Book Notices

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BETTER WRITING FOR LAWYERS. By Timothy Perrin. Toronto, Ontario: Law Society of Upper Canada, 1990. Pp. 227. Can$22.95.

Timothy Perrin's relaxed style and wide-ranging creativity shine in this unusual legal-writing guide. Harried lawyers seeking quick answers to pesky questions about grammar and syntax may quickly lose patience with the book's advice on brainstorming, clustering, and meditating. But anyone who can briefly suppress the left brain will learn valuable writing techniques.

In five main parts, the book explains the reasons for poor legal writing, teaches lawyers to be inventive and to solve problems as they write, coaxes them over the hurdle of first putting their thoughts on paper, outlines a six-step editing method, and provides examples of legal documents with comments and suggested revisions. *Better Writing for Lawyers* abounds with wisdom and sparkling quotations from diverse sources, including judges, writing experts, poets, philosophers, science-fiction writers, humorists — even mathematicians.

Perrin has combined his knowledge and skills as a lawyer, teacher, and writer to create a book that is specialized, understandable, and approachable. With smooth, logical transitions characteristic of skillful teaching, Perrin deftly leads readers from paragraph to paragraph and from chapter to chapter. Moreover, he manages to infuse humor into even the most tedious topic:

> [D]o you find yourself correcting grammar, spelling and punctuation as soon as you start to edit? Don't. Instead, divide your editing into six or seven separate "passes" through the work. On each pass, look at one aspect of your writing.

> The first editing pass is for truth and accuracy. Did the governor really say his opponent "has a face like a ferrett"? Well, why correct the spelling of "ferret" (only one *t*) if you are just going to have to drop the whole sentence anyway?

Because the book lacks an index and because its table of contents includes enigmatic entries such as "Red Queen School of Drafting," it does not lend itself to quick or easy reference. While the publisher achieves the desirable goal of abundant white space, the type size shrinks in the process, making the text less readable. In the final part, in fact, the type becomes minuscule, forcing the reader to squint over long, crowded footnotes.

Better Writing for Lawyers has minor editing bobbles (such as misplaced question marks) and a few other distractions (such as the erratic use of *she*, *she or he*, *he/she*, and even *he/she/it* as generic pronouns). Despite these peccadillos, the book successfully breathes creativity, humor, and variety into the often staid and pedantic legal-writing literature. Though the solemn may squirm over the book's imaginative methods, many lawyers will welcome Perrin's fresh approach to the difficult task of legal writing.

THE CONTRACT DRAFTING GUIDEBOOK: A GUIDE TO THE PRACTICAL APPLICATION OF THE PRINCIPLES OF CONTRACT LAW. By Scott J. Burnham. Rev. ed. Charlottesville: The Michie Co., 1992. Pp. 511. $60.

This extensive guide explains substantive contract law and teaches the process of contract drafting. Well organized and detailed, this lucid guide demystifies even the most baffling contract topics. Though intended for practicing lawyers, it would ease the agony of first-year law students struggling to make sense of contract law.

The book's major faults lie not in its style or content, but in its format. Crowded pages and narrow margins detract from

readability. And readers will be distracted by the array of dissimilar fonts as well as by the varied stylistic conventions for examples, quotations, and lists. Though the writing and editing are generally accurate, some passages are wordy and some paragraphs much too long.

The book includes two main parts with bewildering subtitles: "How the Principles of Contract Law Are Exemplified in Drafting" and "How the Principles of Drafting Exemplify the Principles of Contract Law." These inscrutable descriptions only deter readers; instead, the subtitles should more simply reflect that the first part covers substantive law and the second covers drafting.

Part I details the key concepts of contract law, such as offer and acceptance, consideration, and promise and condition. It discusses leading cases and statutes, including the U.C.C. and the Magnuson-Moss Act. This part also explains the rules of interpretation and includes a thoughtful discussion of ethics in drafting.

Part II provides practical advice on contract negotiations, the parts of a contract, specific phrases, and computer-aided drafting. One chapter briefly traces the history of plain language and distinguishes between subjective and objective standards; here, as elsewhere, Burnham strongly recommends plain language. In the final chapter of Part II, Burnham discusses key aspects of word-processing software, document assembly, and expert systems.

The appendix lists problematic words and phrases in several categories, such as vague words, doublets, triplets, and overblown phrases. Each list begins with a brief comment, but unfortunately the individual entries are not annotated. Though the appendix might serve as a handy reminder, most drafters will have other books that cover these words and phrases in greater detail.

The book includes an extensive bibliography of books and articles, with annotations for the 12 works on legal drafting.

The index is clear and comprehensive, but the one-column format makes it much longer than necessary.

Though Burnham uses second person throughout, his tone remains predominantly serious, even aloof. Without ever pausing for humor or diversion, he moves directly to the message. Only in the introduction does he relax slightly by sharing a few personal anecdotes. Resolute readers in a hurry for answers may appreciate Burnham's no-nonsense approach. But most readers will probably yearn for more color and vitality.

Despite its somewhat staid approach, the guide admirably achieves its goals. It does two difficult jobs well: explaining substantive contract law and teaching drafting. Replete with examples and cross-references, this comprehensive book will please both the practical and the scholarly.

THE DECLINE AND FALL OF GOBBLEDYGOOK: REPORT ON PLAIN LANGUAGE DOCUMENTATION. By the Canadian Bar Association and Canadian Bankers' Association Joint Committee on Plain Language. Ottawa, Ontario: The Canadian Bar Association, 1990. Pp. 66 (English), pp. 54 (French). Can$20.

In this report, a committee of lawyers and bankers assesses the use of English and French plain language in law and in the financial services industry, identifies barriers to plain language, develops a prototype banking document, and recommends more widespread use of plain language. Half the book is written in English, the other half in French. Although the committee's goals are laudable, the report painfully reminds us that writing by committee may lead to dull, lifeless prose.

Not surprisingly, no natural voice emerges. Instead, the report lumbers along in heavy, solemn language. The book's monotony stems in part from its repetitive subject–verb–object sentence structure, which creates a tedious, singsong effect. But other writing problems plague the report: condescendingly

simple words and sentences; many colorless "to be" and "to have" verbs; bland language devoid of imagery; and pervasive passive voice. The committee writes, for example:

> Legal writing does, however, present a particular problem. Legal writing is generally assumed to be difficult to understand. While some legal writing is difficult because of its technical nature, the Joint Committee also believes that a great deal of legal writing is just bad writing. Why is this the case? We can suggest some reasons for this.

The committee describes plain language as language that uses good grammar, familiar words, and simple sentence structure. But this description misses the mark. Though the committee fails to explain what it means by "familiar words," its own writing suggests that the category excludes not just legalese and other atrocities, but also the vivid, descriptive words that infuse writing with imagery and impact. As for using simple sentence structure, the report's pedestrian style implicitly warns against a slavish adherence to that formula.

With a list modestly called "The Ten Commandments for Plain Language Drafting," the committee mistakenly implies that writers should be bound by simplistic rules that are set in stone. The report stiffly proclaims: "Write short sentences" and "Use the active voice." Some commandments — such as "Avoid unnecessary formality" — are vague to the point of meaninglessness. One rule — "Use words consistently" — creates a classic example of ambiguity: Is the committee admonishing against the use of pictures, or urging precision in the use of words?

In conclusory terms, the report discusses the benefits and limitations of plain-language drafting. The committee announces, for example, that plain language leads to improved customer relations and cost savings. Though the report contains a few anecdotes from business, it omits research and other documentation.

The discussion of plain language in law is largely limited to the results of surveys sent to Canadian law schools and bar-admission courses. The committee unremarkably concludes that law schools, law societies, and law firms should devote more attention to promoting plain language. Though the report interestingly discusses the unusual growth of plain language in the legal writing of Quebec, this discussion merely summarizes a 1990 report of the Canadian Legal Information Centre.

The committee explains two approaches — subjective and objective — to plain-language laws. After articulating the two sides of the debate over legislating plain language, the committee concludes that using plain language should be strictly voluntary. It proposes a coalition of individuals and organizations to advocate plain language and to provide a repository of plain-language forms.

The book has three appendixes: (1) an extremely short list of words and expressions to avoid, (2) a lost-check form in two versions — legalese and plain language, and (3) a briefly annotated bibliography of 12 books on plain-language drafting. The report contains no index; instead, it ends with a summary of the committee's recommendations.

This report will be useful to those particularly interested in plain language in Canada. Its bilingual aspect is intriguing, with the French half eloquently titled *Mort au Charabia!* But the report is neither specific nor comprehensive enough for those with a broader interest in plain language. Unfortunately, its most memorable lesson is that, when misunderstood as being merely short sentences and simple words, plain language plods.

DRAFTING LEGAL DOCUMENTS: PRINCIPLES AND PRACTICES. By Barbara Child. 2d ed. St. Paul: West Publishing Co., 1992. Pp. 432 (text). $22.95. Pp. 323 (teacher's manual).

This new edition splendidly updates and augments one of the best textbooks available for a course on legal drafting. With a clear, understandable organization and an attractive page layout, the student text comprehensively covers drafting in litigation practice as well as drafting contracts, legislation, and wills. The accompanying teacher's manual, though less attractive because of its courier font and crowded pages, brims with practical teaching ideas and good advice on the politics of teaching legal drafting in law schools.

The student text has three main parts: the first on litigation drafting, the second on what Child calls drafting in "preventive law," and the third on processes and concepts that apply to drafting any legal document. All three parts include well-annotated sample documents and detailed checklists for specific documents and skills. Every chapter contains several assignments and exercises — many more than students could possibly complete in one semester. Instructors will appreciate the flexibility that this variety gives them.

In footnotes throughout the book, Child provides many references to books, periodicals, cases, and other authorities on each topic. She includes several well-chosen excerpts from cases and other sources. Though sometimes wordy, Child's writing is generally clear and readable. She consistently addresses her readers in a pleasant, courteous tone.

Part One, on litigation drafting, briefly covers the basics of court papers and then devotes entire chapters to complaints, motions, and answers. Child evaluates official and unofficial pleading forms, distinguishes between various motions, and explains specific elements of court papers. Into this detailed discussion Child skillfully blends her insights about litigation strategy and the benefits of plain language.

In Part Two, Child covers drafting in the practice of preventive law — drafting contracts, legislation, and wills designed to prevent litigation. After briefly discussing elements common to these three types of documents, she includes one chapter on each type. The chapter on contract drafting is one of the book's most extensive, with discussions of various provisions and specific guidance on leases, employment contracts, construction contracts, and form contracts. Because the chapter on legislation incorporates passages from other sources, it is not as cohesive as other parts of the book. In her chapter on drafting wills, Child wisely acknowledges the complexity of the task and refers her readers to several books devoted entirely to the topic. She then limits her coverage to common will-drafting problems. The chapter contains an excellent assignment on living wills.

Part Three, which describes drafting skills that apply to all legal documents, is intended for reference as students work through the earlier chapters of the book. Child focuses on the skills of relying on clients and documents as resources ("using clients and documents," as she not so tactfully puts it), drafting in flexible language, avoiding ambiguity, understanding canons of construction, defining terms, naming concepts, and making stylistic choices. This part, like all the others, abounds with details and examples. Particularly insightful are Child's discussions of gender-neutral language and the plain-language movement.

The chapter titles and subtitles precisely identify the book's topics, making the table of contents a useful reference aid. Child provides an excellent select bibliography of books and articles; short annotations accompany the book titles. The textbook ends with a good, if somewhat brief, index of subjects and a helpful index of documents.

The strengths of the book eclipse its minor flaws. Though the book covers very basic drafting skills, its details and insights make it useful not just to students, but to practicing attorneys as well.

A GRAMMAR BOOKLET FOR LAWYERS OR HOW NOT TO DANGLE YOUR PARTICIPLES IN PUBLIC (AND OTHER GOOD ADVICE). By Constance Rooke. Toronto, Ontario: The Law Society of Upper Canada, 1991. Pp. 38. Can$7.

This paperback's playful title verges on false advertising, for the text often plods as Rooke serves up stale grammatical rules and dry examples. To illustrate the importance of modifier placement, Ms. Rooke writes:

> Only his son works in Halifax.
> His only son works in Halifax.
> His son only works in Halifax.
> His son works only in Halifax.

Reading such a sentence once is bad enough; rehearsing it four times is torturous. Granted, to most readers, the book's topic seems notoriously dull: all the more reason for wit and whimsy. The curious mixture of examples includes colorless statements about everyday life (*He liked to swim and to take long hikes*), pedantic sentences obviously intended for the precollege classroom (*All students who cheat should be expelled*), and a few peculiar reflections on well-known authors (*Our ignorance of Shakespeare's life is not, I think, much to be regretted*).

Ms. Rooke is not a lawyer. That fact quickly becomes apparent as her tone fluctuates between unctuousness and condescension. In discussing lawyers' writing, she remarks:

> I have found numerous errors of punctuation, grammar, and syntax. Some of these are "advanced errors" in the sense that they relate to complex matters and are difficult to detect; others are "advanced" only in the sense that they occur in the writing of such linguistically sophisticated persons as yourselves.

Then, after advising lawyers to correct their errors by feeling keenly embarrassed by them, she philosophizes: "Motivation by embarrassment ought to be especially powerful for lawyers, who are perceived and who perceive themselves as highly

literate individuals." Lawyers will be grateful that after the introduction, Ms. Rooke loses track of her intended audience, reverting largely to the tone and style of a high-school English teacher. At times, she sternly corrects the class in strident boldfaced sentences like this one: **"This is not the way to solve the problem!"**

The booklet contains about 20 brief sections, each dealing with a basic grammatical concept, such as fragments, dangling modifiers, parallelism, and passive voice. Ms. Rooke also includes a glossary of usage — but its coverage is limited to nonlegal terms. The book ends with a list of commonly misspelled words, notable for their incredibly tiny font size.

Although the writing and editing are generally accurate, the booklet contains a few overlong sentences and paragraphs. Not comprehensive enough for useful reference and not entertaining enough for painless review, this grammar booklet fails to satisfy any identifiable need — least of all any need of the lawyers it supposedly targets.

HOW TO WRITE REGULATIONS AND OTHER LEGAL DOCUMENTS IN CLEAR ENGLISH. By Janice C. Redish. Washington, D.C.: Document Design Center, American Institutes for Research, 1991. Pp. 47. $11.95.

This polished booklet offers a step-by-step approach to legal writing. Though focusing on regulations, its advice applies to many other documents as well. Ample white space, frequent bullet lists, and boxed examples enhance the book's readability.

The booklet begins with a brief chapter that generally describes regulations. The main attraction, however, is the second chapter, which describes four stages of writing an effective regulation:

- planning the regulation;
- writing the first draft;
- reviewing and revising the draft; and
- evaluating the regulation.

In the section on planning, Redish explains how to evaluate a regulation's scope, purpose, and audience and to clarify the text with the table of contents and other signposts. The section on writing the first draft is specific and detailed. Particularly valuable is the discussion of converting abstract language into concrete descriptions of actors and acts.

Although generally solid, Redish's advice is sometimes too absolute — especially her prescriptions to use active voice, to avoid nominalizations, and to write short sentences. A mistaken premise, too, emerges when Redish says that plain language is appropriate *if* the audience finds it easier to deal with everyday language than with Latinisms. Because few imaginable audiences would prefer writing laced with Latin terms, the conditional *if* hardly makes good sense.

Redish only briefly touches on the difficult task of revising. As for evaluating regulations, she condemns readability formulas, suggesting that drafters instead test a target group's comprehension of each regulation. Other than the list of 16 suggested readings at the end, the book provides no cross-references.

Even if this clear, readable guide had nothing helpful to say, its page layout would make it a model of good design. But, of course, it does have some helpful things to say — especially to those who are new to the discipline of drafting.

JUDICIAL OPINION WRITING MANUAL. By the Appellate Judges Conference, Judicial Administrative Division, American Bar Association. St. Paul: West Publishing Co., 1991. Pp. 195. $35.

Created by a diverse group of 16 judges, lawyers, writers, and editors, this book defies the axiom that writing by committee can only disappoint. The committee separated into four small groups, each of which created one chapter. As a result, the book resembles a collection of essays: each chapter is cohesive, though the book as a whole lacks unity.

The first chapter reviews the substantive aspects of appellate opinion writing, including jurisdiction, standards of review, and judicial restraint. The second chapter — probably the best — explains in detail the specific parts of an opinion and gives sound advice on drafting each of them. These first two chapters will prove most useful to law clerks and beginning judges.

Chapter 3, broadly titled "Writing Style," lists and discusses 27 rules of good writing, ranging from comma use to chronological order. The foreword explains that, by reviewing 400 recent opinions, researchers identified these 27 rules as the most commonly broken. Though the incidence of specific errors may be of some interest, any useful and comprehensive style guide would also cover other rules. And in 25 short pages, even the 27 commonly broken rules cannot be adequately addressed.

Chapter 4, on legal citation, advocates using the *Maroonbook* to promote "a more consistent and uniform practice in the use of citation forms among appellate courts throughout the nation." But as several critics have recognized, confusion and indecision are the only "consistent and uniform" results of using the *Maroonbook*.[1] After advising appellate writers to use

1. *See* Bryan A. Garner, *An Uninformed System of Citation: The Maroonbook Blues*, 1 SCRIBES J. LEGAL WRITING 191, 191 (1990).

their discretion in citing legal sources and to eschew "useless elaboration of citation forms," the chapter ironically lists hundreds of specific abbreviations for various statutes, publications, and terms. Since legal publishers typically follow their own strict citation rules, which closely track those of the *Bluebook*, it is folly to advise judges and clerks to apply their discretion in conjuring up citations.

The book has an assortment of appendixes, including an annotated bibliography of articles published between 1977 and 1987, a supplemental unannotated bibliography, a model opinion printed in an unattractive font with typographical quirks, and a list of biographies of committee members. The index is detailed and easy to use.

The preface tells us that the book targets inexperienced judges and their staffs. But the book — specifically the first two chapters — will actually prove useful to the staffs of all appellate judges, even the experienced ones. New appellate law clerks will likely be the book's most enthusiastic readers.

The style and tone vary slightly from chapter to chapter, but the book is written in the second person throughout. The book's tone is formal and serious, with hardly a trace of humor or diversion. Despite the arid prose, however, the book shines with professionalism and polish.

The text is generally accurate and well edited. But in some chapters, the mixture of too many fonts makes the pages look cluttered and confusing, especially since the margins are narrow. Examples are sometimes used inconsistently, with some illustrating textual principles while others merely continue the text.

Although not as comprehensive as Judge Aldisert's recent book on judicial opinions,[2] this manual offers concise, practical information. It should be judiciously placed on the desks of

2. RUGGERO J. ALDISERT, OPINION WRITING (1990), *reviewed in* 2 SCRIBES J. LEGAL WRITING 176 (1991).

new law clerks, with a note to read the first two chapters immediately.

LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING. By Ruggero J. Aldisert. Deerfield, Ill.: Clark Boardman Callaghan, 1992. Pp. 217. $19.95.

Like Judge Aldisert's 1990 book on opinion writing, *Logic for Lawyers* fills a conspicuous gap in the legal literature, at last providing a comprehensive work on legal reasoning. Using broad strokes, Aldisert explains the basics of logic, eliminating the formulaic and esoteric complexities that bemire many treatises on logic. Applying basic concepts to legal thinking, Aldisert teaches how to construct sound logical arguments and to identify the structural and material flaws in adversaries' arguments.

Aldisert begins by explaining how logic works in the common-law system — how it shapes the law by gradually creating legal principles from specific, reasoned decisions. After introducing deductive and inductive reasoning, Aldisert devotes a chapter to each topic. Although these chapters discuss pure logic concepts such as the syllogism and inductive generalization, Aldisert integrates into these discussions practical examples from caselaw.

Analogical reasoning is a central focus of the book because Aldisert considers such reasoning "the most important aspect of the study and practice of law." With sensitivity and insight, he discusses how courts sometimes use selected community views as sources for drawing analogies, trampling justice and fundamental rights in the process.

In his chapter on the Socratic method, Aldisert provides law students with an important introduction to this wrenching pedagogical process. Lawyers, too, will benefit from the discussion because, as Aldisert notes, the process continues after

law school, as judges struggle to clarify arguments and to analyze the inherent weaknesses of opposing positions.

In several chapters, Aldisert explains the formal and material fallacies, interspersing caselaw passages that discuss and clarify them. Finally, in a thoughtful conclusion, Aldisert synthesizes the book's various concepts and places them in the larger context of successfully studying and practicing law.

This splendid book has only a few shortcomings. Although Aldisert provides plentiful brief examples from cases, most of the quoted opinions merely mention, but do not illustrate, the concepts and fallacies. Better examples and fuller explanations would improve the book.

In one chapter, Aldisert misjudges his readers' perseverance. After discussing deductive reasoning, he instructs readers to analyze the examples that follow — identifying major premises, minor premises, and conclusions; determining the order of the premises; looking for enthymemes and multiple syllogisms; and deciding whether the court has leaped to conclusions or followed logical order. Then he abruptly casts readers into eight lengthy and difficult passages from major Supreme Court opinions, providing neither a helpful clue nor an encouraging word along the way. Most readers will skip this onerous, solitary chore, preferring to learn from Aldisert's clear, straightforward prose.

Finally, in one section sure to frustrate even industrious readers, Aldisert presents three LSAT-type logic games and challenges readers to work out the answers by drawing boxes and charts. The first puzzle contains some irrelevant facts; more disturbing, it fails to provide enough information to yield a definite solution. This Gordian knot will understandably enrage the unfortunate overachiever who struggles in vain for an answer.

Logic for Lawyers demystifies a vast, abstract topic, providing practical guidelines for applying its concepts to aid in legal study and legal practice. Aldisert's conversational tone and simple, fluid prose make the book enormously appealing.

MELLINKOFF'S DICTIONARY OF AMERICAN LEGAL USAGE. By David Mellinkoff. St. Paul: West Publishing Co., 1992. Pp. 703. $39.95.

This legal-usage dictionary comes from the author of a groundbreaking book on legal language, *The Language of the Law*. Despite Mellinkoff's description of his dictionary as "new and different," it is not the first book of its kind. But as Mellinkoff's comment may obliquely suggest, his book differs significantly from Garner's *Dictionary of Modern Legal Usage*.

For one thing, instead of illustrating legal usage with examples from judicial opinions and other sources, Mellinkoff creates his own examples. As explained in the preface, his examples have roots in legal sources and "are shaped by more than a half-century of personal immersion in the oral and written language of the law." Although clear and easy to understand, Mellinkoff's examples are consistently flat and colorless, robbing the book of the variety, authenticity, and rich texture of real examples. These made-up examples also detract from the scholarliness of the work. Of course, some readers — especially law students uncomfortable with the complexities of legal language — may appreciate these simpler examples. In addition to omitting quotations, Mellinkoff largely refrains from citing secondary sources, again making the book less than scholarly. Mostly ignoring general usage categories, such as legalese and redundancy, he focuses exclusively on American legal usage.

Strangely, the book begins with a hundred-page index of entries printed on green paper. This separate section lists alphabetically every word and phrase defined in the book and provides cross-references to the headwords under which each definition can be found. Though easy to locate, the index is superfluous because all words and phrases in the index also appear alphabetically, with their cross-references, within the body of the dictionary.

For some entries, Mellinkoff's usage dictionary resembles a comprehensive law dictionary, providing complicated discussions of technical legal terms with no special usage problems. For example, under the headword *tenancy*, Mellinkoff mirrors *Black's Law Dictionary* by fully defining *joint tenancy*, *life tenancy*, *periodic tenancy*, *tenancy at sufferance*, *tenancy at will*, *tenancy by the entirety*, *tenancy for years*, *tenancy in common*, *tenancy in fee*, and *tenancy in fee tail*. Similar unnecessary expansion appears for the headwords *easement*, *fee simple*, *stock*, and *immunity*.

The book contains some entries that readers may consider not just unnecessary, but also offensive. For instance, after discussing the term *crime against nature*, Mellinkoff lists the various sexual acts to which the term may apply. That much seems useful and appropriate. But why should a *usage* dictionary — as opposed to a purely defining dictionary — go on to graphically define each of those acts? For readers who are uncertain of their meanings, any ordinary dictionary includes these common terms. Similarly, why, under *fighting words*, risk offending some readers with this example: "Bill, you old son of a bitch"?

Mellinkoff's style is decidedly informal — his tone remarkably brisk and familiar. With light-hearted banter, Mellinkoff comments that "no one knows what *address* will do to an issue: point to it, sniff at it, poke it up a little, 'shed light on it,' indorse, condemn, or offer solutions." Entries often end with snappy imperative statements: the definition of *chilling effect*, for example, ends with "Chill it." Such flippant remarks will strike some readers as condescending and inappropriate.

Mellinkoff occasionally pushes his extreme informality to the point of nonsense, resulting in prose that resembles an e.e. cummings poem: "*facility*: a something sort of building, when the drafter doesn't know or doesn't care." The book brims with such unorthodox expression: "The utter vagueness of thingness, a poor thing, a thingamajig, ought to disqualify *thing* for legal discourse."

Readers must also occasionally puzzle over the meaning of Mellinkoff's incomplete thoughts. For example, the headword *constitutional* is followed by the cryptic phrase, "Needs sorting out." Next come four definitions that seem problematically indistinct. We can only guess about the meaning of the phrase that follows *constitutional*: Is it a remark about the need for clarifying the word in legal writing — or merely a stray editing comment?

Mellinkoff enlivens the book with wit and clever wordplay, quipping about "pleasant participles" and "writers eager for all-purpose nothingness." But some of his humor may offend against decorum: in discussing some writers' tendency to use the word *gender* instead of the word *sex*, Mellinkoff comments: "But those who opt for *gender* rarely stand on a consistent, principled choice. They lapse into *sex*."

Mellinkoff helpfully provides simplified phonetics for difficult words and phrases. Though the book is generally well edited and typographically accurate, its one-column format wastes space and necessitates frequent page-turning.

Neither comprehensive nor scholarly, this usage dictionary at times masquerades as a legal dictionary, with too much emphasis on substantive legal definition and too little on the vagaries of legal usage. Many lawyers, however, will enjoy Mellinkoff's flamboyant prose and sometimes provocative observations.

PLAIN LANGUAGE: PRINCIPLES AND PRACTICE. Edited by Erwin R. Steinberg. Detroit: Wayne State University Press, 1991. Pp. 258. $32.50 (cloth), $17.95 (paper).

The 18 essays in this collection describe the principles of plain language and explore the challenges and achievements of those who promote and use it. The essays are well written, accurate, and thoroughly documented. Most project a serious, even scientific, tone typical of scholarly articles in the field of

linguistics. One refreshing exception, by Hiraku Amemiya, is a wry, fascinating piece on technical writing in Japan:

> The first to become aware of the need for better manuals were the software publishers. Software, after all, has little of the natural glory of hardware. Whereas some PCs make very attractive room ornaments even if they are never used, the value of a software program only becomes apparent when it is run on a computer. Software does not look the slightest bit impressive when it is lying asleep in a floppy disk jacket.

The essays are loosely arranged in four main parts, whose subjects sometimes overlap. Essays in the first part discuss plain-language laws and various other attempts to promote plain language. In addition to Amemiya's essay, this section includes two essays that trace the history of the plain-language movement in the United States; one that describes the movement in Australia and Great Britain; and one that reports the goals and activities of Canada's Plain Language Centre.

The second part, broadly titled "The Language of Plain English," contains two essays that explore some of the problems of plain language. The first argues that instead of merely presenting programs to writers, consultants must guide those in authority to promote and teach plain language. The second criticizes plain-language prescriptions as oversimplified and ineffective. As an example, the authors consider the plain-language guideline "Avoid whiz-deletions" — relative clauses from which the introductory words such as *which is* have been removed. They conclude that since whiz-deletions abound in good writing, plain-language proponents should not inflexibly admonish writers to avoid them.

The third part concerns aids for writing and revision. The first essay directly rebuts the previous one on whiz-deletions, arguing that guidelines are merely useful writing aids that are not intended to supplant the writer's judgment. Though technically the essay may belong in this part, it probably should have been included in the same part as the piece it

refutes. The third part also includes papers on using specific software programs and protocol-aided revision in composing, revising, and editing documents for various audiences.

The last part includes five case studies reporting on specific plain-language projects in government, commerce, and industry. For varied documents — from computer manuals to package labels — the case studies report on research concerning document design. The collection ends with brief biographies of contributors and with a less-than-comprehensive index.

Attorneys with a strong background and interest in linguistics will find this book absorbing. Some parts, most notably the first, will attract a broader range of readers. Those researching plain language — and particularly those seeking statistics and anecdotes to justify the approach — will especially appreciate this authoritative collection.

PLAIN LANGUAGE FOR LAWYERS. By Michele M. Asprey. Sydney, Australia: The Federation Press, 1991. Pp. 140. $47.50 (cloth), $32.50 (paper).

Written by a lawyer who serves as consultant to the Centre for Plain Language in Sydney, this book articulates an argument for the use of plain language in legal documents and provides lawyers with practical advice on the subject. The book succeeds in the first undertaking but falters somewhat in the second. Despite its broad title, the book focuses primarily on contract drafting and letter writing rather than on persuasive writing.

The first three chapters powerfully justify the plain-language movement in the law. Meticulously documenting this section with extensive authority, Asprey discusses why legal language has become so dense and convoluted, traces the history of criticism directed at legal language, and reviews recent developments in the plain-language movement in the United States, Great Britain, Canada, New Zealand, and Australia. Asprey

explains the benefits of using plain language, providing specific examples from government and business. She also effectively debunks the notion that certain words and phrases possess magical powers to ensure specific legal results. Even lawyers who are already sold on plain language will find this discussion fascinating; they may also find it useful in converting skeptics. Chapter 13 reinforces the message of the first three chapters, answering recurrent questions about plain language in the law.

Chapters 4 through 12 offer practical guidelines for using plain language in the lawyer's daily work. Although these chapters contain some sound advice, poor organization plagues this entire part of the book. The same issues sometimes arise in different chapters, and several chapters have bewilderingly similar topics. For example, after discussing archaic words in a chapter titled "Words," Asprey condemns the use of Latin words in a chapter titled "Legal Affectations and Other Habits." Such organizational problems appear elsewhere: tone and formality are considered in one chapter and pomposity in another.

Unlike several similar books, this one devotes substantial attention to mechanical aspects of document design, including the use of headings, signals, numbering, bullets, and fonts. Asprey classifies legal words and separately considers each type, including terms of art (like *estoppel*), legal buzzwords (like *on all fours*), colorful language (like *eggshell skull*), word strings, synonyms, word clusters, and archaic words. Asprey also discusses future tense, passive voice, the subjunctive mood, negatives, adverbial clauses, nominalizations, and provisos. She insightfully considers specific words and phrases such as *where*, *said*, and *pursuant to*, and provides a fairly comprehensive list of problematic words and phrases with a corresponding list of alternatives.

Chapter 12, on the rules of legal interpretation, seems unnecessary, because it merely summarizes common rules and advises readers to keep them in mind when drafting. Although Asprey announces that the rules of interpretation are "perfectly

compatible" with plain-language drafting, she fails to offer persuasive proof or effective examples on this issue.

Asprey writes in first and second person, using an informal and conversational tone. Her prose is brisk and sometimes humorous. For example, she remarks: "The only excuse for using Latin in a letter to your client is that your client is an ancient Roman." Unconventional in its style, the book abounds with contractions and sentence fragments. In the following passage, for instance, Asprey unabashedly uses four fragments in a row:

> No misunderstandings. Just the facts. A professional document that is accessible by its users. One that shows our skills and focuses its readers on the issues rather than the periphery of unnecessary detail and unfamiliar style.

Both explicitly and implicitly, Asprey advises that language must be flexible. To avoid sexist language, she tells writers to use — and uses herself — plural pronouns to refer to singular antecedents: "This might be of some benefit to a client who has forgotten what *they* asked *their* solicitor . . . ." Asprey remarks that many grammatical rules — such as distinguishing between *I* and *me* and between *who* and *whom* — are slipping out of general use; she contends that following these rules can make language sound stilted. In text, this belief is boldly implemented: Asprey includes the phrase "confusion about who it is addressed to" and the clause "The writer is me."

But while recognizing that sexist language offends some readers, Asprey ignores the profoundly negative reactions that grammatical errors may cause. As Fowler once noted, use of the singular *they* sets the literary person's teeth on edge.[3] Many lawyers will disagree with Asprey's "flexible" approach to grammar, on the theory that it is better to seem stilted than illiterate.

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3. H.W. FOWLER, A DICTIONARY OF MODERN ENGLISH USAGE 392 (1st Am. ed. 1944).

Despite its organizational flaws and dubious approach to grammar, *Plain Language for Lawyers* provides a compelling argument for plain language in the law. With abundant quotations, authorities, and examples, Asprey dispels the illusion that history, or precedent, or tradition, or precision compels us to adhere to the cumbersome verbosity of the past.

PRIMER ON THE ANALYSIS AND PRESENTATION OF LEGAL ARGUMENT. By Bradley G. Clary. St. Paul: West Publishing Co., 1992. Pp. 106. $7.95.

This thin paperback is one of the few works attempting to teach moot-court students to analyze legal issues, write briefs, and present oral argument. Clary begins by explaining his analytical method — an "hour-glass approach" that involves distilling facts and principles into a "societal value" that favors the client. Each step cries out for — but Clary never supplies — a practical example. Instead, after all the steps, Clary constructs a long, abstract metaphor that reads on the order of, "[T]he architect's task is not simply to design a building that stands, but also to design a building that conveys the desired value-openness." Rather than teaching legal analysis, Clary thus bemuses readers with thoughts of bricks and mortar and value-vagueness.

The next section, on factual and legal relationships relevant to analysis, manifests serious organizational problems. The chapter consists largely of a disjointed list of various relationships, such as facts to legal principles and constitutional issues to nonconstitutional issues. Even the loose organizational tie of relationships unravels near the end, with a seemingly unrelated section on canons of construction.

Separate chapters on brief writing and oral argument follow, with information so elementary that it will be useful only to first-year law students. The tips on oral argument are more specific than those on brief writing — perhaps too specific. For

example, Clary tells readers to scout out the courtrooms because they "are of different sizes and of different dimensions. Some have microphones, and some do not."

Strangely, the book's final "chapter," which reads like introductory material, is less than a page long. In it, Clary modestly concludes, "Indeed, I assume arguendo that reasonable people may differ over the correctness of pieces of advice given in this primer." Indeed, though not arguendo.

True, Clary's primer cites abundant authorities — mostly federal cases — but they usually appear in string citations that clutter the text, hampering readability. And Clary injects several long substantive footnotes that further deter readers. These flaws, however, pale in comparison to the book's other defects: dense, colorless writing and careless editing. Clary litters his prose with legalese, including a mountain of *hereins*. He scatters trite metaphors and dangling modifiers and, for emphasis, resorts to annoyingly frequent underscoring and excessive quotation marks. Editing errors abound: inconsistent use of quotation marks, commas, and generic pronouns; sloppy blurring of the distinction between *which* and *that*; and failure to differentiate hyphens from dashes. The final error produces a bewildering chapter title, in all capitals and underlined:

> METHODOLOGY FOR ANALYSIS OF A LEGAL PROBLEM-AN HOUR-GLASS APPROACH

Moot-court students could use a good primer on legal analysis, brief writing, and oral argument. But only a drastic rewrite could transform this book into the one they need.

THINKING LIKE A WRITER: A LAWYER'S GUIDE TO EFFECTIVE WRITING AND EDITING. By Stephen V. Armstrong and Timothy P. Terrell. Deerfield, Ill.: Clark Boardman Callaghan, 1992. Pp. 203. $24.95.

This book's coauthors — a law-school professor and a former English professor — have for several years taught legal writing

to lawyers and judges. Their writing reflects their obvious familiarity with legal writing and with the unique writing environment of the law firm. Practicing lawyers will thus find the book more relevant and more useful than many other books of its kind.

The book focuses on "expository prose that explains a legal analysis" — a genre that includes letters, memoranda, briefs, and judicial opinions. Unfortunately, the book's two most objectionable parts appear right at the beginning. The book starts with an outline of writing principles and techniques, which are later interspersed throughout the text in boxes. Without the accompanying explanations, much of the writing advice in this summary will remain cryptic to readers. The outline should appear last, not first, for it makes the book seem daunting to the uninitiated.

What follows in the first chapter is a tiresome discussion of the relationship between legal writing and legal reasoning. This dull, bookish passage sinks under the weight of a complicated analogy for writing based on Dworkin's model — with its theoretical distinctions between legal rules and legal principles and its application of standards for judging the relative importance of conflicting principles. Most readers will have little patience for this extended analogy. The authors sensibly advise those who are in no mood for theory to skip the first chapter. But the authors themselves should have skipped it — or mercifully buried it in an appendix for the few who find themselves in such an unusual mood.

After that faltering start, the book quickly improves. One of its best chapters is the second, which focuses on audience reaction and on the varied purposes of legal writing. With sound psychological insight, the authors evaluate how various audiences typically react to lawyers' common writing habits. This theme echoes throughout the book, reflecting rare sensitivity for the effects of writing on an intended audience. But sometimes the authors venture too far. For example, while noting that most professional writers begin sentences with *but*,

the authors advise us to consider the possible negative reactions that this usage may evoke in a so-called "conservative" audience. This advice, of course, merely perpetuates the arrant myth that using *but* to begin sentences is informal, loose, or even wrong.[4]

The book also contains an excellent chapter on editing, with specific suggestions for improving the editing process within the law firm. Again, the authors take a psychological approach, discussing the interpersonal aspects of editing the work of colleagues. Many lawyers, especially associates at large firms, will immediately identify each of the examples of typical editing styles with the name of at least one partner. But this chapter offers more than mere description; it brims with practical advice on using the editing process within the firm to encourage, rather than demoralize, colleagues and to more effectively guide them in improving their writing.

The chapters on organization contain some helpful practical advice, but at times lapse into incomprehensible theory and abstraction. Particularly puzzling is the "taxonomy of maps," a section of unexplained line drawings with multiple diverging arrows and letters. The chapters on paragraphs, sentences, words, and punctuation, however, are clear and well organized, with many effective examples and revisions.

The tone is decidedly formal and serious throughout, with sparse touches of humor, as in one chapter title, "The Wages of Syntax." Only in chapter 8 do we learn the reason for all this mirthlessness; the authors view humor, even good humor, as a dangerous distraction from the content of the writing. They express a similar view on metaphors. These opinions, however, are too sweeping and absolute. Although humor is misplaced in a brief on capital punishment, appropriate humor can often add color and vitality to legal writing. And while an ineffective metaphor certainly distracts in any context, the effective

4. *See* Bryan A. Garner, *On Beginning Sentences with* But, *ante* pp. 87–93.

use of metaphor "is the traditional device of persuasion. Eliminate metaphor from the law and you have reduced its power to convince and convert."[5]

The authors conclude with a brief separate discussion of each of these forms of expository legal writing: memoranda, briefs, judicial opinions, and letters. Their advice on each form is largely practical, with their usual emphasis on audience reaction. The two appendixes seem somewhat misplaced, with little explanation of their purpose or relevance in the book. The first justifies instruction in legal writing but fails to place the discussion in any meaningful context. The second reviews basic grammar and syntax, briefly describing the parts of the sentence and the types of sentences.

An attractive paperback book, *Thinking Like a Writer* is most notable for its rare focus on psychological and interpersonal aspects of writing and editing. Although some may consider their tone too serious, Armstrong and Terrell write with vitality, grace, and character. Except for a few misguided forays into needless theory and abstraction, they offer practical advice on legal writing and editing.

WINNING ON APPEAL: BETTER BRIEFS AND ORAL ARGUMENT. By Ruggero J. Aldisert. Deerfield, Ill.: Clark Boardman Callaghan, 1992. Pp. 388. $45.

Judge Aldisert's fourth book is an attractive hardback designed as a desk reference on brief writing and oral argument. On every aspect of appellate practice, the book provides many quotations from federal and state appellate judges, who express their views on effective and ineffective advocacy. Judge Aldisert adds his own insights, including details on how he and his law clerks read and analyze briefs, how he prepares for oral argument, and how federal appellate judges decide cases in post-

5. LON L. FULLER, LEGAL FICTIONS 24 (1967).

argument conferences. For lawyers who have not been appellate law clerks, the book could prove invaluable.

The book contains five main parts. Aldisert starts with an overview of appellate advocacy, which includes, for various jurisdictions, statistics on the increasing number of appeals, the odds of being granted oral argument, and the odds of prevailing. The next two main parts cover brief writing — part 2 on general issues such as jurisdiction and part 3 on specific aspects of brief writing such as researching, using authorities, and drafting various parts of the brief.

Part 4 focuses on preparing and delivering oral argument. Particularly valuable are the many tips from judges of 30 states and all 13 federal circuits.

Part 5, which would have been more appropriately called an appendix, includes two checklists: one on brief writing and the other on oral argument. These checklists, which largely summarize the text, may serve as a quick, useful reminder of various appellate steps. Though each checklist contains a warning to learn the court rules, there is still a danger that overreliance on the lists might induce someone to overlook a critical step under local rules. The book ends with a comprehensive index.

Instead of creating entirely fresh text and examples for this book, Aldisert unfortunately duplicates parts of his earlier books on opinion writing and logic. And one short segment, written entirely by someone else, breaks from the rest of the book's tone and style. This book, like the one on logic, lists many examples while giving little or no analysis or comment, leaving readers to ponder the intended point.

In places the book is overwritten. Aldisert includes several overwrought metaphors. For example, even the most focused reader will lose the legal message in this tedious architectural metaphor:

> We must all take a critical look today at the house of the law. We must be able to identify its architectural lines. We should know front, rear and side elevations, the floor plans for each

> component. If every legal decision builds upon another, deft hands must stack each brick in its proper place. Our house must appear as majestic as a cathedral, not like a frazzled jerry-built hovel crying out for urban renewal.

Aldisert's briefer metaphors are often hackneyed (oral argument is "the last half of the ninth inning") and sometimes mixed (a quotation might "provide fodder to your adversary and thus boomerang on you").

The overdone prose appears even when Aldisert is literal. For example, he relies too heavily on adjectives and adverbs and sometimes ignores the sound of his language, resulting in graceless prose:

- "The captious, quibbling carping of your law office superiors pales into insignificance . . . ."
- "[Y]ou may find yourself the target of an unyielding, obdurate and unrelenting line of questioning from one of the judges inexorably committed to an idiosyncratic, irrelevant intellectual frolic . . . ."

The decidedly informal style occasionally lapses into legalese, with pedantic *thereofs* and *therefroms*. Minor editing errors, such as inconsistent commas and dangling modifiers, also mar the book.

Whatever its stylistic and editorial faults, *Winning on Appeal* will give its readers valuable insights from an author with decades of experience as a state and federal appellate judge.