

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American
Judges Association

American Judges Association

October 2001

Court Review: Volume 38, Issue 2 - The Resource Page: Focus on Legal Writing

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

 Part of the [Jurisprudence Commons](#)

"Court Review: Volume 38, Issue 2 - The Resource Page: Focus on Legal Writing" (2001). *Court Review: The Journal of the American Judges Association*. 196.
<https://digitalcommons.unl.edu/ajacourtreview/196>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

The Resource Page: Focus on Legal Writing



BOOKS

BRYAN A. GARNER, *A DICTIONARY OF MODERN AMERICAN USAGE*. Oxford Univ. Press, 1998. (\$37.95). 770 pp.

Two aspects of its preparation and design make this the best English-usage book available today. First, computer-assisted research has allowed Bryan Garner to search thousands of sources to find answers to what usages actually are in use today. For example, Garner's search of the NEXIS databases found 10,138 references to ethicist but only 25 to ethician. Garner concludes that although ethician dates back to the 17th century and thus has precedence in most dictionaries, it is a needless relic in today's English. Second, Garner is simply unsurpassed in the sweep of his knowledge, the clarity of his explanations, and the ability to form the sound judgments that are at the heart of all debates about proper usage.

BRYAN A. GARNER, *A DICTIONARY OF MODERN LEGAL USAGE*. Oxford Univ. Press, 2d ed. 1995 (\$65 hardcover; \$25 paperback). 951 pp.

Like a normal dictionary, its entries are alphabetical, but this dictionary covers questions of usage, not definitions. From standard questions like when to use "which" and "that" or "affect" and "effect" to legal-specific issues like the proper use of the word "precedent" or whether you can use the word "conclusory" even though it's not in the dictionary, Garner supplies good advice that's clearly written. He also provides good sources, like the citation to *Greenwood v. Wierdsma*, 741 P.2d 1079, 1086 n.3 (Wyo. 1987) ("[W]e like the word *conclusory*, and we are distressed by its omission from the English language. We now proclaim that henceforth *conclusory* is appropriately used in the opinions of this court."). If you were to

limit yourself to only one resource from those listed on these pages, this is probably the best single background resource for the legal writer: it contains much of the information separately covered in his *Dictionary of Modern American Usage*, while also providing many entries specific to legal writing. For the judge, we add that Garner provides some useful comments about writing style and judicial opinions, as well as his own brief bibliography on those subjects, under the headings "Legal Writing Style" and "Opinions, Judicial."

BRYAN A. GARNER, *THE ELEMENTS OF LEGAL STYLE*. Oxford Univ. Press, 1991 (\$27.50). 236 pp.

This guide is specifically modeled after the best-known general style manual, Strunk & White's *The Elements of Style*. It includes much good advice, with a majority of the book devoted to advice specific to legal writing.

MERRIAM-WEBSTER'S *DICTIONARY OF ENGLISH USAGE*. Merriam-Webster, Inc., rep. ed. 1993 (\$21.95). 992 pp.

For those of you who like to hear opposing viewpoints, this is a great English-usage book. It draws from dozens of other usage authorities, telling you what's generally accepted and, when appropriate, why some disagree with the generally accepted position.

THE AMERICAN HERITAGE BOOK OF ENGLISH USAGE: A PRACTICAL AND AUTHORITATIVE GUIDE TO CONTEMPORARY ENGLISH. Houghton Mifflin Co., 1996 (\$14.00 paperback). 290 pp.

Inexpensive but accurate advice is available in this book, which reports in many cases on the opinions of the 158-member American Heritage Usage Panel. Where else can you learn that most of the panel members believe that only women can be called *vivacious*, while only men can be considered

debonair? Usage Panel members at the time of publication included Justice Antonin Scalia, Carl Sagan, Senator Daniel Patrick Moynihan, James Michener, and Garrison Keillor.

BLACK'S LAW DICTIONARY (7th ed.) (Bryan A. Garner, ed.). West Publishing Co., 1999 (\$55.95 hardcover). 1738 pp.

BLACK'S LAW DICTIONARY (Abridged 7th ed.) (Bryan A. Garner, ed.). West Publishing Co., 2000 (\$44.95 paperback). 1308 pp.

BLACK'S LAW DICTIONARY, POCKET ED. (2d ed.) (Bryan A. Garner, ed.). West Publishing Co., 2001 (\$24.95 paperback). 720 pp.

The prior, 6th edition of *Black's Law Dictionary* was published in 1990. Four years later, Bryan Garner, leading a team of editors, legal historians, scholars, lawyers, and judges, began work on a complete revision. Every definition was reexamined and hundreds of new entries were added. Garner's first work product was a pocket edition that came out in 1996; its definitions were clear, concise, up-to-date, and simply superior to the 1,657-page 6th edition. Garner's full edition, *Black's 7th*, came out in 2000. In 2001, for the first time, the United States Supreme Court relied specifically on one of the dictionary's definitions in deciding a case. See *Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources*, 121 S.Ct. 1835, 1853 (2001)(Ginsburg, J., dissenting) ("The Court derives this 'clear meaning' [of the term 'prevailing party'] principally from *Black's Law Dictionary*. . ."). All three editions contain the word *conclusory*, which is not found in the *Oxford English Dictionary* but is a favorite of lawyers and judges. For opinion writing, you'll want the full, hardcover edition; for home or general use, though, either of the paperback editions is quite good.

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed.) (David R. Pritchard, ed.). Houghton Mifflin Co. 2000 (\$60). 2,015 pp. plus appendix.

This dictionary is simply luxurious, with concise, up-to-date definitions and great pictures and graphics. Current usage is reflected, with the same usage panel that completes surveys for the *American Heritage Book of English Usage*. For example, the dictionary notes that “website” is now the preferred spelling over “Web site,” providing a detailed usage note about the changing terminology on technology. And unlike other general-use dictionaries, it contains the word *conclusory*, specifically noting its use in legal writing and even providing an example.



ARTICLES ON OPINION WRITING

Chicago Law Review Special Issue on Judicial Opinion Writing

- James Boyd White, *What's an Opinion For?*, 62 *Chicago L. Rev.* 1363 (1995).
- Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 *Chicago L. Rev.* 1371 (1995).
- Richard A. Posner, *Judges' Writing Styles (And Do They Matter)?*, 62 *Chicago L. Rev.* 1421 (1995).
- Patricia M. Wald, *A Reply to Judge Posner*, 62 *Chicago L. Rev.* 1451 (1995).
- Frederick Schauer, *Opinions as Rules*, 62 *Chicago L. Rev.* 1455 (1995).
- Martha C. Nussbaum, *Poets as Judges: Judicial Rhetoric and the Literary Imagination*, 62 *Chicago L. Rev.* 1477 (1995).

Copies of this special issue, the Fall 1995 issue of the *Chicago Law Review*, can be ordered from the William S. Hein Company (1-800-828-7571; www.wshein.com) for \$20 plus shipping. The issue includes an entertaining exchange between federal appellate judges Richard Posner and Patricia Wald.

Robert F. Blomquist, *Playing on Words: Judge Richard A. Posner's Appellate Opinions, 1981-82—Ruminations on Sexy Judicial Opinion Style During an Extraordi-*

nary Rookie Season, 68 *U. Cin. L. Rev.* 651 (2000).

Benjamin N. Cardozo, *Law and Literature*, 48 *Yale L.J.* 471 (1939).

Charles N. Day, *Judicial Boilerplate Language as Torts Decisional Litany: Four Problem Areas in North Carolina*, 18 *Campbell L. Rev.* 359 (1996).

Paul Gerwitz, *On "I Know It When I See It,"* 105 *Yale L.J.* 1023 (1996).

Walter Gibson, *Literary Minds and Judicial Style*, 36 *N.Y.U. L. Rev.* 915 (1961).

Paul Horwitz, *Law's Expression: The Promise and Perils of Judicial Opinion Writing in Canadian Constitutional Law*, 38 *Osgoode Hall L.J.* 101 (2000).

Glen Leggett, *Judicial Writing: An Observation by a Teacher of Writing*, 58 *Law Lib. J.* 114 (1965).

Robert A. Leflar, *Some Observations Concerning Judicial Opinions*, 61 *Colum. L. Rev.* 810 (1961).

Abner J. Mikva, *For Whom Judges Write*, 61 *S. Cal. L. Rev.* 1357 (1988).

Steven M. Oxenhandler, *The Lady Doth Protest Too Much Methinks: The Use of Figurative Language from Shakespeare's Hamlet in American Case Law*, 23 *Hamline L. Rev.* 370 (2000).

George R. Smith, *A Primer of Opinion Writing, for Four New Judges*, 21 *Ark. L. Rev.* 197 (1967).

Irving R. Younger, *On Judicial Opinions Considered as One of the Fine Arts*, 51 *U. Colo. L. Rev.* 341 (1980).



USEFUL WEBSITES

American Heritage Dictionary of the English Language (4th ed. 2000).

<http://www.bartelby.com/61/>

This dictionary is available online, along with several other American Heritage resources, including *Roget's Thesaurus*. By searching the “American

Heritage Collection,” you can find the dictionary definition of a word, any other words that include that word in their definition, and synonyms or antonyms from the thesaurus. Searching for the word “condemn,” for example, not only turns up all five definitions of that word (including its legal meaning of appropriating property for public use), but also leads you to the entries for damn, denounce, decry, deplore, disapprove, criticize, doom, and proscribe. We prefer the elegance of the oversized, eight-pound hardback version of the dictionary, but it's awfully convenient to have this full dictionary (and more) available to you wherever you can connect to the Web.

Bartelby.com

<http://www.bartelby.com>

The Web is vast and hard to search, but we feel certain that the depth and breadth of information available for writers at this website is not matched anywhere else. The contents include the *American Heritage Dictionary of the English Language*, the *American Heritage Book of English Usage*, the *Columbia Encyclopedia*, the *World Factbook*, the *Columbia Gazetteer of North America*, *Roget's Thesaurus*, *Bartlett's Familiar Quotations* and two other quotation collections, the complete works of Shakespeare, poetry from Emily Dickinson, Robert Frost, Walt Whitman, and others, the King James version of the Bible, Gray's *Anatomy of the Human Body*, William Strunk's 1918 *The Elements of Style*, and Emily Post's 1922 *Etiquette*. A search engine allows convenient searching of one or all of these resources.

HyperGrammar

<http://www.uottawa.ca/academic/arts/writcent/hypergrammar/>

Jack Lynch's Guide to Grammar and Style

<http://andromeda.rutgers.edu/~jlynch/Writing/>

Don't want to plunk down the money for one of the usage dictionaries? Well, the Web won't give you the same depth of coverage, but you can find the basic rules at either of these sites.



The Resource Page



NEW BOOKS

D. GRAHAM BURNETT, *A TRIAL BY JURY*. Knopf, 2001 (\$21). 192 pp.

In its review of this book, the *New York Times* said, "Any reader who has gone through a tour of jury duty is likely to respond to this engaging book with a glow of recognition." Given some of the views expressed in the book, we hope that few jurors have had the experiences of Burnett, who served on the jury in a New York murder trial. Burnett's jury spent most of its first two days of deliberation trying to figure out the jury instructions, which had been read once in court and not provided to the jurors in writing. The trial judge, who is not named, is described as a "dry and disagreeable man" who ran the court in a tyrannical fashion. For any judge operating in a jurisdiction or courtroom in which modern jury reforms (written instructions given at the start and close of trial, juror note-taking, etc.) have not been adopted, this first-hand account of the reactions of a juror trying to do his job in a trial using traditional methods merits review.

RICHARD A. POSNER, *FRONTIERS OF LEGAL THEORY*. Harvard Univ. Press, 2001 (\$35). 440 pp.

Judge Posner, the long-time intellectual leader of the law and economics movement, extends his discussion of the influence of the social sciences on the law. In this book, he discusses the influences on the law of psychology, history, and statistics, while keeping the influence of economic principles front and center throughout. As always, his treatment of these issues is original and well-researched.

BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH*. Univ. of Chicago Press, 2001 (\$40 hardcover; \$15 paperback). 221 pp.

Bryan Garner's latest contribution to

the legal writing world is based on the highly successful seminars he has given to thousands of lawyers. Most of the advice in the book could apply to any writing, not just to writing lawyers' briefs, research memos, or contracts. For example, his suggestions for directly dealing with counterarguments would apply just as well to the writer of a judicial opinion as to the author of a brief. The book concludes with a helpful, 17-page summary of the correct uses—and most common misuses—of punctuation.



WEBSITE UPDATES

National Center for State Courts
<http://www.ncsconline.org>

Even if you've been there before, take a moment to go to the National Center for State Courts website. It has been totally redesigned and the effort no doubt invested in the website design work has greatly improved both the appearance and functionality of the site. Lots of useful reports can be found online. At the Research Division page, for example, more than 25 different reports are available on the first page alone. Or, if you need salary data, the semiannual survey of state judicial salaries can be found easily by using the search engine found in the upper right-hand corner of the National Center's home page and typing in "judicial salary."

TOP COURT WEBSITES

Best Overall Sites

1. Ninth Judicial Circuit, Florida
<http://www.ninja9.org>
2. North Dakota Supreme Court
<http://www.court.state.nd.us>
3. Maricopa County Superior Court
<http://www.superiorcourt.maricopa.gov>
4. New Jersey Judiciary
<http://www.judiciary.state.nj.us>

5. Northern District of Indiana
<http://innnd.uscourts.gov>
6. Supreme Court of Canada
<http://www.scc-csc.gc.ca>
7. Los Angeles Superior Court
<http://www.lasuperiorcourt.org>
8. Vermont Judiciary
<http://www.vermontjudiciary.org>
9. Dakota County District Court
<http://co.dakota.mn.us/courts>
10. North Carolina Judiciary
<http://www.aoc.state.nc.us>

Best Educational Sites

1. Arizona Supreme Court
<http://www.lawforkids.org>
2. Washington Judiciary
<http://www.courts.wa.gov>
3. Maricopa County Superior Court
<http://www.superiorcourt.maricopa.gov>
4. Utah Judiciary
<http://courtlink.utcourts.gov>
5. Eighteenth Judicial Circuit, Florida
<http://www.18thcircuit.state.fl.us>
6. Supreme Court of Canada
<http://www.scc-csc.gc.ca>

Best Public Access Sites

1. Ninth Judicial Circuit, Florida
<http://www.ninja9.org>
2. Dakota County District Court (Minn.)
<http://www.co.dakota.mn.us/courts>
3. Utah Judiciary
<http://courtlink.utcourts.gov>
4. Washington Judiciary
<http://www.courts.wa.gov>
5. Los Angeles Superior Court
<http://www.lasuperiorcourt.org>

[Top court websites as announced at the CTC7 Conference, sponsored by the National Center for State Courts, held August 14-16, 2001 in Baltimore, Maryland.]



FOCUS ON LEGAL WRITING

The Resource Page focuses on resources that can help you with legal writing on pages 46-47.