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Fundamentals of Legal Writing, by Sidney F. Parham

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THE FUNDAMENTALS OF LEGAL WRITING. By Sidney F. Parham, Jr. Charlottesville: The Michie Company. 1967. Pp. 77. (Price unavailable).

This book is a beefed-up version of an article that appeared several years ago in the American Bar Association Journal. It undertakes to inform the bar of the general need for standards of excellence in legal drafting and of a perceived specific need for a handbook of legal prose style similar to some unnamed English ones. The author is apparently unaware of a number of American books, articles, and manuals that do the job passing well, in most instances better than this attempt.¹

Although titled as a book on legal writing, it is, except for one short chapter, a book on legal drafting. (The difference would be hard to determine from this book.) Unfortunately, even as a book on drafting, the attempt falls far short of the mark. Although we can readily agree with ninety per cent of the ideas that it advances (ideas that every draftsman needs), its defects appear to be fatal.

The most serious shortcoming is that the book's construction and composition betray almost everything that it asserts. Although it preaches sound organization,² economy,³ directness,⁴ simplicity,⁵ and the avoidance of gobbledygook,⁶ the book is badly organized, repetitive, redundant, incomplete, misleading, and very badly written, even for a law book. Practices that the author specifically eschews he tolerates in his own sample drafts.

The author's grasp of the principles of organization appears to be minimal. Moreover, his failure to sense the important differences between ambiguity (equivocation) and vagueness (marginal uncertainty)⁷ leads him to make an absolute virtue of precision,⁸ when presumably he should be talking about clarity. Vagueness is often highly desirable.⁹

The book is seriously incomplete, because it omits at least several

1. See R. COOK, *LEGAL DRAFTING* (rev. ed. 1951); F. COOPER, *WRITING IN LAW PRACTICE* (1963); F.R. DICKERSON, *THE FUNDAMENTALS OF LEGAL DRAFTING* (1965); E. PIESSE & J. SMITH, *THE ELEMENTS OF DRAFTING* (2d ed. 1958); Thomas, *Problems in Drafting Legal Instruments*, 39 *ILL. B.J.* 51 (1950).

2. See S. PARHAM, JR., *THE FUNDAMENTALS OF LEGAL WRITING* 19-29 (1967), [Hereinafter cited as PARHAM].

3. *Id.* 46.

4. *Id.* 45-46.

5. *Id.* 45.

6. *Id.* 50-59.

7. See F.R. DICKERSON, *THE FUNDAMENTALS OF LEGAL DRAFTING* 27-29 (1965).

8. PARHAM 47-49.

9. See Christie, *Vagueness in Language*, 48 *MINN. L. REV.* 885, 886 (1964).

of the most important drafting principles. Worst of all, it says nothing about the cardinal principle of consistency.¹⁰ Almost as serious, it says little or nothing about the importance of adhering to accepted usage.¹¹ It says nothing about definition,¹² the principles of tabulation,¹³ or how to avoid ambiguity,¹⁴ and little about how to achieve stylistic simplicity.¹⁵ The book has no index, but under the circumstances the lack may not be serious.

The book is generally misleading because it purports to deal adequately with a vital legal discipline whose surface it in fact only scratches. So doing, it impliedly reinforces the widely accepted heresy that the principles of legal draftsmanship can be reduced to a few pages of exhortation and general advice. That the law schools do not take the subject seriously is not surprising.

The author even overstates the desirability of getting the facts and grasping the client's policy goals before starting to compose. Professor Seavey surely overstated the opposite approach when he said that he wrote his articles first and researched them afterwards, but he had a solid point. The draftsman who tries to have his detailed ideas completely in hand before starting to write is making a serious tactical error; he overlooks the needed substantive feedback that only an attempt to formulate tentative conclusions provides. Besides, why research matters that a more mature consideration may show to be irrelevant?

While generally unfavorable, this review is not unfriendly. As a participant in several similar attempts, I can vouch for the difficulty of the job. But while I applaud the effort, I cannot honestly endorse the result.

F. Reed Dickerson†

10. See E. PIESSE & J. SMITH, *THE ELEMENTS OF DRAFTING* 32 (2d ed. 1958). The authors express the importance of consistency by labeling it the "Golden Rule" of drafting.

11. F.R. DICKERSON, *supra* note 7, at 12-13.

12. *Id.* 98-112.

13. *Id.* 85-92.

14. *Id.* 97.

15. *Id.* 49-52, 112-38.

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