



THE LAWYER'S BOOKSHELF

REVIEWED BY DANIEL J. KORNSTEIN

The Lawyer's Guide to Writing Well; Creative Writing for Lawyers

By Tom Goldstein and Jethro K. Lieberman. U. of Calif. Press, Berkeley, 1991 (paperback). 278 pages, \$12.95.

By Michael J. Cohen. Citadel Press, New York, 1991. 143 pages. \$7.95.

The difficult task, after one learns how to think like a lawyer, is relearning how to write like a human being." So says lawyer Floyd Abrams, as he is quoted in one of these books, and he sums up a pervasive problem. But books like these are at least part of the cure. For "the good lawyer," one of these books tells us, "browses through usage books now and again, not from pedantry but from fascination with language and the power of writing."

Originally published in hardcover in 1989, *The Lawyer's Guide to Writing Well* by Tom Goldstein and Jethro K. Lieberman has just come out in paperback. Not having a copy of this inexpensive but splendid book should constitute malpractice.

The authors are two lawyer-journalists turned academics. Tom Goldstein, law-trained former reporter for major newspapers, is now dean of the Graduate School of Journalism at Berkeley. Jethro K. Lieberman, author of several law-related books and a former writer for *Business Week*, now teaches legal writing at New York Law School. They have teamed up to produce a superb guide to legal writing.

"Most lawyers write poorly," Goldstein and Lieberman proclaim in their opening sentence. "We write for lawyers who wish to improve their writing." But their purpose is broader than merely promulgating rules of usage. The authors explore the context and process of legal writing. They inquire into the causes of poor legal writing. They suggest how to polish legal writing and make it shine.

The authors spell out the particulars of their good advice in an un pompous tone of understanding and practicability that makes them less Polonius-like. "The rules that follow," they pass on from experience, "are not artificial dictates . . . but the essentials by which all writers make their thoughts clear." The authors are right.

Even just a few of these rules betoken the authors' acuity. Goldstein and Lieberman sensibly urge us to avoid: and/or, Latinisms (use English), false emphatics (e.g., clearly, plainly, obviously, certainly); "the fact that . . .," lawyerisms (e.g., herewith, hereafter, aforementioned), "in the event that" (use "if"), "prior to" (use "before"), "subsequent to" (use "after"). Quote sparingly, write lead paragraphs that lure your reader on, and focus on topic sentences. Illustrate abstractions with concrete and unexpected images. In short, Goldstein and Lieberman remind us, good legal writing starts with good writing.

The Lawyer's Guide makes us want to write better. It holds out the attractive prospect of going beyond the workaday legal written product. It shows how tone, voice and style "enable a lawyer to transcend the mundane and make a piece of writing memorable." In a sentence that should be posted prominently on every lawyer's desk, the authors urge: "Every lawyer should strive for one original, memorable sentence in every document." Such an appeal to the best within us ennobles us and makes us turn to the next writing task with gusto and renewed motivation.

Of all the useful parts of *The Lawyer's Guide*, the single most valuable is, surprisingly, its glossary. The glossary? Yes, the glossary! For the glossary summarizes, compactly and concisely, the most important lessons of the book. In those 23 worthwhile pages, the authors have compiled an extraordinary compendium of excellent writing advice.

The Lawyer's Guide to Writing Well is more than just a book about writing. It is also about the relationship between legal writing and law firm management. Drawing on analogies from publishing and journalism, for example, Goldstein and Lieberman point out that it is "counterproductive for senior-level lawyers to revise heavily the work of their juniors." But if those whose time is worth the most are to spend less time editing those who are paid the least, then the younger lawyers have to put in more time getting the written work right, getting it closer to final form.

Among other good ideas borrowed by the authors from publishing and journalism are a firm style book, a firm editor, and a firm newsletter about writing. The most important of these suggestions is a firm style manual. Law firms consist of several people of varying writing skills and often idiosyncratic styles. Unlike *Time* magazine, the work product of a law firm is individualized and in almost all cases lacks a consistent style. A firm style book would go a long way to eliminating such unnecessary inconsistencies and establishing firm-wide conventions.

The Lawyer's Guide is superb in every way. In style, it brings a light, at times even humorous touch to a subject too often made unnecessarily dry. In substance, it is perfect. It belongs on every lawyer's ready reference shelf (right next to Richard Weisberg's equally fine *When Lawyers Write*); more important, it should be read and applied daily. Law firms should buy copies for each of their lawyers.

Only then will the right audience — that is, all lawyers — get Goldstein and Lieberman's message. "Good lawyers must devote their time to producing effective prose . . . The good lawyer is genuinely interested in words, in their nuances, in the subtle distinctions between them . . . Those for whom writing is unimportant are doomed to be second-rate lawyers."

Unlike *The Lawyer's Guide*, Michael J. Cohen's *Creative Writing for Lawyers* is aimed at lawyers who can write reasonably well, those who have presumably mastered the skills taught by Goldstein and Lieberman. First learn to write well, the books' joint message seems to be; then you can start to think about writing creatively. The two books almost form a course sequence, with *The Lawyers Guide* the text for the first semester, and *Creative Writing for Lawyers* for the second, elective semester. But the course doesn't end after six months; it lasts a professional lifetime.

Cohen's book appeals to artistic souls clad in pin-stripe suits and creatively smothered by the practice of law. It will respond to the yearnings of those lawyers who walk into a bookstore, see copies of *Presumed Innocent* or *The Firm*, and mutter to themselves, "Why can't I do that?" Cohen answers encouragingly:

"But you can successfully write a creative work and enhance your creative abilities while immersed in the practice of law."

By "creative work," Cohen means fiction. "If you've picked up this book," he starts off, "you probably harbor a secret, long-suppressed desire to be a novelist, poet, playwright, or creative genius . . . You dream of unleashing your creative potential." He distinguishes between creative writing of fiction and analytic legal writing, between youthful outlets for creative ability and the reality of law school and practice.

Although the distinction drawn by Cohen is understandable, those of us who practice law in the adversary system may question its sharpness. Legal writing can and often does embrace fiction. Some of the most imaginative fiction I've ever read has been contained in the legal briefs of my adversaries.

Creative Writing for Lawyers focuses on writing fiction, but Cohen's tips are valuable to those solely interested in improving their professional legal writing. Like Goldstein and Lieberman, Cohen gives useful advice about style: "Don't bore the audience. Keep their attention. Sustain the spell. Dramatize conflict. Sharpen observations . . . Use lively verbs. Condense lame verbs and adverbs into strong, energetic verbs. Sprinkle in colors. Use strong visual images. Work in figures of speech. Strive for precision."

Expanding on these suggestions, Cohen shows insight into how the legal process actually works. "Creative writing succeeds when it engages the reader," he observes, and some pages later ties that observation into briefwriting: "You first have to win the judge's empathy. You frame the facts in a manner sympathetic to your client. You weave a good story, one that engages the emotions." Elsewhere, he notes how, "It is often the story, not sober analysis, that wins the case . . . Distinguishing cases is in large part the art of distinguishing stories. The result turns on the facts, not the law."

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If legal writing tends to be overly abstract, too interested in ideas and disembodied principles, listen to Cohen: "Creative writing is not about ideas; it is about people." To breathe life into your legal writing, heed Cohen's advice that great works of fiction concentrate on "the nature of human relationships." Great legal briefs often do the same thing.

Not only creative writing, as Cohen suggests, but also legal writing requires passion. The briefwriter must put himself or herself into the task wholeheartedly. Even the most abstruse discussion of statutory interpretation can come alive in a good writer's hands. "The subject matter is less important than the attention you devote to your subject. *Anything* that interests you will interest the reader, provided your writing shows enthusiasm for the project."

The ease with which Cohen's suggestions fit non-fictional legal writing makes one skeptical of his distinction between creative writing, on the one hand, and legal writing, on the other: "Creative writing is not brief writing." But his own book makes a good case for exploding that distinction.

At one point, for instance, Cohen says: "The creative writer, like the sophisticated lawyer, pays special attention to language." At another, "As a lawyer and a writer, you are immersed in the task of fitting language to experience." Admitting that "the process of creative writing resembles that of legal thinking," Cohen tells his lawyer readers, without acknowledging any inconsistency: "Your work demands creativity, the kind demanded of writers generally. You spend your time searching for the right word; you make imaginative leaps."

As Cohen shows, legal writing should be — and can be — creative. A lawyer at Davis Polk & Wardwell, Cohen writes with style, clarity, and wit. He never bores us with heavy-handed didactic preachiness; he sticks to essentials, laces his comments with apt and enjoyable excerpts from his own short stories, and, in the end, inspires. As he wisely notes, "You can hunt the twin hares of creative writing and legal writing. Each of your pursuits will complement the other."

By the end of the book, Cohen gets wistful: "Do you want to be rich? It is probably easier to do so by practicing law than by counting on a best-seller . . . Do you want to be a literary superstar? It is probably easier to become a prominent lawyer." His best and deepest piece of advice is: "If you love writing, you must love it for its own sake and find a measure of success in the capacity of writing to enrich your life."

Both these books excel. They will heighten any lawyer's sensitivity to the written word. They will appreciably enrich any lawyer's grasp of good writing. They are not only a pleasure, but a delight to read.

In a paradoxical way, these books undercut their own major premise. If most lawyers write so poorly, how did these wonderful books come to be written by lawyers? Perhaps the answer, as Goldstein and Lieberman note, is that, "Many strong, effective writers practice today." And the authors are among them.

By now you must be tired of hearing about how badly you write. You probably scour columns like these looking for mistakes in grammar or usage, so you can gleefully say: "Aha! Gotcha!" "But writing about errors," as Goldstein and Lieberman concede, "is always dangerous because critics invariably commit their own." So if you discover any errors in this book review, I can only hide behind Goldstein and Lieberman's apt comment that, "No matter how diligently we edit, errors, like stubborn weeds in a garden, infest our prose."

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Sometimes a lawyer who specialises in the tort of negligence makes an agreement with a client. The agreement is that if the client does not win the case then he or she does not have to pay for the lawyer's services. This is called a "no win-no fee" arrangement. It is allowed in the UK and the USA. the law concerning the rights and duties of private individuals and companies rather than criminal matters. criminal law. the law which punishes acts against a person or property which is considered to be harmful to the whole community. a matter. a subject or situation.