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A Dictionary of Modern Legal Usage

Lynn Foster

University of Arkansas at Little Rock William H. Bowen School of Law, lfoster@ualr.edu

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BOOK REVIEW

A Dictionary of Modern Legal Usage. Bryan A. Garner. New York: Oxford University Press, 1987. 640 pp. \$35.00.

Lynn Foster*

Books to help attorneys and law students write better are numerous, ranging in format from treatises¹ to nutshells² to dictionaries³ to thesauri.⁴ But until now, no book in the area of legal writing has borrowed the format of H.W. Fowler's classic reference, *A Dictionary of Modern English Usage*,⁵ which for decades was one of the most important sources for writers and grammarians.

Fowler mixed discussions of specific topics with entries about particular words, all arranged in a single alphabetical order. In addition to simply discussing the language, Fowler had his own opinions about what was good and bad, and frequently disagreed with the scholarly consensus of his time. Some of his judgments on the English language are famous. For example, his five divisions of the Eng-

* Law Library Director and Associate Professor of Law, University of Arkansas at Little Rock; A.B., M.S., University of Illinois; J.D., Southern Illinois University. Professor Foster is coauthor (with N. JOHNSON & E. KELLY) of *LEGAL RESEARCH EXERCISES* (2d ed. 1986).

1. Some of the recent books on legal writing include: G. BLOCK, *EFFECTIVE LEGAL WRITING* (3d ed. 1986); N. BRAND & J. WHITE, *LEGAL WRITING: THE STRATEGY OF PERSUASION* (1976); V. CHARROW & M. ERHARDT, *CLEAR AND EFFECTIVE LEGAL WRITING* (1986); M. FREEMAN, *THE GRAMMATICAL LAWYER* (1979); R. GOLDFARB & J. RAYMOND, *CLEAR UNDERSTANDINGS: A GUIDE TO LEGAL WRITING* (1983); G. GOPEN, *WRITING FROM A LEGAL PERSPECTIVE* (1981); D. MELLINKOFF, *THE LANGUAGE OF THE LAW* (1963); D. MELLINKOFF, *LEGAL WRITING: SENSE AND NONSENSE* (1982); M. RAY & J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (1987); H. WEIHOFEN, *LEGAL WRITING STYLE* (2d ed. 1980); R. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (2d ed. 1985). Obviously, the legal profession is concerned about the quality of legal writing.

2. L. SQUIRES & M. ROMBAUER, *LEGAL WRITING IN A NUTSHELL* (1982).

3. *BALLENTINE'S LAW DICTIONARY* (3d ed. 1969) and *BLACK'S LAW DICTIONARY* (5th ed. 1979) are the two leading legal dictionaries in the United States, but a number of others exist.

4. W. BURTON, *LEGAL THESAURUS* (1980), was the first modern legal thesaurus published, although it has been joined by a companion, W. STATSKY, *WEST'S LEGAL THESAURUS/DICTIONARY* (1985).

5. H. FOWLER, *A DICTIONARY OF MODERN ENGLISH USAGE* (2d ed. 1965).

lish-speaking world (also quoted by Garner) are: "(1) those who neither know nor care what a split infinitive is; (2) those who do not know, but care very much; (3) those who know and condemn; (4) those who know and approve; and (5) those who know and distinguish."⁶

Mr. Garner has attempted to follow in Fowler's footsteps with a book intended for legal writers. Legal writing has its own vocabulary and its own very formal style. It is written for (usually) a specialized audience, and tends to be confusing (to say the least) if it is written poorly. In his introduction, Mr. Garner states that "[f]or a specialized language that is highly developed, the language of law remains remarkably variable, largely because it has been incompletely recorded and mapped."⁷ One of the unique aspects of this book is that Mr. Garner provides just this sort of mapping for many legal words. For example, an attorney looking up "discriminatee" ("a person unlawfully discriminated against") would discover that, according to Garner, the word cannot be found in any legal dictionary, but that it is beginning to appear in cases. Three examples of its use in judicial opinions are listed, with citations.⁸ Such mapping of word use can be valuable, and is now possible on a large scale with the advent of free text searching on WESTLAW and LEXIS.

Another purpose of *A Dictionary of Modern Legal Usage* is to "serve as an instrument of reform."⁹ The book clarifies meanings of terms; for example I was interested and educated by the difference between "deprecate" ("to disapprove regretfully") and "depreciate" ("to belittle, disparage," or, "to fall in value"), having misused "deprecate" for "depreciate" myself on several occasions.

The book also contains short entries on various aspects of poor legal writing; for example, the entries "jargonmongering," "law reviewese," "Biblical affectation," and "purple prose" attack various aspects of bad writing. Mr. Garner distinguishes between Latin words which have become terms of art or parts of legal argot—like "locus" ("a place where something is situated or is done") or "pro tanto" ("as far as it goes")—and "bombastic, vestigial Latinisms" such as "vel non" ("or not"—Garner says of it that it "is almost al-

6. *Id.* at 579.

7. B. GARNER, *A DICTIONARY OF MODERN LEGAL USAGE* xi (1987). The book jacket states that Mr. Garner was an associate editor of the *Texas Law Review*, later clerked for the United States Court of Appeals for the Fifth Circuit, and is now an attorney with the Dallas firm of Carrington, Coleman, Sloman & Blumenthal.

8. *Id.* at 191.

9. *Id.* at xii.

ways superfluous; it is *always* vexatious”) or “particeps criminis” (“accessory”). Mr. Garner is ruthless in weeding out “archaisms,” outmoded words or expressions, like “aforementioned” and “to wit.”

Finally, since legal usage is, after all, a part of general English usage, the book also contains discussions of various types of nonlegal usage that will be useful to the legal writer. All of the examples (and there are many) in these entries are derived from legal writing. The entry on “sexism” is representative. Mr. Garner begins by discussing the fact that English has no singular personal pronoun that can be used for both sexes. Traditionally, the practice was to use “he” and “him” for both sexes, but many writers have become increasingly uncomfortable with this and have searched for alternatives. Mr. Garner quotes Fowler’s three alternative solutions, which Fowler described as “makeshifts: first, *as anybody can see for himself or herself*; second, *as anybody can see for themselves*; and third, *as anybody can see for himself*.”¹⁰ Mr. Garner offers a fourth makeshift, now commonly used: “*as anybody can see for herself*.” He rejects an alternative found in a United States Court of Appeals case: “*s/he*,” and concludes that probably “he” and “him” will continue to survive (I’m not so sure of that). The other major problem with sexism is words ending or beginning with “man” (“manful,” “chairman,” “foreman,” etc.). Mr. Garner notes statutes and court cases that have used more neutral language, taking note of terms that seem to him so neutral that they are ridiculous, like “personpower.” He concludes by stating that it is hard to find a middle ground between minimizing sexism in writing and resorting to awkward devices.¹¹

It is certainly hard to find a delicate balance when writing a book of this nature. Obviously, a book like this cannot be directed toward very poor (or “basic,” as the current euphemism has it) writers. On the other hand, directing the book toward fanatic grammarians and aficionados of the English language risks attracting only a very small audience. By and large Mr. Garner has done an excellent job. The book’s format is unique among legal texts. It should be very helpful as a reference. One criticism is that since it is meant as a reference, perhaps entry words like “deictic” and “hypallage” and “tmesis” might have been left out and instead words like “pronouns” and “epithets” and “compound words” substituted. Few readers, if any, know what the former terms mean. The book does have cross references, but they do little to alleviate this particular problem.

10. *Id.* at 500 (quoting H. FOWLER, *supra* note 5, at 404).

11. *Id.* at 499-501.

The book covers not only American legal usage, but also usage in the United Kingdom. It is not a book that will teach one how to write—a book that covers the writing process—and for that reason I do not recommend it for “basic” writers, or for first year law students, who already have enough books to read. But I do recommend it as a reference work for all upperclass students and all attorneys who seek to improve their writing. It is a unique and valuable addition to the literature of legal writing.