

Book Notices

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Aspen Handbook for Legal Writers: A Practical Reference. By Deborah E. Bouchoux. New York: Aspen Publishers, 2005. Pp. 307. \$24.95.

Written by a longtime paralegal instructor, this book is aimed at students. As the Foreword makes clear, the book “is designed to be used as a supplement to the texts [used in] writing classes” (p. xxii).

The book begins with the mechanics of writing — grammar, punctuation, and spelling. Next, it covers the “Features of Effective Legal Writing and Organization,” leaving one to wonder how to parse the title of that section. The third section considers legal documents, legal conventions, and common legal-writing blunders. And the final section covers post-writing steps and document design.

The organization is confusing because the reader can’t easily determine where to find specific topics. For example, vague words, elegant variation, and legalese are included under “Features of Effective Legal Writing” and not under “Legal-Writing Blunders.” And some topics are arbitrarily divided between two sections. For instance, gender-linked pronouns are included in the first section, but sexist language is included in the second section.

For a single topic, the book often includes several kinds of information: rules and examples; “tip” boxes, with advice on how to remember or apply certain rules; sidebars, with illustrations from actual writing and lists of problem words and phrases; and “challenge” boxes, which enable readers to test their understanding (with

answers in an appendix). Scattered throughout the book are also numerous “stylelinks,” which refer readers to websites for more information. All these extras seem distracting and tend to make the layout overwhelming.

Unfortunately, while Bouchoux tells readers to write with force and to avoid nominalizations, she sometimes fails to heed her own advice. For example, she writes:

- “The way you communicate communicates information about you” (p. 1).
- “The selection of an improper word will result in inaccuracy in your writing” (p. 73).

While the *Aspen Handbook* is generally reliable, some of its advice seems misguided. For example, while Bouchoux recommends that writers avoid sexist language and provides specific techniques for doing so, she says that in documents such as contracts, “you may use *he* throughout and at the end include a statement that the use of the masculine gender is deemed to include the feminine” (p. 22). Most prominent legal-writing experts reject such an approach.¹

Most of the appendixes seem unnecessary and may even be misleading. The 13-page Appendix A, on citation form, doesn’t begin to cover even the essentials of that topic. Similarly, Appendix B, on English as a second language, provides little practical information on a topic that is covered extensively elsewhere. The two appendixes that provide a glossary of terms and a glossary of usage are likewise too brief to provide much practical help.

¹ See, e.g., Peter Butt & Richard Castle, *Modern Legal Drafting* 157–58 (Cambridge U. Press 2001); Barbara Child, *Drafting Legal Documents: Principles and Practices* 394 (2d ed., West 1992); Bryan A. Garner, *The Elements of Legal Style* 207–13 (2d ed., Oxford U. Press 2002); Richard C. Wydick, *Plain English for Lawyers* 74–75 (5th ed., Carolina Academic Press 2005).

Guide to Legal Writing Style. By Terri LeClercq. 3d ed. New York, NY: Aspen Publishers, 2004. Pp. 121. \$27.50 (with CD included).

Now in its third edition, this guide is a supplementary text for legal-writing courses. The introductory section explains why law students must study writing and why the prose of casebooks is generally so dense and confusing. But LeClercq's view on how to use the book seems unrealistic. She first advises students: "Skim this book before beginning your first assignment [to] see what is important to your new field" (p. xvi). Then, she tells students that after completing the first draft of a writing assignment, they should:

- check its organization against chapter 1,
- evaluate its sentences against chapter 2,
- ensure that there are no misused words by reviewing chapter 3,
- double-check punctuation against the rules in chapter 4, and
- compare its visual format to the examples in chapter 5.

Finally, LeClercq says to "focus on the professor's feedback and return to any chapter that offers advice in those areas" (p. xvi). Most law students will resist returning to a book multiple times during a single writing assignment. And legal-writing instructors may find this approach inefficient.

As in the previous edition, the book covers organizing a draft, editing sentences, choosing and arranging words, and using punctuation. New in this edition is an expanded chapter on formatting documents. Here, LeClercq lists nine helpful formatting tips, such as using ample white space and avoiding all-capital letters. Then,

on facing pages, she provides two versions of a legal document — an ineffective one across from an improved one. Marginal notes on both versions highlight the formatting issues. LeClercq uses this approach for eight different types of documents, such as student memorandums, client letters, and résumés. While the idea is good, the type size in some documents is too small, making reading difficult. The appendixes contain grammar and punctuation exercises, an annotated student memorandum and brief, and answers to the exercises. The accompanying CD, which provides many more exercises, is attractive and easy to use.

LeClercq offers generally good advice on topics such as hyphenating phrasal adjectives, using dashes, keeping the subject close to the verb, and introducing block quotations. Unfortunately, though, on a few issues, some of her advice is questionable. For example, she advises students to avoid “awkward citation placement” by moving citations into prepositional phrases. Thus, the book says that instead of starting a sentence with a citation, a student should write:

The Pennsylvania court, in *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000), maintained that this decision should not apply to the defendant.

But other writing experts caution against such embedded citations because they make documents harder to read. And while LeClercq correctly notes that one solution is to move the citation to a separate citation sentence, she fails to even mention what many regard as the best solution — to place citational details in a footnote while making clear in the text what’s important, as follows:

In 2000, the Pennsylvania court maintained that this decision should not apply to the defendant.²³

²³ *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000).

Similarly, while advising students to avoid sexist language, LeClerc condones using *he/she* to replace the generic *he* — gimmickry shunned by most writing experts.

The book's format is somewhat distracting. The publisher uses too many font styles and sizes, various shaded and unshaded boxes and bars, and an array of subtitles such as "Try These," "What to Remember," "Solutions," and "Treacherous Words." The book would also benefit from a more comprehensive index.

Despite a few problems, this better-edited, concise version is much improved from the previous ones and should benefit law students who undertake the exercises.

The Legal Writer: 40 Rules for the Art of Legal Writing. By Mark Painter. 3d ed. Cincinnati Book Publishing, 2005. Pp. 168. \$26.95.

Now in its third edition, this concise guide has earned acclaim from legal-writing experts, law professors, and practitioners. The book's goal is to help lawyers and judges make their writing understandable — not just to lawyers, but to the general public. As Judge Painter observes, shouldn't the real people involved in cases be able to read what's happening to them (p. 138)?

The book begins with a fascinating chapter titled "How We Got into This Mess," which briefly explains how and why lawyers have acquired such abysmal legal-writing habits. This part provides apt examples of atrocious legal writing, some of which produce unintended hilarity.

The book then presents the 40 rules. Here, you'll find no long explanations, no philosophical wanderings, no fluff — just good, simple advice and practical recommendations for change. Judge Painter devotes only a couple of pages to each rule, providing easy-to-understand examples when they're helpful.

The author's tone is refreshingly plainspoken, as in this passage from Rule 18 — "Use *But* and *And* to Begin Sentences":

Do not be afraid to start sentences with *and* or *but*. This signifies good writing. The reason your grammar-school teacher told you not to start a sentence with *and* was because you wrote, *I have a mother. And a father. And a dog.* Use *but* rather than *however* to start a sentence, and see how much better it reads (p. 80).

For each state, a useful addendum lists selected citation and style requirements; telephone and fax numbers of the highest court's clerk; and the Internet address for the state court system.

The Legal Writer isn't a comprehensive guide to legal usage and style, nor does it purport to be. Instead, it's an attractive primer that offers uniformly sound pointers for improving your legal writing.

A Manual of Style for Contract Drafting. By Kenneth A. Adams. Chicago, Illinois: American Bar Association, 2004. Pp. 256. \$44.95.

Except for two new chapters on vagueness and ambiguity, this paperback manual covers the same material as Adams's 2001 book, *Legal Usage in Drafting Corporate Agreements* (reviewed in Volume 9 of this journal). But in his new manual, Adams omits the nearly 40 pages of endnotes in his first drafting book. While some explanations are shortened, many remain the same, leaving the reader to wonder what, if any, authority supports specific points.

And since the manual is more prescriptive than the earlier book, lawyers who follow its advice must either rely on blind faith in Adams or consult the earlier book for authority. It seems unreasonable to expect readers to do either.

As in his earlier book, Adams's laudable goal is to convince lawyers to abandon archaic contract language, some of which has spawned significant litigation through the years. He advocates clear, concise, and consistent language that is subject to only one reasonable interpretation. For the most part, contracts would be much improved if drafters followed his advice. But he continues to disagree with the more progressive view to avoid *shall* in contract drafting.² *Shall* has been used in as many as eight senses in drafted documents.³ And as most legal-writing experts recognize, the unprincipled use of *shall* has bred significant litigation, as attested by 104 pages and over 1,300 cases in *Words and Phrases*, all interpreting the word *shall*.⁴

In this manual, some of Adams's sentences and paragraphs are awkward and overlong — problems worsened by his overuse of prepositional phrases beginning with *of*. For example, Adams writes:

By way *of* an example *of* the effect *of* including *prospects* in the field *of* change, if one *of* Acme's competitors secures an alternative source *of* raw materials that would allow it to produce goods more cheaply, that development could be said to have an adverse effect on Acme's prospects if it appears that as a result Acme would likely be forced to reduce its profit margins (p. 108).

² See, e.g., Michèle M. Asprey, *Plain Language for Lawyers* 193–201 (3d ed., The Federation Press 2003); Joseph Kimble, *Lifting the Fog of Legalese: Essays on Plain Language* 42, 72, 159–60 (Carolina Academic Press 2006); Richard C. Wydick, *Plain English for Lawyers* 63–64 (5th ed., Carolina Academic Press 2005).

³ Bryan A. Garner, *A Dictionary of Modern Legal Usage* 940 (2d ed., Oxford U. Press 1995).

⁴ Kimble, *supra* n. 2, at 42.

Like the earlier book, this manual would benefit from a thorough edit to enhance readability and to correct a few grammatical bobbles, such as this error in subject–verb agreement: “These drawbacks means [sic] that *must* is not a viable alternative to *shall*” (p. 24).

To its credit, the manual covers a wide range of topics and provides some practical tips for lawyers who draft contracts. But because Adams’s earlier book provides authority for most of his advice, many drafters will find it a more useful guide.

A New Miscellany-at-Law: Yet Another Diversion for Lawyers and Others. By R.E. Megarry. Edited by Bryan A. Garner. Oxford: Hart Publishing, 2005. Pp. 450. \$45.

While following the style of its two predecessors, this volume contains entirely new material. Like the earlier volumes, this one collects legal eccentricities, absurdities, and humor that will amuse both lawyers and nonlawyers. For example, the book describes a court’s refusal to consider whether bees should be classified as invitees, licensees, or trespassers. It contains a surprising account of a wife’s being part-exchanged for a Newfoundland dog. And the book mentions the future Lord Denning’s reference to a wife who “was actually committing adultery while denying it in the witness box.”

The book reports on a British judge, unpersuaded by the submissions of counsel, who asked: “Is one to abandon every vestige of common sense in approaching this matter?” And counsel promptly replied: “Yes, my Lord.” Similarly absurd, an Australian advocate argued that it was possible for a husband to have sex with his estranged wife “without prejudice.” And the book discusses a Canadian court’s applying the concept of the “reasonable dog.”

The book even includes judgments delivered in verse. And Megarry provides a collection of judicial insults in response to advocates' misguided efforts, such as this 14th-century rebuke from Chief Justice Bereford: "We wish to know whether you have anything else to say, for as yet you have done nothing but wrangle and chatter."

A New Miscellany-at-Law includes material from Great Britain and the U.S. While the book is primarily for lawyers, a glossary and explanatory footnotes enable nonlawyers to share in the humor.

The author, Sir Robert Megarry, became a Chancery judge in 1967 and was the Vice-Chancellor of the Supreme Court when he retired in 1985. He has authored books on equity, land law, the Rent Acts, and the literature of the law. His first two Miscellanies were legal best sellers. This third one has been skillfully edited by Bryan Garner, who has published extensively on legal writing, usage, and drafting and is the editor in chief of all current editions of *Black's Law Dictionary*.

Because much of *A New Miscellany-at-Law* concerns language, it will be especially appreciated by Scribes members and other legal-language buffs.

Plain English for Lawyers. By Richard C. Wydick. 5th ed. Durham, N.C.: Carolina Academic Press, 2005. Pp. 139 (text). \$17. Pp. 140 (teacher's manual, with CD enclosed).

For over 25 years, this classic — now in its fifth edition — has been a favorite of lawyers, judges, law students, and legal-writing instructors. Still a slim paperback, the book is plain, clear, and approachable. And it teaches, in part, by doing. For instance, its opening demonstrates a graceful style, an effective rhythm, and a conversational tone:

We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is “(1) wordy, (2) unclear, (3) pompous, and (4) dull” (p. 3).

While most of the text in this edition remains the same, the exercises at chapter ends are entirely new. The teacher’s manual, which is twice as long as the one for the previous edition, is also entirely new. And it contains a treasure trove of supplemental material, such as legal-writing discussions, teaching points, advanced assignments, and additional exercises and keys, including appellate-briefing exercises. As the manual explains, instructors whose students must buy the book may use the enclosed CD to create teaching slides and handouts.

In January 2005, the Legal Writing Institute gave Wydick its prestigious Golden Pen Award for *Plain English for Lawyers*. The award itself neatly summarizes the impact of Wydick’s book: “*Plain English for Lawyers* . . . has become a classic. Perhaps no single work has done more to improve the writing of lawyers and law students and to promote the modern trend toward a clear, plain style of legal writing.”

Plain Language for Lawyers. By Michèle M. Asprey. 3d ed. New South Wales: The Federation Press, 2003. Pp. 330. \$33.05.

Asprey’s third edition of *Plain Language for Lawyers* contains some excellent new material. It covers the significant developments in plain language and the law since 1996, when the second edition was published. Asprey considers research, caselaw, and legislation in Australia and on the international scene.

There are two entirely new chapters that address topics rarely covered in the literature: (1) writing e-mail and writing for the Internet, and (2) designing documents intended to be read on a computer screen. Like the previous editions, this one outlines the substantial cost savings to companies and governments that have designed plain-language contracts and forms. As before, Asprey presents a convincing case for plain language. She demonstrates that it is both economically wise and legally responsible to abandon archaic drafting habits and to embrace plain language.

The rest of the book offers sound, practical guidance for using plain language in a lawyer's daily work. Asprey's tone is casual and engaging. Indeed, some readers may find her writing too casual; she commonly includes fragments, for instance, and American lawyers may be put off by her use of *they* with a singular antecedent. Then again, that "rule" may be changing.⁵

The book also includes a detailed index and links to further research, which Asprey wisely includes in nondistracting, non-substantive footnotes.

All in all, *Plain Language for Lawyers* continues to be an outstanding resource on the theory and practice of plain language.

⁵ See Robert D. Eagleson, *A Singular Use of They*, 5 *Scribes J. Legal Writing* 87 (1994–1995).

