

Book Notices

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The Art of the Statute. By Jack Stark. Littleton, Colo.: Fred B. Rothman & Co., 1996. Pp. 124. \$35.

This is an idiosyncratic book on legislative drafting. Stark asserts that a drafter “will do much better by trying to achieve accuracy than by trying to achieve clarity” (p. 2). And he completes this false dichotomy by adding: “A clear statute that does not fulfill the requested intent is a disaster, not an accomplishment” (*id.*). What he does not say is that such a statute is also a rarity, since it is easier to recognize whether the intent is fulfilled if the statute is clear — and harder if it is obscure.

Beyond the attack on the plain-language movement, the advice in the book is often buried in extended discussions, sometimes without examples. And when you do find some practical advice, it's hit-or-miss. For example, Stark says that using definitions lavishly can help “make it more difficult for judges to misconstrue statutes” (p. 87). But this view is at odds with that of many other drafting authorities who recommend being a minimalist with definitions.

Someone already versed in the literature can read this book with profit to gain the insights of a thoughtful drafter who has worked on state statutes for many years. But it can hardly serve as a guide for the novice because Stark's main conclusions are scattered within lengthy discussions, and the conclusions themselves often seem shaky.

Commercial Agreements: A Lawyer's Guide to Drafting and Negotiating. By Peter Siviglia. Rochester, N.Y.: Lawyers Cooperative Publishing, 1993. Pp. 396 (text); pp. 203 (pocket part). \$125.

This book fills a definite gap in the drafting literature by focusing — in one manageable volume — on not only the style but also the content of several common types of documents: promissory notes, guaranties, pledges of stock, security agreements, employment agreements, brokerage agreements, shareholders' agreements, partnership agreements, license agreements, and acquisitions. Siviglia also treats opinion letters, letters of credit, and even negotiating strategies. If only he had a chapter on general releases!

Although Siviglia advocates a fairly modern drafting style, he retains some older forms such as *Witnesseth*, *Whereas*, and *In witness whereof*. And many of his enumerated items appear in long block paragraphs instead of in tabulated lists. But all in all, this book is a welcome addition to the literature on contractual drafting because it provides a rare combination of substantive analysis and drafting advice.

Drafting Effective Contracts: A Practitioner's Guide. By Robert A. Feldman. Englewood Cliffs, N.J.: Aspen Law & Business, 1996. Pp. 986. \$157.

An excellent guidebook for the contractual drafter, this looseleaf volume covers virtually every aspect of the subject from first thinking about a problem through producing a final draft. The first part of the book deals with the drafting process, drafting conventions, and negotiations. The rest of the book treats in great detail four of the most common types of transactional documents: sale documents, promissory notes, guaranties, and security agreements. The book is highly recommended for all law libraries.

Exercises in Commercial Transactions. By Peter Siviglia. Durham, N.C.: Carolina Academic Press, 1995. Pp. 218. \$19.95.

Recognizing that the commercial lawyer “is an architect of relationships” (p. 3) — and that law-school training tends to emphasize a litigation-oriented mindset — Siviglia has prepared a set of 16 transactional problems with suggested solutions. He understands the variability of context: “Each solution offered is not the only solution; it merely represents one point of view of the best possible resolution at the time and under the circumstances” (p. 5). Each proposed solution includes the author’s practical analysis, presented in a down-to-earth, almost avuncular voice.

The Great Advocates Legal Briefs: Covering Six Historic Cases. Edited by Steven D. Stark. Minnetonka, Minn.: The Professional Education Group, Inc., 1994. Pp. 190. \$19.95.

Despite the punctuation bobble in its title, this book teaches brief-writing in a simple and sound way — by example. Stark includes six important briefs written in the past 30 years by some of our best American legal writers. Just as literature texts give students a taste of Shakespeare, Dickens, and Hemingway, this paperback primer lets readers sample briefs by luminaries such as Charles Alan Wright, Ruth Bader Ginsburg, and Laurence Tribe. Before each brief, Stark explains the case’s historical context, describes the opinion’s result and reasoning, and remarks on the brief’s most notable features.

Although Stark presents two briefs in their entirety, he unfortunately edits the others — without consulting the authors — supposedly to make the briefs “easier to read as arguments and to highlight their strong points” (p. ii). And without explaining why, Stark unhelpfully converts all footnotes to endnotes. Perhaps he realizes that long substantive footnotes are both distracting and unnecessary. But moving them to the end

does not solve those problems; it only inconveniences the reader.

Still, this first volume of a new series (p. i) is a valuable contribution. Many lawyers will enjoy reading these briefs from historic cases such as *Bowers v. Hardwick* and *San Antonio Independent School District v. Rodriguez*. And the book will enable lawyers to improve their own writing by emulating the masters.

Legal Writing. By Margot Costanzo. London: Cavandish Publishing Limited, 1993. Pp. 163. £10.95.

One in a series of books designed to teach essential legal skills, this book unfortunately reflects Britain's fairly backward state of legal-writing training. The book's most serious failing is its poor organization. Chapter 1 is a hodgepodge of generalities, followed by other chapters that skip from topic to topic with no discernible plan or progression.

Some subtitles are incomprehensible, like these: "Multiple audiences who act" and "Rhetoric is back!" And capitalization errors abound, including instances in which noun phrases are initial-capped for no apparent reason, as in this subtitle: "How is Legal Writing different from other forms of Business Writing?"

Substantively, the book covers only a narrow range of legal writing, consisting of letters, memorandums, articles, newsletters, speeches, and one form that will be unfamiliar to most American lawyers — the brief to counsel, a legal memorandum from a solicitor to a barrister on a court appearance or other matter for a common client. Other types of legal writing, such as pleadings and contracts, are reserved for another book in the series.

All in all, this book is quite inferior to an earlier British product, Mark Adler's *Clarity for Lawyers*, reviewed in the 1991 volume of the *Scribes Journal*.

Legal Writing: Process, Analysis, and Organization. By Linda Holdeman Edwards. Boston: Little, Brown and Company, 1996. Pp. 420 (text). \$26.50. Pp. 172 (teacher's manual).

Written by the legal-writing director at Mercer University, this is a comprehensive textbook and teacher's manual for an introductory legal-writing course. The first chapter covers general topics, including the law's pliability, the distinction between predicting and persuading, the ethics of legal writing, and the problem of plagiarism. Here, and elsewhere in the book, Edwards relies heavily on analogies, some of which are unnecessarily simplistic. For example, after describing the immutable rules of the board game Monopoly, she announces: "The law is not quite like Monopoly" (p. 4). Comments like this, combined with a sometimes pedantic tone, make the text seem slightly condescending.

The rest of the book is divided into two parts, the first on writing predictively (in office memos) and the second on writing persuasively (in briefs). For each major form, Edwards takes students through a four-step process: (1) outlining; (2) writing a working draft; (3) converting the draft into the specific form; and (4) revising. In the first step, she explains how to formulate a "rule of law" based on a statute, an opinion, and multiple authorities, and then how to apply the rule to specific facts. But as Edwards acknowledges in the teacher's manual, if students work straight through the book using this "skills-based approach," they must learn rule formulation at all its levels of complexity before ever beginning to write. That task, of course, will seem daunting to some students because of the utter lack of context. Edwards suggests an alternative "assignment-based approach," but that too has disadvantages, including the need to skip back and forth in the text.

Aside from these sequencing problems, the book is quite detailed and generally sound in its advice. Particularly good are the sections on using the *Bluebook*, quoting authority, and improving style by avoiding passive voice, nominalizations, and

wordiness. In her section on brief-writing, Edwards considers often-neglected topics such as creating a theory of the case, telling a story, planning one's strategy, and defusing an opponent's rhetoric. The appendixes contain a sample office memo, trial brief, and appellate brief, along with court opinions to be used with the exercises.

Despite its unattractive Courier font, the teacher's manual will prove enormously helpful to beginning instructors. In addition to the usual answers to exercises and advice on assignments, the manual offers plans and sample syllabuses to accommodate different kinds of legal-writing courses.

Legal Writing: The Strategy of Persuasion. 3d ed. By Norman Brand & John O. White. New York: St. Martin's Press, 1994. Pp. 209. \$32.99.

This textbook offers detailed guidance to law students on three forms of writing: the exam answer, the legal memorandum, and the brief. Brand and White admirably focus on a process approach to writing, which includes three stages: (1) prewriting (considering purpose, audience, and voice; analyzing the problem through brainstorming or graphics; and organizing and outlining the problem); (2) drafting; and (3) revising.

Unfortunately, the book's organization is hard to follow. Some topics appear in one chapter and then reappear later. And the discussion of logic and argument follows, like an afterthought, the detailed sections on the specific forms of writing. Finally, because the two chapters on mechanics and style cover so few issues, students would be better served with good recommendations for comprehensive books on those topics.

The book excels in its practical advice on planning and writing exam answers and in its detailed problems, sample answers, and exercises. It is especially recommended for prelaw students who want to gain an early understanding of the challenge that lies ahead of them.

Legislative Drafting. By V.C.R.A.C. Crabbe. London: Cavendish Publishing Ltd., 1994. Pp. 318. £29.95.

In this book on British-style legislative drafting, Crabbe gives mostly standard advice (avoid *and/or*, don't use *same* as a pronoun, distinguish *which* from *that*). To his credit, Crabbe is intimately familiar not just with the British literature on drafting but also with American contributions. Unfortunately, the information is not presented in a reader-friendly way. Still, because the book champions enlightened positions on this subject, it is a welcome addition to the literature.

Manual on Usage & Style. 8th ed. By Texas Law Review. Austin: Texas Law Review Association, 1995. Pp. 90. \$4.

This pocket-sized manual is a concise set of generally accepted rules for formal legal writing, especially law-review writing. The book opens with a true gem of legal writing by Charles Alan Wright — his foreword to the second edition.

This new edition's slightly revised title reflects the book's recent reorganization into two parts — the first on basic usage rules (on grammar, punctuation, spelling, capitalization, and commonly misused words) and the second on style rules primarily for law-review editors. While the rules are generally sound, the editors retain a few gaffes from earlier editions. For example, they tell us that *since* should be used only "to indicate the passage of time" (p. 69). But there's no need to rob writers of the causal meaning of this word; instead, careful editors can simply eliminate any miscues that might result from using *since* in context. In another stylistic lapse, the editors approve of beginning sentences with *however* (p. 64).¹

¹ See BRYAN A. GARNER, *A DICTIONARY OF MODERN LEGAL USAGE* 409 (2d ed. 1995); KAREN LARSEN, *THE MISS GRAMMAR GUIDEBOOK* 101-02 (1994); WILLIAM STRUNK & E.B. WHITE, *THE ELEMENTS OF STYLE* 48-49 (3d ed. 1979).

Some of the rules themselves could stand a good edit, like this one:

When a word in a title is hyphenated to separate a root word from its prefix, capitalize both the prefix and the root unless the hyphen is being used either to distinguish the word with its prefix from another word of the same spelling or to separate doubled vowels or vowels that appear to create a distinct sound.

And the book would benefit from a sturdier binding. Still, this handy guide serves a purpose, if only to end acrimonious debates by establishing definite rules on the finer points of law-review editing.

Plain English for Lawyers. 4th ed. By Richard C. Wydick. Durham, N.C.: Carolina Academic Press, 1998. Pp. 173. \$10.95.

Now in its fourth edition, this book is a favorite among law students, legal-writing instructors, and practicing lawyers. And for good reason. This well-written treasure sparkles with excellent legal-writing advice. The book's theme, of course, remains the same: "good legal writing should not differ, without good reason, from ordinary well-written English" (p. 5).

This edition retains the attractive design of the third edition, changing only the color of the cover from brown to green. Substantive changes include new material on how to clarify the reach of modifiers and several new sections on how to draft rules, contracts, and the like. And Wydick has added even more of his excellent exercises, sprinkling a few new ones throughout the text and almost doubling the number at the end.

Plain English for Lawyers is a classic that deserves a place on every lawyer's shelf. It is everything a writing book should be — clear, concise, spirited, practical, accessible, and sound.

Practical Legal Writing for Legal Assistants. By Celia C. Elwell & Robert Barr Smith. St. Paul, Minn.: West Publishing Company, 1996. Pp. 608. \$35.50.

This comprehensive guide will serve not only as an excellent coursebook for legal-assistant training, but also as a valuable reference book for working legal assistants. In the first of 13 well-organized chapters, the authors weave an interesting fact scenario, which raises myriad issues in tort law, contract law, and labor law. The fact scenario naturally gives rise to a lawsuit, which is used throughout the book for illustrations and assignments.

After the first chapter, the authors cover communication skills; basic legal-writing advice; grammar and punctuation; correspondence and internal memorandums; legal research; citation form; and legal analysis. They then turn to specific types of documents that legal assistants draft, including legal memorandums, briefs, pleadings, motions, and discovery documents. Each chapter includes practice tips, margin definitions, boldfaced key words and phrases, exercises, and assignments.

What sets this book apart from others is its detailed advice on the practical aspects of a legal assistant's job, including ethical issues, professional conduct, and office politics. In short, the book covers much more than writing.

The appendixes list commonly misspelled words, misused prepositions, and stuffy words, and give samples of various types of legal writing. In one appendix, the authors furnish a handy "brief cheat sheet," which shows detailed rules and other information for federal and state trial and appellate courts in Oklahoma and serves as a model for creating similar guides for other jurisdictions. The book concludes with an extensive glossary and a good index.

The book's tone is casual yet courteous. The authors manage to sound positive and encouraging — yet never condescending. This useful, well-written guide is highly recommended.

Writing Contracts: A Distinct Discipline. By Peter Siviglia. Durham, N.C.: Carolina Academic Press, 1996. Pp. 85. \$12.75.

This little handbook is yet another nice addition by Peter Siviglia to the literature on contractual drafting. In a chapter titled "The Quest for Simplicity," he sums up his philosophy:

From the draftsman's point of view, complexity intensifies the risk of error in the drafting and the risk of different interpretations in the reading: both chum for the litigators. The commercial attorney, therefore, must work to achieve a result as simple as possible. And to accomplish this goal, the attorney must exorcize two demons! Sloth and the fear of being original (p. 73).

Siviglia has boiled down his advice from other books to create this new one. And even though some of the examples appear in his larger books, this one ends up being surprisingly fresh in its presentation.