Book Notices

Beverly Ray Burlingame

Clarifying Eurolaw. By Martin Cutts. Whaley Bridge, High Peak, UK: Plain Language Commission, 2001. Pp. 68. £8.

Lucid Law. 2d ed. By Martin Cutts. Whaley Bridge, High Peak, UK: Plain Language Commission, 2000. Pp. 82. £8.

For over a decade, Martin Cutts has helped lead the crusade in the U.K. to make statute law plainer and more accessible. Cutts, a nonlawyer, is the research director of the Plain Language Commission, a U.K. company that provides editing services and presents in-house writing courses.

In the late 1980s, when Cutts protested the obscurity of U.K. statutes, the parliamentary drafters challenged him to rewrite one. In response, he rewrote and redesigned the Timeshare Act 1992. *Lucid Law* — first published in 1994 — is the project's groundbreaking report, which:

- explains the project's background and discusses the benefits of clearer legislation;
- reports the statistical results of testing the original and rewritten versions on law students and the public;
- reprints both versions;
- compares in detail the language, structure, and typography of the two versions; and
- describes the response from the parliamentary counsel's office and the government.

The second edition of *Lucid Law* is largely a reprint of the first, with minor corrections. But it begins with a new section discussing Cutts's revision of a U.K. tax statute and describing various plain-language reforms during the intervening six years.

Cutts prepared the second booklet, *Clarifying Eurolaw*, for the 2001 European Law Conference in Stockholm. In it, he explains his revision of a European Union toy-safety directive. Like *Lucid Law*, this booklet provides clear, detailed commentary on specific changes that Cutts made in word usage, structure, and format.

The two booklets share several common attributes, including their attractive design and layout, their good organization, and their vibrant prose. Indeed, even those who never draft statutes will appreciate the eloquence and insight of Cutts's commentary:

- "Legalese — the obscure and complicated style of many legal documents — is one of the few social evils that can be eradicated by careful thought and disciplined use of a Biro [pen]. Yet it remains powerful. Far from being a harmless eccentricity devised and construed by crackpots in the privacy of their own derangement, it is a huge industry throughout the English-speaking world . . ." (p. 6, *Clarifying Eurolaw*).

- "*Lucid Law* acted as that small voice at the back of the meeting, piping up to say that the law belongs to all of us, that it ought not to be a private mystery composed and interpreted only by the chosen few, and that those who are ruled by the law should have every chance of understanding it for themselves without professional mediation" (p. D, *Lucid Law*).

Similarly, most readers will recognize the force and clarity of the revised statutes. Compare, for example, the following before-and-after versions of a timeshare-statute provision:

Before: "The offeree's giving, within the time allowed under this section, notice of cancellation of the agreement to the offeror at a time when the agreement has been entered into shall have the effect of cancelling the agreement."

After: "An agreement is cancelled if the customer gives the seller notice of cancellation within the time this section allows."

There are only a few flaws in these otherwise excellent books. First, Cutts seldom provides a side-by-side comparison of an original and revised provision. Instead, his commentary on each provision forces the reader to locate the provision in two complete versions of the statute. While complete versions are necessary in comparing global features such as structure and typography, they're unwieldy in analyzing specific changes to a single provision. Cutts should use both approaches, even though the booklets would get longer.

Another flaw is in Cutts's pronoun use. Some readers will be distracted by the generic masculine pronouns in a few statutory provisions. Some will disagree with his view that a generic *he* or *him* is acceptable "when repetition of 'customer' would [be] clumsy" (p. 35, *Lucid Law*). Some will refuse to accept his apparent belief that repeating *customer* is the only alternative. And Cutts only makes matters worse by observing that men "would not be happy if the dominant pronoun were 'she.'" Feminists will interpret this to mean that Cutts doesn't mind offending female readers. But those who discount the pronoun problem will regard the remark as silly or obsequious. Cutts could have avoided the whole mess by eschewing both the generic masculine pronoun and any obvious or "clumsy" attempts to write around it.

While some American readers will find British punctuation and usage slightly strange, *Lucid Law* and *Clarifying Eurolaw* are highly

recommended. Despite a few peccadilloes, both books provide clear and powerful proof of the need for plain language in the law.

The Elements of Legal Style. 2d ed. By Bryan A. Garner. Oxford & New York: Oxford University Press, 2002. Pp. 268. $30.

Because the author of this book is also the founding editor of this journal, the current editors decided — as in the past — not to print an original review but merely to excerpt all published reviews as of our press date.

- "[E]very lawyer should buy and use *Elements*. Although many of the rules are available elsewhere, no equivalent text comes close to being as accessible for day-to-day reference. This is easily the most usable stylebook on the market today. In addition to its exemplary 27-page index . . . , the table of contents is reproduced on the interior of the front and back covers. Although *Elements* does not supplant Strunk & White or Fowler, its greater ease of use and focus on legal style make it an essential addition to every lawyer's library." — N.Y. L.J., June 28, 2002, at 2.

- "Bryan A. Garner, the editor in chief of *Black's Law Dictionary*, is leading the charge for clearer, more concise, and understandable legal writing with his latest book, *The Elements of Legal Style*. This updated edition of the legal classic is filled with practical and witty advice on the basics of legal style, complete with new examples and authoritative advice. Garner covers the most common errors, pitfalls, and trouble spots in legal writing in concise, jargon-free style." — FLA. B.J., July–Aug. 2002, at 79.

- "Bryan Garner's *The Elements of Legal Style* serves as either lunchtime cafeteria or four-star restaurant — take your pick. There's something here for everyone. If all you need is the correct way to address a judge in writing, you'll find it. Only have time for a refresher course in semicolons? Turn to page 21; there it is. But if you're in the mood to savor more exotic and satisfying fare, Garner serves it with grace. Feel free to sample some asyndeton. You'll learn how this rhetorical device can help give your writing life, even style. . . . [D]on't get the idea that this book would appeal only to the language geeks among us. Never pedagogical, always entertaining, sometimes downright funny, Garner writes with a gently prescriptive tone on everything from word choice to grammar to linguistic sexism." — MASS. B. ASS'N LAW. J., Aug. 2002, at 2.

Kissing Legalese Goodbye. By Ken Bresler. Littleton, Colorado: Fred B. Rothman Publications, 2001. Pp. 59. $12.50.

In the first 40 pages of this slim paperback, Bresler lists alphabetized examples of legalese and suggests plain-language alternatives. In most entries, such as these, he offers simple, unadorned advice:

file suit
Use "sue."

under no conditions
Use "never."

Some entries, however, include witty comments — for example:

enumerate

Do you think that this word is more eloquent than "count"? Elizabeth Barrett Browning would disagree. She's the poet who did *not* write the following lines: "How do I love thee? Let me enumerate the ways."

A few entries — such as the one on nominalizations — are mini-essays that extend to several paragraphs.

By turning the cover upside down and flipping the book over, one finds what appears to be a separate paperback titled "Legal Practitioner's Abecedarian Manual of Legalese, Jargon, and Multi-Syllabic Words to Make Aforesaid Lawyers, Attorneys, and Counselors-at-Law Feel and Sound Like Same." Like its title, the entries in this part poke fun at legalese, as in these examples:

have

Use "possess." Be possessive about the prerogatives you possess as an attorney-at-law; to wit, namely, e.g., and viz., wordiness and worldliness. Better yet, use "have possession of."

indicate

Use "is indicative of," which is indicative of a superior mind.

The book achieves its modest goal — to ridicule legalese and guide word choice. It does not try to provide comprehensive coverage or any compelling support for plain language. While plain-language devotees may enjoy some of Bresler's comments, this quirky book is unlikely to convince anyone to write more plainly.

Legal English: An Introduction to the Language and Culture of the United States. By Teresa Kissane Brostoff and Ann Sinsheimer. Dobbs Ferry, N.Y.: Oceana Publications, Inc., 2000. Pp. 412. $65.

This book originated as an introductory textbook for nonnative English speakers preparing to enroll in the LL.M. program at a Pennsylvania law school. The introduction suggests that it may also be useful for general introduction-to-law courses. But for three primary reasons, the book is unsuitable except as a text for foreign students in Pennsylvania.

First, typical American students will feel excluded from the book's audience by statements like these:

- "In America, it is polite to offer some details about your life when inquiring into the life or profession of another" (p. 5).
- "Studying English stress and intonation patterns will help you master English pronunciation . . ." (p. 18).
- "Americans love quizzes and games. Now is your chance to see why" (p. 49).

Second, most American students will find little use for the book's first two chapters, which cover basic speaking, listening, and writing skills; the "culture shock" experienced by some foreign students; American slang; and the basic structure of the U.S. government. Third, because almost half the book considers Pennsylvania caselaw and statutes, its use seems questionable in schools outside Pennsylvania.

Even aside from the book's tendency to exclude almost everyone from its audience, it's a poor introduction to legal research and writing. For one thing, it has grammatical and stylistic shortcomings, including:

- failing to hyphenate phrasal adjectives, such as "first year law school classes" (p. 1);

- using *which* for *that*, as in "These papers are scholarly works which are typically between 15 and 50 pages . . ." (p. 285); and

- beginning sentences with *however* instead of *but*.

And the book fails to promote the use of plain English in legal writing. For example, the model memo is rife with stilted phrasings like "visually observed" for "saw," "this sensory perception" for "the sound," and "remains fearful" for "is afraid" or "is still afraid." Another bad example set by the model memo is a 62-word issue statement packed into a single, nonchronological sentence.

Although the book contains a little helpful material on reading, briefing, and synthesizing cases, it fails to adequately cover other topics, including interviewing clients, negotiating, presenting oral argument, and writing a seminar paper. By offering advice on everything from citing caselaw to combatting culture shock, the authors try to do too much and succeed at too little.

Legal Writing by Design: A Guide to Great Briefs and Memos. By Teresa J. Reid Rambo and Leanne J. Pflaum. Durham, N.C.: Carolina Academic Press, 2001. Pp. 676. $35.

This book focuses on the process of writing. Unlike many legal-writing texts, it explains deductive, inductive, and analogical reasoning and discusses relevancy as a link between a rule of law and the facts. And the book considers some other neglected topics, including standards of review and oral argument. But the book has significant flaws.

While the cover claims that the book will appeal to students and lawyers alike, the tone, content, and examples tend to limit the book to law students. For example, most practicing lawyers will be put off by didactic comments such as these:

- "Grammar — there, we've said it again — and we did feel you cringe" (p. 75).

- "Before, however, we argue that a case is binding (or even persuasive), we must *always*, *always*, *always* (*did we say always?*) *update our authority to ensure that it's still good law*" (p. 97).

And practicing lawyers will probably find some explanations too simplistic — for example:

- "Although lower court judges must follow precedent established by higher courts in their jurisdiction, *they decide what is precedent*, and they're free to decide however they wish on issues of first impression" (p. 12).

- "This is the stuff of law. Reconciling precedents and predicting the court's action is what lawyers do" (p. 64).

Similarly, there are extended examples based on a law student's grade in Professor Rambo's appellate-advocacy class, a green apple's inclusion within a basket, and the Big Bad Wolf's conduct in *The Three Little Pigs*. These examples will seem silly to most lawyers (and to many law students).

A more serious drawback is the book's grammatical and stylistic flaws, including these:

(1) Overusing exclamation points, question marks, italics, and other typographical gimmicks, as in:

- "Whew! All of this just to decide where to place an apple? You bet!" (p. 64).

- "In analyzing what each of the ELEMENTS of our RULE requires, we look for any "hidden" ELEMENTS .... We look especially for *adjectives* and *adverbs* . . ." (p. 20).

(2) Beginning sentences with *however* instead of *but*.

(3) Misusing and omitting commas, as in:

- "As we've seen, however in § 2.6, the holding is useful when we're arguing by *inductive generalization*" (p. 52; comma omitted after *however*).

- "But, a case doesn't exist in a vacuum" (p. 94; comma misused after *but*).

(4) Using *which* for *that*, as in:

- "Our job . . . is to find a case involving . . . similar facts, or facts which stand in relation to each other as the facts in our case stand to each other" (p. 95).

- "For example, the Court probably would find unconstitutional any statute which made it a crime to 'be mentally ill . . .'" (p. 107).

(5) Overlooking typographical errors, such as "fing-ponging" for "ping-ponging" (p. 81).

(6) Failing to hyphenate phrasal adjectives, such as "law enforcement techniques" (p. 100) and "wrongful death action" (p. 330).

Similarly, Rambo and Pflaum's model memos and briefs use some widely rejected typographical conventions, including lengthy issue statements in all capitals (p. 602), underlined subheadings (p. 603), and Courier font. And in model issues, the authors sometimes pack 50-plus words into a single, nonchronological sentence beginning with *whether*.

While the book may be useful on some topics, such as logic and oral argument, it is not generally recommended, either as a textbook or as a reference book.

Legal Writing in Plain English. By Bryan A. Garner. Chicago: University of Chicago Press, 2001. Pp. 227 (text). $40 hardback. $15 paperback. Pp. 36 (instructor's manual).

- "Providing a systematic approach to improved legal writing, Bryan Garner offers advice on how to avoid the 'age-old cycle of poor legal writing.' . . . This easy-to-follow guide is useful both as a general course of instruction and as a targeted aid in solving particular legal writing problems." — 114 HARV. L. REV. 2217 (2001).

- "[D]espite my sentimental attachment to Wydick's book, Garner's work is a significant improvement. . . . Those who are willing to approach the book systematically and to complete the exercises will see dramatic improvement in their writing. Even casual users who skim through the book will probably discover some useful ideas. With a list of potential users this long, *Legal Writing in Plain English* should prove a useful addition to almost any legal collection." — 94 LAW LIB. J. 106, 107, 108 (2002).

- "There is a good deal more to Bryan Garner's latest book, *Legal Writing in Plain English*, than its title suggests. It is at one level a well-organized practical companion. . . . But

you should understand that the author has a mission. . . . [I]nterspersed with rules of good writing is a revolutionary manifesto packaged in a plain gray wrapper. . . . The importance of Garner's book is that he is calling on attorneys to set aside old habits and look at a central aspect of their profession: the drafting of documents. . . . Attorneys who take on Garner's bolder project will probably find themselves emerging from the process as more effective and interesting writers — and, if Garner's hypothesis is correct, more successful attorneys." — TRIAL, Sept. 2001, at 66-67.

- "The foremost authority on good legal writing has provided a book that takes a practical approach to the subject." — Donald J. Dunn, 10 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 98 (2002).

- "Bryan Garner of LawProse, Inc. is the leading authority on good legal writing. He lays down good rules, and he teaches a mean seminar. He is also a good role model. He writes well. Even his rules and explanatory notes are well written." — 5 GREEN BAG 139 (2002).

Modern Legal Drafting: A Guide to Using Clearer Language. By Peter Butt and Richard Castle. Cambridge, UK: Cambridge University Press, 2001. Pp. 181. $60 hardback. $23 paperback.

Beyond its plain black cover and unassuming title, this book sparkles with fascinating historical insights, thorough research, and subtle wit. The authors demonstrate their credibility through polished, and often vibrant, prose — as shown in these examples:

- "Change will come, but it will be slow. There will be no storming of the citadel, no victory parade, no triumphal

march through the streets. Traditional legal language will be a long time dying" (p. 3).

- "The tyranny of the precedent books is still with us. They continue to be published, hundreds of thousands of words pouring off the printing presses each year, swamping the legal profession with sentence upon sentence for pleadings, affidavits, declarations, wills, leases, conveyances, notices, bills of lading, mortgages, trust deeds, hire-purchase agreements, assignments, bonds, highway agreements, covenants — and any other documents that one lawyer imagines another might need" (p. 10).

- "Some lawyers are reluctant to use the term 'plain English.' They assume that it denotes an oversimplified 'Dick and Jane' style — that its proponents employ a debased form of language, shorn of beauty, stripped of vocabulary, truncated in form and deficient in style" (p. 85).

The book's primary purpose is to encourage lawyers to draft in plain language by illustrating why it's preferable to traditional legal English. Although the book's focus is legal drafting, many of its lessons apply equally to other forms of legal writing. In seven chapters, the book:

(1) examines the influences that affect today's legal drafter and the factors that help perpetuate the traditional style;

(2) demonstrates that plain language does not run afoul of the rules of interpretation;

(3) traces the move toward plain language in various English-speaking countries;

(4) describes some of the benefits of plain-language drafting, such as improving the image of lawyers and avoiding malpractice claims;

(5) identifies techniques that a drafter should avoid;

(6) explains techniques that a drafter should adopt, providing tips on standard English, punctuation, structure, and layout; and

(7) analyzes excerpts from four types of traditionally drafted legal documents and then rewrites them in plain language.

The authors have wisely placed all citations in footnotes, uncluttering the text and increasing the book's readability.

The book has two definite biases. First, its examples come largely from land law. And the complexities of this field will make some examples difficult for most lawyers to grasp. Second, since the authors hail from Australia and England, the style is decidedly British, as are most of the precedents and examples. But the writing is so lucid that this bias will have little effect on most American readers, aside from minor distractions caused by differences in British punctuation and usage.

Modern Legal Drafting's primary audience will consist of practicing legal drafters. But the book may also be useful as a supplemental text in legal-drafting, legal-writing, and language-of-the-law courses. Finally, the book will appeal to anyone interested in the history and status of plain legal language in the U.K., Australia, and North America.

A Plain Language Handbook for Legal Writers. By Christine Mowat. Scarborough, Ontario: Carswell Thomson Publishing, 1998. Pp. 374. Can$65.

Mowat, a nonlawyer, is a Canadian writing consultant who conducts workshops for lawyers and assists on legal-writing projects in government and business. Mowat's book is thoroughly researched, reporting on plain-language projects, treatises, and articles from Canada, the U.S., and abroad.

Contrary to its preface, however, the book is not primarily a practical approach to plain language "for lawyers, law faculty, and law students." While the last 100 pages contain exercises, quizzes, and before-and-after examples that may be useful to legal writers in general, the rest of the book will appeal largely to plain-language experts in law, government, and industry.

The first five chapters — which are intended to establish a "context" for plain language — provide too much theory and detail for readers who just want to write more plainly. For example, few of those readers will appreciate the first chapter, which quotes and discusses ten definitions of "plain language" from experts such as Kimble, Eagleson, Wydick, and Garner. But readers with a more scholarly interest in the subject will find this chapter fascinating.

Chapters 2 and 3 similarly focus on theory, addressing topics such as audience comprehension, the social function of language, and interdisciplinary aspects and ethical foundations of plain language.

Mowat devotes the entire fourth chapter to sexist language, a topic that many experts mention only in passing. In discouraging sexist language, she focuses on its cultural effects — for example, its effects on social evolution and women's self-esteem. And she suggests that one way to solve the generic-masculine-pronoun problem is to use *they* instead of *he* in referring to a singular antecedent such as *person*. But Mowat overlooks the main reason to eschew both sexist language and any obvious efforts to replace it — to avoid distracting a variety of readers, from feminists to

grammarians to male chauvinists.[1] Although the indeterminate *they* advocated by Mowat is more or less standard in British English and may ultimately solve the pronoun problem, it still "sets many literate Americans' teeth on edge."[2] Despite this oversight, the chapter provides a list of nondistracting, nonsexist substitutes, along with good before-and-after examples. Mowat even shows how Cutts, the author of *Lucid Law*,[3] could replace the few generic masculine pronouns in his Clearer Timeshare Act.

Chapter 5 discusses various options for evaluating plain-language documents, including individual tests, group tests, questionnaires, and readability formulas. Again, this information will be useful primarily to plain-language advocates and specialists.

The next seven chapters focus on drafting specific types of documents, including wills, municipal bylaws, legislation, family-law documents, collective agreements, and release forms. For these chapters, Mowat collaborates with experts in each field. Like earlier ones, these chapters include substantial theory and analysis, including reports of plain-language projects in each field.

Mowat's own language is admirably plain, although not inspired, and her tone is professional and never condescending. Unfortunately, the book has one pervasive stylistic flaw. While Mowat correctly advises readers to use a hyphen "to join two or more words serving as a single adjective before a noun" (p. 312), she often ignores this advice, as in "family law chapter" (p. v), "second language speakers" (p. 14), and "social security benefits" (p. 26). Most noticeably, Mowat consistently fails to hyphenate

---

[1] BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 799 (2d ed. 1995); Beverly Ray Burlingame, *Reaction and Distraction: The Pronoun Problem in Legal Persuasion*, 1 SCRIBES J. LEGAL WRITING 87 (1990) (analyzing typical reactions of various types of readers — the feminist, sociologist, pessimist, linguist, grammarian, stylist, and chauvinist — to generic masculine pronouns and obvious efforts to use nonsexist alternatives).

[2] GARNER, *supra* note 1, at 801.

[3] MARTIN CUTTS, LUCID LAW (2d ed. 2000) (reviewed on page 177 of this issue).

plain language as an adjective. As a result, almost every page contains phrases such as "plain language world" (p. v), "plain language movement" (p. 13), "plain language thinkers" (p. 29), and "plain language jury instructions" (p. 49).

Spiral-bound, like a workbook, the book benefits from an attractive format, with many charts, diagrams, and text boxes. Wisely, Mowat uses plenty of white space and tucks all citations into footnotes. She also begins each chapter with a helpful summary.

Although its level of detail may frustrate readers who simply seek to write more plainly, this book will serve as a valuable resource for plain-language experts and for other soldiers in the battle to make plain language universal.