, so has the judge. He begins by speaking "[i]rrespective of whether the district court had the power it exercised," but ends by "assuming for the sake of argument that [the district court] possessed the power it exercised."[4] That he can hold these two contrary propositions in his mind at the same time is remarkable, but perhaps such a feat comes naturally to one who does not merely think, but instead "entertains ideas."

I draw my second example from *Legal Identity: The Coming of Age of Public Law*,[5] a book by a professor at one of the country's leading law schools. I selected his book, not because it is worse than dozens of other academic writings, but because it was described in this law journal as "beautifully written."[6] Let us examine this beauty:

> But I think one must be very cautious in assuming that the "higher role" or more basic agreement that one sees with hindsight

2. United States v. Chicago, 549 F.2d 415, 443 (7th Cir. 1977) (footnotes omitted).

3. This violates the *short-to-long principle*. As Joseph Williams explains:

> If we create a long subject, our reader has to hold his breath until he gets to a verb. . . . [A] sentence with a shorter subject and a longer predicate can move along with a bit more grace. . . .
>
> In general, a vigorous sentence moves quickly from a short and concrete subject through a strong verb to its complement, where we can more gracefully elaborate our syntax and more fully develop our ideas.

J. WILLIAMS, STYLE: TEN LESSONS IN CLARITY & GRACE 81-82 (1981); *see id.* at 95-98, 141-43.

4. Lest you think this sentence is an aberration, here is another from the same dissenting opinion:

> Nowhere do I find in the record of this case any persuasive reason for thinking that if this injunction had been enforced by normal and traditional means available to equity courts the desired objective of elimination of discrimination could not have been achieved without resorting to the extraordinary procedure of stopping operating funds, the lifeblood of a complex metropolis, which city in this case ultimately had to turn to commercial banks for loans with which to meet the crisis when the federal funds were in fact stopped.

United States v. Chicago, 549 F.2d 415, 444 (7th Cir. 1977).

5. LEGAL IDENTITY: THE COMING OF AGE OF PUBLIC LAW (1978) [hereinafter cited as LEGAL IDENTITY].

6. Stewart, *Standing for Solidarity* (Book Review), 88 YALE L.J. 1559, 1559 (1979).

> was side by side with the inconsistent and therefore necessarily temporary "lower role," *there* in fact all along in the form in which it now appears.[7]

What is oddest about this sentence is that, apparently, the professor knew it was incomprehensible. Otherwise, why would he have emphasized the most confusing word in the sentence, "*there*," by italicizing it? Did he believe that italicizing a word could substitute for rewriting a sentence? Notice also the muddle of locational images—"higher," "lower," "side by side," and "*there*."[8]

I take my last example from *Effective Legal Writing—Some Thoughts and Reflections on Learning and Teaching*.[9] Since writing that article, its author has become one of the country's leading tax-shelter specialists. Here is an excerpt from the first two paragraphs:

> If law is language (less facetiously than overly fastidiously—not jurisprudentially) then law students have made a determinative choice, upon entering law school, to undertake the requisite measure of professional responsibility, and to become artisans dealing with a fine (probably the finest) but delicate communicative technique. Consummate skill as expositors and rhetoricians must be developed in the explication of legal materials, and the written expression of private arrangements, court advocacy, and public will. . . .
>
> The law schools have recognized the responsibility of the lawyer to be capable of clear exposition and employing rhetorical techniques in an effective manner to accomplish particular objectives in specific situations, and some have undertaken various forms of programs to teach and to accomplish this.[10]

Although I defy anyone to decipher the first sentence, the last two are clear enough to be translated into English. For example, in standard English the last sentence might read:

> Because law schools have recognized a lawyer's responsibility to write clearly and argue effectively, some have established programs to teach these skills.

7. LEGAL IDENTITY, *supra* note 5, at 53.

8. The author does write some good sentences, but far too many are like this one:

> But the relationship between an individual and the identities that lie within him and that he shares with others, and that leads us to say that the identity is "his," is not one from which "he" can be dropped so that "it" can be studied objectively.

Id. at 147.

9. *Effective Legal Writing—Some Thoughts and Reflections on Learning and Teaching*, 42 CHI. B. REC. 113 (1960).

10. *Id.* at 113 (footnotes omitted).

The author's chief fault is his love of bloodless abstractions. Instead of talking about concrete acts, such as writing or arguing, he talks about vague abstractions, such as "techniques" to accomplish "objectives" in "situations."

George Orwell once parodied this abstract style by translating a well-written verse from *Ecclesiastes* into what he pejoratively called "modern English." Here is the original:

> I returned, and saw under the sun, that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favour to men of skill; but time and chance happeneth to them all.[11]

Here is the same verse, translated into modern English:

> Objective considerations of contemporary phenomena compels [sic] the conclusion that success or failure in competitive activities exhibits no tendency to be commensurate with innate capacity, but that a considerable element of the unpredictable must invariably be taken into account.[12]

With its fuzzy abstractions, Orwell's parody sounds like the sentences in my last example, the practitioner's article on effective legal writing.

I selected these examples because of what they imply about the nature and seriousness of bad legal writing. The weaknesses in these excerpts are common ones, weaknesses that I suffered from until I started reading style books six years ago, and weaknesses that to some extent I still suffer from. All three lawyers write in a style that is vague, indirect, and inflated. None writes in a style that is clear, direct, and plain. Of course, writing is hard work and no one writes perfectly—certainly not I. Yet if we lawyers are going to learn to write well, we must stop pretending that bad prose is written only by people less intelligent or less experienced than we. Law professors and practitioners often complain that young lawyers do not know how to write. But the problem is not confined to young lawyers; even some of the brightest and most learned members of our profession write grotesque sentences. As the prominence of these three proves beyond a reasonable doubt, lawyers do not have to write well to succeed. They would, however, be much more effective if they could write better.

11. *Ecclesiastes* 9:11 (King James).

12. G. ORWELL, *Politics and the English Language*, in SHOOTING AN ELEPHANT AND OTHER ESSAYS 77, 84 (1950).

I. Learning to Write in School

To learn how to write well, where do people turn for help? Most look first to the schools, but few find help there. Indeed, a growing number of critics blame the schools themselves for bad writing.[13] Let me add my voice to that chorus.

Forty years ago Robert Graves and Alan Hodge argued that the problem was carelessness: "English has for some time been written with great carelessness not only among the uneducated and semi-educated but also among the educated classes . . . ."[14] I believe the educated write badly less because they are careless than because they were never taught how to write in school. I know I was not. To be sure, I attended good schools—Yale College and the University of Chicago Law School[15]—and had ample opportunities to write; I wrote as many as 25 papers in a single college term and worked on the law review in law school. Yet the more I wrote, the better I became at making the same mistakes. None of my college or law school teachers ever helped me with my writing. Certainly, a few of them wrote well themselves, but either they did not know how to teach writing or they did not want to take the time.

And in a subtle way, I was instead taught to write poorly. Many of the "rules" I learned before I reached law school I now know are spurious. I believed, for example, that it was improper to split infinitives,[16] to begin a

13. By far the most entertaining critic of English teachers is Richard Mitchell, who calls himself the Underground Grammarian. Best known for his newsletter, published eight times a year (P.O. Box 203, Glassboro, N.J. 08028), Mitchell considers good writing a matter not just of craftsmanship, but of morality as well. He blames English teachers for many of society's ills—not the least of which is the nuclear accident at Three Mile Island. According to Mitchell, by encouraging inattention to detail and by teaching good intentions rather than good grammar, English teachers have fostered the carelessness and incompetence that led to the accident. *See* Mitchell, UNDERGROUND GRAMMARIAN, May 1980, at 1.

14. R. GRAVES & A. HODGE, THE READER OVER YOUR SHOULDER: A HANDBOOK FOR WRITERS OF ENGLISH PROSE 175 (2d ed. 1947).

15. At the time I went to school, Yale claimed to have the best English department in the country and the University of Chicago Law School claimed to have the best first-year writing program in the country.

16. The best discussion of split infinitives can be found in Bergen and Cornelia Evans's *A Dictionary of Contemporary American Usage:*

> The notion that it is a grammatical mistake to place a word between *to* and the simple form of a verb, as in *to quietly walk away,* is responsible for a great deal of bad writing by people who are trying to write well. Actually the rule against "splitting an infinitive" contradicts the principles of English grammar and the practice of our best writers . . . .
>
> The *to*-infinitive is actually the preposition *to* with the simple form of the verb as its object, as in *a need to investigate the matter.* Grammatically it is comparable to a preposition with an *-ing* form of the verb as object, as in *a need for investigating the matter* . . . . In the case of the *-ing* form a qualifying word preferably stands between the preposition and the *-ing,* as in *a need for secretly investigating the matter.* When we have a composite verbal phrase the normal position for a qualifying word is between the first auxiliary and the meaningful form, as in *he decided he would secretly investigate the matter.* In either case, the qualifying word may be placed after the complete verbal statement, as in *for investigating the matter secretly* and *he would investigate the matter secretly.* But when it is placed late, it acquires a special emphasis.

sentence with "and,"[17] or to end a sentence with a preposition.[18] I saw good writing as avoiding a wrong step; I did not know what I should do to write well. I wrote long, complex sentences with abstract phrases and too many nouns. Nearly every style book decries this type of abstract, indirect writing, though it is often given different names. Joseph Williams calls it, among other things, "mature bad writing" to distinguish it from the crude, immature bad writing of children.[19] In Wilson Follett's terminology, I suffered from "noun-plague."[20] Ernest Gowers, on the other hand, would have diagnosed my disease as "abstractitis."[21] Bluntest of all, George Orwell calls it simply "modern English."[22]

So what is the alternative? Nearly every textbook writer endorses the style variously called "plain," "active," "direct," or "verbal," and nearly every leading novelist and essayist uses it. Not only is this style more pleasing aesthetically, but experimental studies have shown it easier to read, type, understand, and remember.[23]

If this plain style is so much better, why do so few people use it? Recent empirical work by Rosemary Hake and Joseph Williams supports what my own experience has led me to believe: Bad education may cause mature bad writing.[24] In several experiments, Hake and Williams submit-

> It would follow that the normal position for a word qualifying an infinitive would be before the verb form but after any auxiliary element, as in *he decided to secretly investigate the matter.*

B. EVANS & C. EVANS, A DICTIONARY OF CONTEMPORARY AMERICAN USAGE 469 (1957).

17. Wilson Follett summarizes the consensus of grammarians: "A prejudice lingers from the days of schoolmarmish rhetoric that a sentence should not begin with *and.* The supposed rule is without foundation in grammar, logic, or art." W. FOLLETT, MODERN AMERICAN USAGE 64 (J. Barzun ed. 1966); *see* E. GOWERS, THE COMPLETE PLAIN WORDS 127 (1954).

18. Although H.W. Fowler's discussion of "preposition at end" is over a half-century old, it still rings true:

> It is a cherished superstition that prepositions must, in spite of the incurable English instinct for putting them late . . . , be kept true to their name & placed before the word they govern.
>
> The fact is that the remarkable freedom enjoyed by English in putting its prepositions late and omitting its relatives is an important element in the flexibility of the language. The power of saying . . . *People worth talking to* instead of . . . *People with whom it is worth while to talk,* is not one to be lightly surrendered. . . . The legitimacy of the prepositional ending in literary English must be uncompromisingly maintained; in respect of elegance or inelegance, every example must be judged not by any arbitrary rule, but on its own merits, according to the impression it makes on the feeling of educated English readers.

H. FOWLER, A DICTIONARY OF MODERN ENGLISH USAGE 457-58 (1st ed. 1926) [hereinafter cited as FOWLER'S 1ST].

19. Joseph Williams has used the term in his writing classes at the University of Chicago.

20. *See* W. FOLLETT, *supra* note 17, at 229-30.

21. *See* H. FOWLER, A DICTIONARY OF MODERN ENGLISH USAGE 5-6 (E. Gowers 2d ed. 1965) [hereinafter cited as FOWLER'S 2D].

22. *See* G. ORWELL, *supra* note 12, at 79.

23. *See, e.g.*, Charrow & Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions,* 79 COLUM. L. REV. 1306, 1328-40 (1979); Danet, *Language in the Legal Process,* 14 LAW & SOC'Y REV. 445, 484-86 (1981); Hake & Williams, *Style and Its Consequences: Do as I Do, Not as I Say,* 43 C. ENGLISH 433, 444-46 (1981); Williams, *Defining Complexity,* 40 C. ENGLISH 595, 602 (1979).

24. Hake & Williams, *supra* note 23, at 446-47.

ted pairs of papers to high-school and college English teachers. One paper in each pair was written in an abstract, nominal, indirect style and the other was written in a concrete, verbal, direct style. For example, in an essay on the advantages of life in a large city, two sentences written in the nominal style were:

> There may be disapproval on the part of some people in regard to his behavior but they are not the only associations a person has to have. Seeking out other people with more freedom of thought is always a possibility for him.[25]

The same two sentences written in the verbal style were:

> Some people in large cities may disapprove of the way a person behaves but they are not the only people a person has to associate with. He can always seek out other people who think more freely.[26]

In each pair, both papers said the same things in about the same number of words and contained the same number of spelling and punctuation errors. The English teachers gave the papers written in the nominal style significantly higher grades than those written in the verbal style.[27] Hake and Williams concluded that, by rewarding students who write in the nominal style, English teachers probably foster bad writing.[28] Their research suggests that English teachers may be less the cure for bad writing than one of its causes.

To teach good writing, moreover, a teacher must do more than give well-written papers higher grades than poorly written papers; a teacher must know how to turn bad writers into good ones. Perhaps some would argue that good writing is largely self-taught, that you can learn to write only by writing. But this argument is only half true. Nearly every difficult task is self-taught; the teacher's function is to shorten the time it takes to learn the task. That writing may be more self-taught than most tasks does not excuse the failure to teach it. Furthermore, the act of writing will not substantially improve a person's style if the writer does not know which elements of his style need improvement. A writer will improve only minimally without an intelligent critique of his writing or at least a framework within which the writer can criticize his own writing. Thus most experts on style try to build this framework by promoting self-consciousness about writing.

25. *Id.* at 447.
26. *Id.* at 448.
27. *Id.* at 436-44.
28. *Id.* at 446-47.

II. Learning to Write by Reading Style Books

If school is not the answer for most of us, what is? A few people may learn to write from their supervisors on the job, but most will have to learn the same way I am trying to—by reading style books.

There are many kinds of style books—some better suited than others for teaching writing. Some are very useful when referred to intermittently: the *Oxford English Dictionary*[29] and Fowler's *Modern English Usage*[30] are just two examples.[31] But because these books are not designed to be read from cover to cover, they are not well-suited to teaching the basics of good writing.

Much better for that purpose are textbooks, that is, books designed specifically for teaching how to write. They can usually be read from beginning to end in a logical progression from topic to topic. Those written for a general audience include two superb books: Jacques Barzun's *Simple & Direct*[32] and Joseph Williams's *Style.*[33]

29. OXFORD ENGLISH DICTIONARY (1933) [hereinafter cited as O.E.D.].

30. FOWLER'S 1ST, *supra* note 18; FOWLER'S 2D, *supra* note 21.

31. Most style books not written primarily for language scholars fall into one of three categories: reference books, commentaries (which in this field are primarily collections of unrelated essays), and textbooks, *see infra* pp. 168-70. Obviously, many reference books and textbooks are also in part commentaries, and many commentaries are also in part textbooks. But they differ enough to discuss them separately.

Reference Books. One type of reference book is the usage dictionary. The most famous example is Fowler's *A Dictionary of Modern English Usage.* One drawback of these books is that they are organized in a dictionary format. This format is fine if you know the correct name for what you are looking up. But in some cases, if you already know what to call it, you probably do not need to look it up. An example is the fused participle. Although Fowler did trailblazing work in identifying, discussing, and inventing the name for the fused participle, even a regular user of *Fowler's* will probably not know where in the book to look if he does not know what to call it. *Fowler's* is not alone in using this format; others include two of the best reference books on American usage. *See* B. EVANS & C. EVANS, *supra* note 16; W. FOLLETT, *supra* note 17.

A second type of reference book is the publishers' style book. *See, e.g.*, A UNIFORM SYSTEM OF CITATION (13th ed. 1981) (the "Blue Book"); U.S. GOV'T PRINTING OFFICE STYLE MANUAL (rev. ed. 1973); THE UNIVERSITY OF CHICAGO PRESS, THE CHICAGO MANUAL OF STYLE (13th ed. 1982); WORDS INTO TYPE (M. Skillin & R. Gay 3d ed. 1974). Although the law review editors' Blue Book recommends the Government Printing Office's style book, I like the last two better. Users most often refer to publishers' style books on questions of punctuation, but I also occasionally rely on them for other information, such as the proper preposition to use with a particular verb.

Another type of reference book used by most writers, good and bad alike, is a dictionary. The leading British dictionary, the *Oxford English Dictionary*, is indispensable for its examples of how words have developed over time. Writers disagree on which American dictionary is best; contenders include: WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (1981); WEBSTER'S NEW COLLEGIATE DICTIONARY (8th ed. 1980); and AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE: NEW COLLEGE EDITION (1981).

Commentaries. The least helpful works for learning how to write compose the second category of style books, the commentaries. These range from excellent scholarly works, *see, e.g.*, D. MELLINKOFF, THE LANGUAGE OF THE LAW (1963); H.L. MENCKEN, THE AMERICAN LANGUAGE (4th ed. 1936), to best-selling collections of essays, *see, e.g.*, R. MITCHELL, LESS THAN WORDS CAN SAY (1979); E. NEWMAN, A CIVIL TONGUE (1976); E. NEWMAN, STRICTLY SPEAKING (1974); W. SAFIRE, ON LANGUAGE (1980); J. SIMON, PARADIGMS LOST: ESSAYS ON LITERACY AND ITS DECLINE (1980).

32. J. BARZUN, SIMPLE & DIRECT: A RHETORIC FOR WRITERS (1975).

33. J. WILLIAMS, *supra* note 3.

In addition, in the last few years two good textbooks have been written specifically for lawyers and law students. Rudolf Flesch's *How to Write Plain English: A Book for Lawyers & Consumers*[34] is directed particularly to those who draft statutes, government regulations, and consumer contracts. Flesch has developed a readability index, based on the average number of syllables per word and the average number of words per sentence.[35] The shorter the words and sentences, the easier they are to read, hence the higher the score. Flesch argues that all legal writing should be written in "Plain English."[36]

I see two problems with his readability index. First, long words and sentences are more often symptoms of unclear writing than causes of it.[37] Second, Flesch wants legal English to be too plain. He defines "Plain English" as a Flesch readability score of 60 or above, which he equates with an eighth- or ninth-grade reading level.[38] Even such generally well-written magazines as *Time* and *Newsweek*, with readability scores of about 50, do not meet Flesch's standards for "Plain English." Because undoubtedly most lawyers and law students find *Time* and *Newsweek* easy reading, I question Flesch's standards. Why force yourself to write at an eighth- or ninth-grade level if you are writing mainly for an audience of other lawyers?[39] And yet despite Flesch's standards being too strict, most lawyers could profit by computing their own readability scores. Many would find them quite low—somewhere between the *Harvard Law Review* at 32 and the Internal Revenue Code at minus 6.[40]

Richard Wydick has written the other good recent textbook on legal writing, *Plain English for Lawyers*.[41] In this short, simple book, he recommends that legal writers follow much of the advice that has been traditionally offered to other writers. Wydick argues persuasively for writing shorter sentences, cutting out unnecessary words, and using more active

34. R. FLESCH, HOW TO WRITE PLAIN ENGLISH (1979).

35. His formula is: "Multiply the average sentence length by 1.015. Multiply the average word length by 84.6. Add the two numbers. Subtract this sum from 206.835. The balance is your readability score." *Id.* at 24.

36. *Id.* at 3.

37. *See, e.g.*, Danet, *supra* note 23, at 484; Raymond, *Putting Flesch to the Test*, ACTUARY, Oct. 1979, at 1; Williams, *supra* note 23, at 608. If you want to write clearly, it is more important that you usually observe other rules: Express the agent of the action in the subject of the sentence; express the action in the verb; express the goal of the action in the direct object; at the beginning of the sentence put older, more familiar information and at the end put newer, less predictable information; move from a short subject to a longer predicate; keep modifiers close to the words they modify; and so on. For discussions of these and other important syntactic and lexical features, see generally J. WILLIAMS, *supra* note 3, at 7-124.

38. R. FLESCH, *supra* note 34, at 24.

39. *See also* Wydick, Book Review, 78 MICH. L. REV. 711, 716 (1980) (reviewing R. FLESCH, *supra* note 34). In part, Flesch wants legal writing accessible to almost anyone who can read.

40. R. FLESCH, *supra* note 34, at 26. This Book Review scores between 55 and 60, just below the borderline. And the two books reviewed here both have readability scores slightly lower than mine.

41. R. WYDICK, PLAIN ENGLISH FOR LAWYERS (1979).

verbs and fewer abstract nouns. I disagree with him on some matters of taste,[42] but Wydick's book is still an excellent style manual for lawyers.

III. Two New Textbooks on Legal Writing

Two publishers of law school textbooks—West Publishing Company and the Foundation Press—have recently put out new textbooks on legal writing.[43] West's book is *Writing from a Legal Perspective* by George D. Gopen, a professor at Loyola University of Chicago;[44] the Foundation Press's book is *Effective Legal Writing: A Style Book for Law Students and Lawyers* by Gertrude Block, a professor at the University of Florida.[45] Both textbooks are designed in part for law students and come complete with problems and exercises.

A. *Gopen's* Writing from a Legal Perspective

Gopen's book begins auspiciously with a description of how legal writing differs from other types of writing. As Gopen argues: "All writers face the problem of discovering what to say and how to say it so that the reader will understand precisely what was meant; but lawyers must also consider how to say it so that no one can intentionally misconstrue their meaning."[46] In other words: All writers write to be understood, lawyers write so that they cannot be misunderstood. Although this point has been made before—by Sir Ernest Gowers[47] among others—Gopen shows that he is thinking about how the literature of writing applies to the special tasks of lawyers.

Gopen then presents "the special *combination* of writing needs"[48] that he believes lawyers must meet. First is "the need for precision and anti-precision."[49] "Anti-precision" is the calculated use of a broad term—a word or phrase that can acquire new meanings from future developments. With open-ended terms such as "due process," the Constitution and its first ten amendments are models of anti-precision.[50] Second is "the need to

42. Wydick, for example, is opposed to using words such as "clearly," which he calls "throat-clearers." *Id.* at 63-64. For a discussion of this issue, see *infra* pp. 176-77.

43. A book published by Charles Scribner's Sons arrived too late to be included in this Review: D. MELLINKOFF, LEGAL WRITING: SENSE AND NONSENSE (1982).

44. G. GOPEN, WRITING FROM A LEGAL PERSPECTIVE (1981) [hereinafter cited by author and page number only].

45. G. BLOCK, EFFECTIVE LEGAL WRITING: A STYLE BOOK FOR LAW STUDENTS AND LAWYERS (1981) [hereinafter cited by author and page number only].

46. G. GOPEN at 1.

47. *See* E. GOWERS, *supra* note 17, at 8-13.

48. G. GOPEN at 6.

49. *Id.*

50. Another type of anti-precision, one that Gopen does not mention, is the use of purposely general language because each party to an agreement wants to interpret the language in a different way. Chief examples are the platforms of political parties and the Charter of the United Nations.

articulate the steps and connections in a logical argument";[51] next is "the need to recognize that people with varying viewpoints and interests might differ in their responses to words or arguments";[52] last is "the need to maintain clarity of expression, even in the face of complexity of thought."[53]

Gopen first stumbles in presenting what he considers his major contribution, a "system for self-revision." Although he calls his system "sheer unpleasantness"[54] and a "strenuous and trying process,"[55] he demands that we examine it carefully.[56] It has, I believe, two major problems. First, the example he selects to explain his system raises more doubts than it dispels. More important, Gopen's system—even as he applies it—can actually lead to bad writing.

1. *The System and an Example*

In just three pages, Gopen explains his system, which is composed of six steps:

Step 1

> Circle the main verb(s) in each clause of each sentence, being careful to treat all passive constructions as the verb "to be.". . .

Step 2

> Considering only the first sentence, decide if the main verb(s) communicates the central idea. If it does not, decide what the most important content of the sentence is and find a verb that capsulizes that idea. Then restructure a sentence around the new main verb . . . .

Each faction may interpret general language as it wants to. If the language were precise, no agreement would be possible. *See* C. PERELMAN, JUSTICE, LAW, AND ARGUMENT: ESSAYS ON MODERN AND LEGAL REASONING 95-106 (1980).

51. G. GOPEN at 6.

52. *Id.* at 7.

53. *Id.*

54. *Id.* at 42.

55. *Id.* at 32.

56. Gopen tells us: "Nothing in this book is of greater importance than the system . . . . Go back through this chapter, several times if necessary, until you are thoroughly familiar with how it works and why. Then force yourself to use it in detail for the next few papers you write." *Id.* at 41. By so emphasizing his system, Gopen not only invites a careful reading, he insists on one.

Step 3

Repeat Step 2 for each sentence in the paragraph . . . .

Step 4

Now reread your new sentences as a new paragraph and take note of the large number of repetitions that have surfaced . . . . Then combine sentences to eliminate as many of the repeats as you can . . . .

Step 5

If the process of collapsing redundancies leaves your sentences with seemingly less of your thought that [*sic*] you felt you were trying to express before, search your prose throughout these drafts for patterns that might have been forming. For example, check all the subjects of sentences. Do they form a pattern or progression? . . .

Step 6

Polish the prose so that it fulfills grammatical requirements and proceeds as smoothly, directly, and forcefully as possible.[57]

Gopen then spends seven pages on a close analysis of one experience with a student, a woman who had written a four-sentence paragraph "in response to an assignment to describe a riot scene in about 50 words." Before revision, the paragraph was:

A riot is developed when a group of people gathers together in a public place with opposing views toward one idea. This is usually accomplished in a way that disturbance is created. Confusion, loud outbursts, and violence are most likely to happen. In some riots a person could even be killed.[58]

After Gopen and the student worked through four of the six steps in his system, they reduced this paragraph to:

When people gather in a public places to disagree on ideas, the con-

57. *Id.* at 32-34.
58. *Id.* at 35.

fusion can often result in serious physical violence.[59]

Although in some respects this partial revision improved the original paragraph, in others the revision weakened it. Whereas the original used direct, concrete words, such as "loud outbursts" and "killed," the partial revision used the vaguer, more abstract phrase "serious physical violence."[60] To his credit, Gopen admits that his first four steps had "impoverished" the student's original paragraph.[61]

Moving to Step 5 of his system, he and the student then examined what was left out during the earlier steps. They discovered that in an attempt to "collapse the redundancies" they had destroyed an important progression in the original paragraph. That progression—"disturbance," "confusion," "outbursts," "violence," and "killed"—had been replaced by the abstract phrase, "serious physical violence." According to Gopen, as the revision session went on, they uncovered the subconscious importance of words left out during the earlier steps. For example, by trying to understand why she had originally written the apparently redundant "gathering together," they discovered that she had been struggling with the irony of rioting: "precisely that action that was to have brought people together resulted in tearing them apart."[62]

She began to express her fears about riots and, in particular, about a riot she had witnessed. The revision session then reached its climax:

> By this time she was totally engrossed in her memories of that riot. She suggested that the impersonality in her description had also stemmed from wanting to keep the whole experience of writing at arm's length, since the experience of watching had upset her so. Suddenly she looked awed and said, 'That's why I took out the "loud"!'. It had recreated the memory too vividly for her. Without the 'loud,' the paper for her would refer to any old riot, not necessarily hers. She was editing out, indeed, repressing, a painful reminder.
>
> In summary: The four seemingly innocent sentences she had started with led her to a five-page paper about the order in which things get out of hand (the central paradox). It explored the positive things that might have happened and the irony of the negative things that actually happened. It talked about the difficulties of being involved and the ways in which memory haunts you afterwards. It talked about dreams, failures, and realities. It was a wonderful

59. *Id.* at 38.

60. Moreover, the latter phrase is made up of words derived from French roots. Elsewhere in his book, Gopen criticizes the use of multisyllabic words derived from our French heritage; he argues that we should instead use shorter, simpler Anglo-Saxon words. *Id.* at 15.

61. *Id.* at 38.

62. *Id.* at 38-39.

paper.[63]

I can understand his elation at such an exciting teaching experience, but what does this example tell us about his system? In particular, what has his system for self-revision produced? After four steps, the intermediate result was a sentence that Gopen, his student, and I all found unsatisfactory. Then, after completing their revision of the short paragraph, Gopen and his student ended up, not with a single shorter, clearer paragraph, but with a five-page paper, not a word of which he shows us. And Gopen is so pleased that he gushes, "It was a wonderful paper."[64]

What Gopen unintentionally illustrates is that his system is one not of revision, but of inspiration, a system that inspires students to turn simple paragraphs into essays. We are also led to believe that his system is about working through psychological obstacles, such as "guilt," "conflicting feelings," and the repression of "a painful reminder."[65] After seven pages supposedly presenting an example of how to revise a paragraph, we find not a successful revision, but a paper twenty times the length of the original paragraph. He wants us to use his system for self-revision on everything we write until we internalize it. But we could not use it if it usually bore the same fruits: Expanding this Review twentyfold would more than fill this issue of the *Law Journal.* Even more disturbingly, Gopen assures us that this experience "was no solitary fluke," that he has "seen similar unfoldings of ideas and associations literally hundreds of times while applying this system."[66]

2. *The Merits of the System*

I have already discussed problems with the example Gopen uses to explain his system for self-revision. Yet even if Gopen does not explain or apply his system sensibly in his book, does it nevertheless have merit? Yes, it does, but a user must be careful not to rely on it too heavily.

If we cannot look for guidance to the example Gopen offers, let us look at his own writing. Gopen is an excellent writer, but, like most of us, he writes many sentences that are more abstract and indirect than they should be. More important, most of Gopen's lapses from grace seem to result from relying on his system. Whereas my all too frequent mistakes stem from my ignorance or carelessness, most of his mistakes stem from his emphasis on only one method of good writing to the exclusion of others.

63. *Id.* at 40-41.
64. *Id.* at 41.
65. *Id.* at 40-41.
66. *Id.* at 41.

The main contribution of Gopen's system is his suggestion that a writer determine the most important word or idea in a sentence and then find a verb that expresses that idea. This approach tends to make writing clearer, more forceful, and more direct. But there are other ways to write more directly and other ways to emphasize the most important ideas. Indeed, making the main idea of a sentence into the verb often weakens the sentence.

Two examples from Gopen's book illustrate this problem. The first is:

> people with varying viewpoints and interests *might differ in their responses* to words or arguments.[67]

I would revise this clause to read:

> people with varying viewpoints and interests *might respond differently* to words or arguments.

Gopen selected "differ" as the main verb presumably because the concept of difference is the main idea of the clause. His choice results in the abstract phrase "differ in their responses," instead of the more direct "respond differently." The shorter phrase emphasizes the concept of difference, not by incorporating it into the main verb, but by placing the adverb "differently" late, after the main verb.[68]

My revision of the second example is more dramatic. Gopen writes of:

> the need to maintain clarity of expression, even in the face of complexity of thought.[69]

I would write instead of:

> the need to express even complex thoughts clearly.

Here Gopen's main idea was presumably clarity, but he was prevented from using the verb "clarify" because it means "to make clear." He meant instead "to maintain clarity," so he used just those words, a choice that led to his circuitous sentence. In my revision, five words replace twelve with

67. *Id.* at 7 (emphasis added).

68. A late placement shows emphasis. *See* B. EVANS & C. EVANS, *supra* note 16, at 469.

Note also that simplifying Gopen's clause uncovers a latent ambiguity. A reader might misread Gopen's clause to mean that people might respond one way to words and another way to arguments. Gopen instead means that people might respond differently to the same words or arguments. Thus his clause should be further revised to read:

> people with varying viewpoints and interests might respond differently to the same words or arguments.

69. G. GOPEN at 7.

great gains in clarity. In the original, Gopen used vague, abstract language to allow him to use what he calls a "strong" verb. Since the verb I selected does not express the sentence's main idea, Gopen's narrow criteria would term this a "weak" verb. Yet both of my revisions use a verb as active as the one replaced. Carried to extremes, Gopen's search for strong verbs causes weak writing.[70]

What Gopen lacks is the sense that his system is too simplistic. It cannot substitute for most of the many ways to write a good sentence. Gopen's problems remind me of George Orwell's delightful essay on prose style, *Politics and the English Language*.[71] After setting out his five rules for good writing, Orwell wisely added a sixth: "Break any of these rules sooner than say anything outright barbarous."[72] That rule is just what Gopen lacks. By failing to junk his system when it leads to barbarism, Gopen appears to value his system above good writing.

3. *Metadiscourse*

The rest of *Writing from a Legal Perspective* is a solid, if only occasionally exciting, series of essays and exercises on a variety of topics. They range from a dull list of words and their etymologies[73] to an earnest thirteen pages defining the concepts "football" and "team."[74] Disagreements with the author bothered me only rarely.

One disagreement, however, bears examining. At one point Gopen writes in his best schoolmarmish tone:

> A word of warning: Never use the word "obviously" (or its cognates "surely," "of course," "certainly," etc.) without a personal qualification (e.g., "obvious to me"). There are only two possibilities: Either it was obvious to your reader, or it was not. If it was obvious, you

70. Another example taken from Gopen's book illustrates one of the problems created by his system. Gopen writes:

> You will probably find that dealing with legal instructions, especially the dictates of government bureaucracies, will result in headaches for you, either physical or metaphorical, throughout your professional and personal lives.

Id. at 132. Although the entire sentence needs rewriting, I will focus only on the problems caused by the choice of the wrong verb. Presumably, Gopen chose the verb "result" because the result (of dealing with legal instructions) is the main idea of the sentence. Once he had selected that verb, the awkward clause took shape: "dealing with legal instructions . . . will result in headaches for you, either physical or metaphorical." A much better way to say this would be: "dealing with legal instructions . . . will give you headaches, either physical or metaphorical." Notice that not only is the revised clause shorter and more direct, but "headaches" is more closely linked to its modifiers. Gopen was probably misled by relying on false lights. By first picking the verb "result" and then building the rest of the sentence around it, Gopen overlooked a natural idiom for what he was saying.

71. G. ORWELL, *supra* note 12.

72. *Id.* at 92.

73. G. GOPEN at 58-64.

74. *Id.* at 95-107.

> have condescended to your reader by suggesting that you are embarrassed to have been forced to articulate such an apparent truth for the benefit of an unintelligent audience. If it was not obvious, your reader will concentrate on the question of obviousness instead of the substance of your comment.[75]

Here Gopen is talking about one type of what Joseph Williams calls "metadiscourse," that is, "discourse about discoursing." Other examples of metadiscourse are: "usually," "often," "possibly," "perhaps," "undoubtedly," "certainly," "clearly," "central," "major," "as to," "speaking of," and so on.[76] Stylists disagree on how much metadiscourse to use. Some argue that it is a waste of words—and thus almost never appropriate. People in this camp sometimes refer to metadiscourse pejoratively as "throat-clearing."[77] Another camp considers metadiscourse a valuable way to tune writing to an audience and to clarify how the parts of an argument fit together. A third camp argues that metadiscourse is a matter of personal taste, which it is. But taste can be educated. I have not yet encountered a broad-ranging discussion of the advantages and disadvantages of various kinds of metadiscourse.[78] Instead, we are usually offered spirited attacks on metadiscourse that are unconvincing primarily because they completely ignore its advantages.

Gopen's attack is not on all metadiscourse, only on metadiscourse that asserts certainty about what is being said, words such as "of course" and "obviously." Yet these words are often used properly when they introduce an idea that the writer thinks the reader may already know.[79] In fact, a good writer often uses metadiscourse of the type Gopen condemns while trying to implement some of Gopen's other pronouncements on writing. Gopen argues forcefully that lawyers must articulate all the steps in a logical argument.[80] Because this articulation requires lawyers to spell out details that many readers already know, good writers often use words like "of course" and "obviously" to soften the inherent presumptuousness. For example, if I wished to argue that too few women manage large corpora-

75. *Id.* at 194-95.
76. J. WILLIAMS, *supra* note 3, at 48-49.
77. *See* R. WYDICK, *supra* note 41, at 63-64.
78. The best discussion is in J. WILLIAMS, *supra* note 3, at 47-52.
79. For instance, Rudolf Flesch begins a chapter in his book on legal writing with the words:
> If you want to learn to write Plain English, you must learn how to use a readability formula. Of course this isn't true if you have a talent for writing.

R. FLESCH, *supra* note 34, at 20. After reading Flesch's sweeping opening sentence, I was about to object to it. But by beginning his second sentence with "Of course," Flesch graciously acknowledged the protests that had already sprung to mind. If, however, Flesch had merely said, "This isn't true if you have a talent for writing," he might have implied that he is telling me something I had not thought of. Without "Of course," Flesch's tone would have been pompous.
80. G. GOPEN at 6-7.

tions, I might begin with the statement: "Of course, women make up about half of the population." Now everyone knows (or should know) this fact. But they might not know that it is part of my argument. Gopen, however, believes that the words "of course" insult an audience's intelligence. I think that, on the contrary, I would insult the intelligence of my audience if I omitted these words. And it would be even worse to follow his alternative suggestion and say: "It is obvious to me that women make up about half of the population."

Moreover, a word like "obviously" may signal something else: that the writer did not provide proof of a statement's truth because he considered it self-evident. It is impossible to prove the truth of every statement, and it would be distracting to prove the truth of most statements that can be proved. The word "obviously" can properly indicate why some statements are not supported by further argument. For example, assume I want to argue that lawyers should take much more care in writing. I may begin my argument with: "Obviously, no one writes perfect English." Even if someone disagrees with this preliminary statement, he will at least know why I did not bother to prove it. I considered it self-evident. Thus metadiscourse indicating certainty has several proper uses. To dismiss it as easily as Gopen does is neither wise nor convincing.

B. *Block's* Effective Legal Writing

Now let us turn to *Effective Legal Writing*. In the first half of her book, Professor Block discusses grammar and meaning (chapter 1), legal style (chapter 2), and expository and argumentative techniques (chapter 3). In the second half—chapter 4 and the appendix—Block offers a series of problems, exercises, and answers. I will discuss only the first three chapters, which present Block's ideas on legal writing.

1. *On Grammar and Style*

In the first two chapters, Block primarily examines particular problems in writing. For example, the first chapter covers relative pronouns, personal pronouns, dangling modifiers, sentence fragments, run-on sentences, the punctuation of restrictive and non-restrictive clauses, the semi-colon/comma choice, colons, number errors, the extra "that," and count and non-count nouns. As you can see from this bewildering list, chapter 1 is a partial primer on the fine points of English grammar. Indeed, in both chapters Block goes into more detail than I consider appropriate in such a short book for lawyers and law students. Frequently she presents only one view as established fact, and too often, she is just plain wrong.

a. *Dangling Modifiers*

In a book devoted chiefly to grammatical and stylistic errors, Block tells us that "The most widespread grammatical error in law students' writing is, without doubt, the dangling modifier."[81] In analyzing this error, Block herself makes several missteps. First, and most seriously, she does not admit the acceptable uses of the dangling modifier. In 1926 Fowler explained the first acceptable use:

> [I]t is to be remembered that there is continual change going on by which certain participles or adjectives acquire the character of prepositions or adverbs, no longer needing the prop of a noun to cling to; we can say, *Considering the circumstances you were justified*[;] . . . *Roughly speaking they are identical* [;] . . . *They are illiterate (using the word in its widest sense)*; . . . [and] *Allowing for exceptions, the rule may stand.*[82]

In all of these examples, a participle has become an acceptable dangler by being converted into a preposition or adverb. Although modern grammarians of every stripe consider this converted participle proper,[83] Block does not recognize it.

81. G. BLOCK at 8. Joseph Williams clearly defines the dangling modifier:

> A modifier "dangles" when its implied subject differs from the specific subject of the clause that follows it:
>
> In order to limit the spread of infection, the entire area was sealed off.
>
> (The implied subject of *limit*, some person, is different from the subject of the main clause, *the entire area.*)
>
> Resuming negotiations after a break of several days, the same issues confronted both the union and the company.
>
> (The implied subject of *resuming, the union and the company*, is different from the subject of the main clause, *the same issues.*)

J. WILLIAMS, *supra* note 3, at 99.

82. FOWLER'S 1ST, *supra* note 18, at 674-76; *see also* FOWLER'S 2D, *supra* note 21, at 659-61 (discussing unattached participles).

83. The construction is allowed by the "good usage" grammarians (e.g., Fowler, Follett), as well as by the more permissive grammarians (e.g., the Evanses). *See* B. EVANS & C. EVANS, *supra* note 16, at 354-55; W. FOLLETT, *supra* note 17, at 121-24; FOWLER'S 2D, *supra* note 21, at 659-61.

The Evanses are quite pointed in their criticism of the position Block has adopted:

> The rule against the "dangling participle" is pernicious and no one who takes it as inviolable can write good English. In the first place, there are two types of participial phrases which must immediately be recognized as exceptions. (1) There are a great many participles that are used independently so much of the time that they might be classed as prepositions (or as conjunctions if they are followed by a clause). These include such words as *concerning, regarding, providing, owing to, excepting, failing.* (2) Frequently, an unattached participle is meant to apply indefinitely to anyone or everyone, as in . . . *looking at the subject dispassionately, what evidence is there?.* This is the idiomatic way of making statements of this kind and any other construction would be unnatural and cumbersome.
>
> And the rule is still bad, even if these exceptions are recognized. There is no need to twist a sentence out of its natural form merely in order to make the subject of the participle also the subject of the principal verb. Good writers do not hesitate to use exactly the construction the rule forbids, as in *lying in my bed, everything seemed so different* . . . .

B. EVANS & C. EVANS, *supra* note 16, at 354.

But perhaps you would argue that Block is merely simplifying her argument to make it easier for lawyers to absorb, that she would not attack one of these converted participles. Unfortunately, this is not true. As one of her examples of "ungrammatical" dangling modifiers, she offers:

> Viewing the issue from the proper perspective, a decision becomes easy.[84]

Wilson Follett has identified "viewing" as precisely the kind of participle that is being converted into a preposition.[85] One may argue about how far the conversion has gone, but one may not reasonably deny that such a conversion has begun.

The second exception to the rule against dangling modifiers largely overlaps the first. According to Joseph Williams, dangling modifiers are permitted when either the modifier or the subject of the main clause is metadiscourse. For example:

> *In order to start the motor,* IT IS ESSENTIAL that the retroflex cam connecting rod be disengaged.
> TO SUMMARIZE, *unemployment* in the southern tier of counties remains the state's major economic and social problem.[86]

Although this exception is not widely recognized, it makes sense to me—and apparently to most good writers as well.

The second problem with Block's analysis of dangling modifiers is even more puzzling. Block appears to violate her own principles in the very paragraph where she introduces her opposition to dangling modifiers. She writes:

> *To demonstrate,* . . . in the following sentences there are no dangling modifiers . . . .[87]

The implied subject of "To demonstrate" is "I," while the subject of the main clause is "dangling modifiers." Because the modifier "To demonstrate" dangles, Block has violated her own strict rule. Of course, most grammarians would consider this sentence proper. "To demonstrate" is metadiscourse and thus would fall within Williams's broad exception. Is Block merely writing carelessly or does she mistakenly believe that infinitives cannot be dangling modifiers?

84. G. BLOCK at 9.
85. W. FOLLETT, *supra* note 17, at 122.
86. J. WILLIAMS, *supra* note 3, at 99-100.
87. G. BLOCK at 8 (emphasis added).

The third problem with her discussion of dangling modifiers is the justification for her strict rule. She writes:

> It might be argued that because dangling modifiers appear so commonly in the writing of young educated persons and cause little confusion, such errors should be ignored rather than eliminated. The argument fails for at least two reasons: (1) lawyers are held to higher standards in language usage than other educated persons, and more important (2) dangling modifiers always reduce precision, and occasionally create ludicrous statements.[88]

I will take up her second argument first. Block argues that even if dangling modifiers do not create ludicrous statements, they always reduce precision. Is this true? Assume I write: "Strictly speaking, Burger is wrong." Is there any doubt in this example who is speaking strictly—Burger or I? Would I be writing more precisely if I wrote instead: "Strictly speaking, I think Burger is wrong"? Actually, I would be writing less precisely because the clause "I think" weakens the emphasis on the sentence's main point. And even if there were any gains in clarity, they would be more than outweighed by the loss in directness.

In a roundabout way, this example brings me to Block's first argument—that "lawyers are held to higher standards in language usage than other educated persons." My problems with this assertion stem less from whether it is true[89] than from how Block applies it. Block assumes that "higher standards" for writing translate into stricter rules against dangling modifiers and other allegedly incorrect constructions. This notion is one of the most pernicious ideas a writing teacher can hold. If you deny yourself a proper and useful construction because of a misplaced reliance on the strictest interpretation of a grammatical rule, you have not elevated your standards for writing, you have only elevated a particular grammatical rule. Your writing will suffer as you avoid idiom and choose unnatural and cumbersome constructions.

Block's argument reminds me of Tolstoy's claim that celibacy is "higher" than marriage.[90] Tolstoy preached complete celibacy but continued to have sex into extreme old age.[91] Yet celibacy is "higher" than marriage only when the measure is the degree of abstinence from sex. I do not believe that celibacy is "higher" when measured by its contribution to a

88. *Id.* at 9.

89. As I hope I illustrated at the beginning of this Review, the standards to which lawyers are held are none too high—though they may be higher than the standards in other fields. On the characteristics of legal language, see Danet, *supra* note 23, at 463-84.

90. *See* G. *Orwell, Politics vs. Literature*, in SHOOTING AN ELEPHANT AND OTHER ESSAYS 53, 68 (1950).

91. *See id.* at 45.

good life or the biological need of our species to continue. Likewise, abstinence from using dangling modifiers is "higher" only when the measure is the strictness of the rule against dangling modifiers; abstinence from using dangling modifiers is not higher when the measure is good writing. And Block is like Tolstoy in another way: She preaches abstinence but does not practice it.[92]

It disturbs me to see how far Block is willing to go to avoid writing naturally. As Bergen and Cornelia Evans put it, "no one who takes [the rule against the dangling participle] as inviolable can write good English."[93] It would be patently ridiculous to write bad English in the name of higher standards.

b. *The Choice Between a Comma and a Semi-colon*

Dangling modifiers are not Block's only problem. Block argues: "A semi-colon alone can . . . join two ideas, but a comma cannot. Joining two complete sentences by a comma with no coordinating conjunction or conjunctive adverb results in a run-on sentence."[94] Here she is just plain wrong. It is entirely proper to say, as does Joseph Williams: "Football appeals to our love for violent collision, baseball satisfies our more measured and graceful tastes";[95] and "I came, I saw, I went away impressed."[96] These are not run-on sentences. Nor is Bergen and Cornelia Evans's example: "Beautiful is the mother, beautiful is her son."[97] When sentences are short and similarly constructed (without internal punctuation), a comma is not only permissible but preferable.[98] Calling such sentences run-ons when joined with a comma shows that Block understands neither commas nor run-ons.

c. *"Where" Indicating Place*

Block describes "where" as an "adverb that, in its precise sense, indicates only 'place.' "[99] She then approvingly quotes the outrageous assertions of Henry Weihofen, another author of a book on legal writing: "Strictly, 'where' denotes *place* only. One can speak of 'states where the rule is followed,' but 'cases where the rule is followed' should be changed to 'cases in which the rule is followed' or 'cases that follow the rule.' "[100]

92. *See supra* pp. 180-81.
93. B. EVANS & C. EVANS, *supra* note 16, at 354.
94. G. BLOCK at 12.
95. J. WILLIAMS, *supra* note 3, at 187 (emphasis omitted).
96. *Id.* at 201 (emphasis omitted).
97. B. EVANS & C. EVANS, *supra* note 16, at 103.
98. *See* J. WILLIAMS, *supra* note 3, at 200.
99. G. BLOCK at 35.
100. *Id.* at 35 (quoting H. WEIHOFEN, LEGAL WRITING STYLE 40 (2d ed. 1980)).

Weihofen is wrong. The English word "where" has been used to denote situation, as well as place, since before English displaced Law French as our written legal language.[101] It appears that "where" denoting place is the older usage,[102] but to attack a usage that has been proper since before Shakespeare's time requires more than the bald assertion that "where," "in its precise sense, indicates only 'place.' " It is entirely proper to say either "in cases where" or "in cases in which."[103] The second phrase is more formal than the first; I prefer the first because it is simpler and less awkward.

d. *A Difference of Emphasis*

In short, I think Block's chapters on grammar and style are too often picayune and silly.[104] Even where her analysis of grammar and style is impeccable—and it often is—I disagree with her emphasis. Our differences reflect an underlying disagreement about what is wrong with the writing of educated persons today. I think that the first principle of good prose is to write clearly and directly. To do so requires a writer sensitive to the evils of abstract nouns, muddled phrases, and long sentences. Certainly, Block briefly covers these problems, but she gives them the same weight as less important errors, such as dangling modifiers.

2. *On Rhetoric*

In her third chapter, *Expository and Argumentative Techniques*, Block examines rhetorical strategies, logical fallacies, and "examsmanship." It is commendable that Block wades into these problems at all. Lawyers have paid too little attention to the styles of their arguments. In an interesting

101. *See* 12 O.E.D, *supra* note 29, at 26-27 (showing uses of "where").

102. *Id.*

103. Of course, Weihofen's other suggestion is also a good construction: "cases that follow the rule." *See* G. BLOCK at 35 (quoting H. WEIHOFEN, *supra* note 100, at 40).

104. Besides making the contentions I have already criticized, Block also complains that "[l]aw students often incorrectly use the plural pronoun 'they' instead of the singular 'it' when referring to a court, committee, institution, business or any entity composed of individuals. The Senate, for example, is an 'it.' " G. BLOCK at 14. Block probably has some authority for her view, but the prevailing view is contrary. *See* WORDS INTO TYPE, *supra* note 31, at 365-66. Whether collective nouns are singular or plural varies with their context. *Id.* For example, when a committee acts as one, "committee" is singular: "The Committee adheres to its decision." When the members of a committee do not act in concert, "committee" is plural: "The committee have signed their names to the report." *Id.* This is an extremely fine point, but if Block takes the time to dredge up a rule, she should make certain it is correct.

At times, moreover, Block paints with broader strokes than she should. In attacking the abuse of the preposition "as to," *see* G. BLOCK at 35-36, she neglects to mention its one legitimate use: "to bring into prominence at the beginning of a sentence something that without it would have to stand later," FOWLER'S 2ND, *supra* note 21, at 36-37. For example, it is proper to state: "As to free speech, we are fortunate to enjoy constitutional protection."

discussion, Block briefly reviews a dozen logical fallacies.[105] In a weaker analysis, she examines the use of the syllogism in legal argument. She asserts: "The method attorneys probably use most often is also the most ancient, the form of deduction described by Aristotle called the syllogism. . . . Aristotle's syllogism works very well in modern legal reasoning from precedent . . . ."[106] As an example of a legal syllogism, Block offers the following:

> *Major premise*: [Courts have held that] in order to establish liability for negligence, plaintiffs must show only that "but for" defendant's negligence the injury to plaintiff would not have occurred.
> *Minor premise*: The injury to this plaintiff (A) would not have occurred except for the negligence of this defendant (B).
> *Conclusion*: B is liable for negligence to A.[107]

Notice that in the major premise she puts the clause "Courts have held that" in brackets; apparently, she could not decide whether to include it. With the clause, her syllogism is unsound because the conclusion does not follow from the premises. Without the clause, the syllogism (though technically valid) is unsound because the major premise is false.[108] She has left unstated a premise, which in its broadest form is: A court must always follow the rule of law enunciated by an earlier court.[109]

This premise is false for two reasons. First, as most philosophers of law believe, courts do not always have to follow precedent.[110] Their obligation to do equity sometimes justifies revising or rejecting even clear precedents. Second and more important, even a court following precedent need not adopt the legal rule that was previously announced.[111] A court may reinterpret an earlier case because it considers different facts essential. Since a holding is only the result based on particular facts, a court may revise an old rule or create a new one while still following precedent.[112]

Block inadvertently illustrates what some philosophers have been saying for the last thirty years—that the syllogism is nearly useless in practical

105. G. BLOCK at 58-61. For a much more complete analysis of logical fallacies, see D. FISCHER, HISTORIANS' FALLACIES: TOWARD A LOGIC OF HISTORICAL THOUGHT (1970).

106. G. BLOCK at 49.

107. *Id.* at 49 (brackets in original).

108. Another defect in this syllogism is the element that is present in the major premise but missing from the minor premise. The major premise states that "plaintiffs must show" something, but the minor premise does not state that they have shown it.

109. A narrower form of the unstated premise would be: "The court in this case must follow the rule of law enunciated by earlier courts."

110. *See, e.g.*, E. LEVI, AN INTRODUCTION TO LEGAL REASONING 7-9, 57-60 (1948); C. PERELMAN, *supra* note 50, at 125-35.

111. E. LEVI, *supra* note 110, at 6-9, 27-33.

112. *Id.* at 6.

argument.[113] Once we have established the premises necessary to use a syllogism, usually the result is self-evident.[114] Because in a sense the conclusion is contained in the premises, nearly all the reasoning takes place in trying to establish the premises, not in reasoning from the premises to the conclusion.

How, then, do we establish the premises? In most cases, we do not. For example, we can almost never establish the premises necessary to use the syllogism to reason from precedent, as Block wants us to do. To use the syllogism to reason from precedent we would usually have to establish the premise that a legal rule enunciated in an earlier case must always be followed in a later case. As I have already argued, this premise is false.

Block, who appears to have relied on *Strategies of Rhetoric*,[115] might have looked elsewhere for guidance about the syllogism. In the literature of what is sometimes called the "New Rhetoric,"[116] Block could have found alternative forms that fit legal arguments much better than the syllogism.[117] By forcing the arguer to assume false premises or to reason improperly from true premises, the syllogism is likely to mask the elements of an argument. In her own attempt to use the syllogism, Block gives us ample evidence of these pitfalls.

Conclusion

Although both Gopen and Block write well themselves, I disagree with some of their advice to others. Because of my qualms, I think that a lawyer should read several other works on writing before reading theirs. You might begin with Joseph Williams's *Style*.[118] If you want to read further, you might try one or more of the following: Jacques Barzun's *Simple & Direct*,[119] Richard Wydick's *Plain English for Lawyers*,[120] George Orwell's *Politics and the English Language*,[121] Joseph Williams's *Defin-*

113. *See, e.g.*, C. PERELMAN, *supra* note 50, at 125-27; S. TOULMIN, THE USES OF ARGUMENT 107-45 (1958).

114. *See* S. TOULMIN, *supra* note 113, at 144-45, 150-51.

115. A. TIBBETTS & C. TIBBETTS, STRATEGIES OF RHETORIC (3d. ed. 1979).

116. Chaim Perelman is a leader in this field, which attempts to analyze the structure and content of everyday arguments. *See, e.g.*, C. PERELMAN, *supra* note 50; C. PERELMAN & L. OLBRECHTS-TYTECA, THE NEW RHETORIC: A TREATISE ON ARGUMENTATION (1969).

117. For example, in his book *The Uses of Argument*, Stephen Toulmin has suggested a model form for all arguments. His model, too complex to be adequately explained here, avoids the particular problems Block encountered in trying to use the syllogism. By using a "qualifier," Toulmin's model encompasses arguments that are usually but not always true. And in a term he calls the "rebuttal," Toulmin incorporates the doctrine of exceptions—so essential to legal argument. All in all, Toulmin's model form should illuminate the elements of an argument. S. TOULMIN, *supra* note 113, at 94-145.

118. J. WILLIAMS, *supra* note 3.

119. J. BARZUN, *supra* note 32.

120. R. WYDICK, *supra* note 41.

121. G. ORWELL, *supra* note 12.

ing Complexity,[122] David Mellinkoff's *Legal Writing*,[123] Irving Younger's *In Praise of Simplicity*,[124] and Robert Graves's and Alan Hodge's *The Reader over Your Shoulder*.[125] Only after digesting several of these should you invest the time to read the two books reviewed here.

To be fair, none of the eight works I recommend discuss the rhetorical techniques analyzed by Gopen and Block. Yet someone who wants to read about styles and structures of argument might profit by going directly to the works of rhetoricians Chaim Perelman,[126] Stephen Toulmin,[127] and David Hackett Fischer,[128] among others.

In what respects, then, are the two books under review weaker than the style books and articles I recommend? In my view, Gopen and Block emphasize one good idea at the expense of other good ideas. Gopen's central insight is that a sentence will be more direct if its verb expresses the main idea of the sentence. Yet we saw how using the verb to express the sentence's main idea can lead to indirect writing. For example, Gopen wrote "to maintain clarity, even in the face of complexity of thought" instead of "to express even complex thoughts clearly."[129]

Also troubling was the example Gopen chose to illustrate his system for self-revision. He never showed us a successful revision of a paragraph using his system. Instead, he devoted seven pages to discussing how using his system turned a simple paragraph into a five-page paper. And then he did not show us a single line of that paper.

Block, on the other hand, went wrong by emphasizing grammar and style rules that are too strict. She confused higher standards regarding a particular rule with higher standards for writing in general. In fact, writing suffers when a writer denies the natural and idiomatic way of writing something by relying on the strictest interpretation of a rule. For this reason, writers on style should be careful not to urge stricter technical rules than necessary.

Moreover, Block and I disagree on the source of the major problems in writing. Like many others, I believe that the chief fault in the writing of educated persons is a vague, abstract style. In the words of George

122. Williams, *supra* note 23.

123. D. MELLINKOFF, *supra* note 43.

124. Younger, *In Praise of Simplicity*, 62 A.B.A. J. 632 (1976).

125. R. GRAVES & A. HODGE, *supra* note 14. The original 1943 edition, R. GRAVES & A. HODGE, THE READER OVER YOUR SHOULDER: A HANDBOOK FOR WRITERS OF ENGLISH PROSE (1943), is more detailed, but harder to find.

126. C. PERELMAN, *supra* note 50; C. PERELMAN, THE NEW RHETORIC AND THE HUMANITIES: ESSAYS ON RHETORIC AND ITS APPLICATIONS (1979); C. PERELMAN & L. OLBRECHTS-TYTECA, *supra* note 116.

127. S. TOULMIN, *supra* note 113.

128. D. FISCHER, *supra* note 105.

129. *See supra* pp. 175-76.

Orwell: "The whole tendency of modern prose is away from concreteness."[130] If you write abstractly, the meaning of a sentence is obscured, even from yourself. But if you write simply, "when you make a stupid remark its stupidity will be obvious, even to yourself."[131]

This observation of Orwell's brings me full circle to where I began this essay—with the empty verbiage of three prominent lawyers. Because we usually think in words, bad writing infects thinking.[132] And bad writers are further hampered because they are denied the refinement of their thoughts that comes from putting words down on paper and effectively revising them. Thus Orwell is right. If authors like these three wrote clearly, they would see the emptiness of their own prose. Since they cannot write clearly, they cannot think clearly. This, then, is the saddest consequence of bad writing—it hides, distorts, and ultimately prevents thought.

130. G. ORWELL, *supra* note 12, at 84.
131. *Id.* at 92.
132. *See id.*