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The BackPage

News for Associates and Young Lawyers

Plain Language Key to Contracts

Associate's Book Takes Aim at Bloviation

Amongst the learned the lawyers claim first place, the most self-satisfied class of people, as they roll their rock of Sisyphus and string together six-hundred laws in the same breath, no matter whether relevant or not, piling up opinion on opinion and gloss on gloss to make their profession seem most difficult of all.

— Desiderius Erasmus
(*Praise of Folly*, 1509)

BY THOMAS ADCOCK

WITH PUBLICATION of his wry and well-received book on the art of corporate drafting, Kenneth A. Adams has struck a blow against lawyerly bloviation. And none too soon for young associates who might wish to buck the hidebound prose traditions of a profession that persists in larding contracts and agreements with the likes of "now comes" and "hereby" and "each and every" and — surely the worst sin — "witnesseth."

"The whole idea is that the associates will be four years ahead of where I was," Mr. Adams said of his aridly titled book, *Legal Usage in Drafting Corporate Agreements* (Quorum Books). An eighth-year corporate associate at Kramer Levin Naftalis & Frankel LLP, Mr. Adams added, "The firms don't have to believe this is gospel, but that it's superior to just muddling through."

As the first near-comprehensive survey of the conventions of language and structure used in drafting corporate agreements, Mr. Adams, 40, hopes *Legal Usage* will help younger associates "quickly learn how to draft efficiently and effectively, instead of learning by osmosis."

What Mr. Adams would call osmotic muddling is what Professor Nicholas R. Weiskopf of St. John's University School of Law calls being "thrown to the wolves."

Professor Weiskopf welcomes the entry of Mr. Adams' book as a part of the growing movement among attorneys and professional groups around the country in the cause of plain speaking. The English language has a vocabulary and specificity second to no other, argue plain-talk advocates such as the *Scribes Journal of Legal Writing*. Not to mention that contracts and agreements must be read and comprehended by plain-talking non-lawyers, also known as clients.

In his classes, Professor Weiskopf said Lesson Number One is "Say it in English."

"That doesn't mean you don't use specific legal terms," said Professor Weiskopf. "But wherever possible, spell out what you mean in plain English, with short sentences."

For instance, Mr. Adams, an eighth-year associate, is averse to the verb "to covenant." Of this he writes:

> *Acme covenants* is simply a fusty way of saying *Acme agrees*. Many drafters remain attached to it, perhaps because of its Old Testament atmospherics, and they often make matters worse by having parties "covenant and agree" to a given provision.

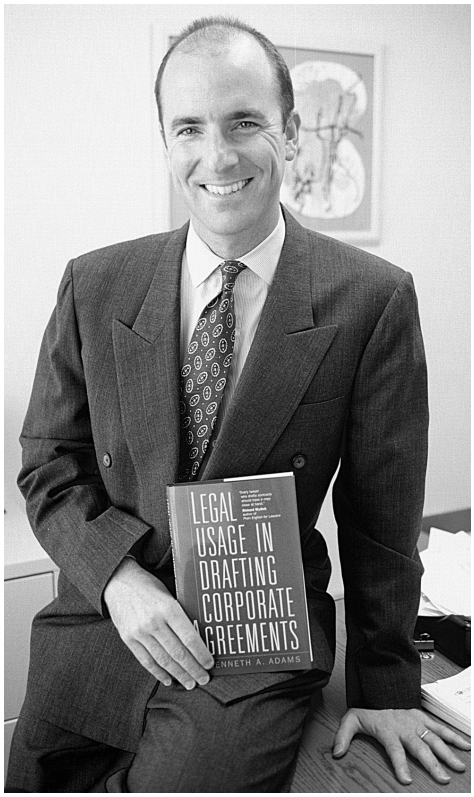
Mr. Adams likewise takes a dim view of redundancy. More from *Legal Usage*:

> Take the following example: *This Agreement shall in all respects be interpreted, construed and governed by and in accordance with the laws of the State of New York.* It is entirely adequate to state that the agreement is *governed* by the stated laws, and *in all respects* adds nothing, since the provision is sufficiently comprehensive without it.

But standing in the way of such rhetorical common sense is human ego, or what Professor Richard C. Wydick of the University of California School of Law at Davis terms "the inter-firm politics of legal writing." Author of the widely read *Plain English for Lawyers*, Professor Wydick offers high endorsement for Mr. Adams' effort.

He said the Adams book "gives the young lawyer who's asked to draft a corporate agreement an authority he can point to when a senior partner says, 'That's not the way we do it here.' "

At 206 pages, Mr. Adams' book (available at www.greenwood.com) is slim but thorough — a four-year result of weekends, stolen hours, and the blessings of Scott S. Rosenblum, a partner at Kramer Levin who encouraged the project.



PHOTOGRAPH BY RICK KOPSTEIN

Kenneth A. Adams hopes his new book will help younger associates quickly learn the art of corporate drafting. "The whole idea is that the associates will be four years ahead of where I was".

"Ken spent a lot of time and effort writing this, but he really continued to work on all sorts of stuff from the billable standpoint," said Mr. Rosenblum, who has recommended *Legal Usage* for use in the firm's CLE program. "It really showed his determination."

Family Spirit

In another way, the author said, his book is a natural outgrowth of the "good-humoredly pedantic" spirit of family debates. Dinner table conversation, Mr. Adams recollected of his parents and his siblings, was "peppered with allusions to marginal historical figures, and prone to digressions to debate a questionable usage or the origins of a given word."

The Adams family was lively indeed. His father was in career foreign service with the U.S. State Department and stationed throughout Mr. Adams' boyhood in Europe, the Middle East and Africa. His mother was the daughter of Eastern European immigrants. Among his brothers and sisters are two lawyers, an anthropologist and the author of a book on the architecture of Prague.

Mr. Adams — born in Germany, raised in Morocco, Senegal, Ghana and Belgium, and educated almost entirely in England — describes those peripatetic years as a "misspent youth reading novels."

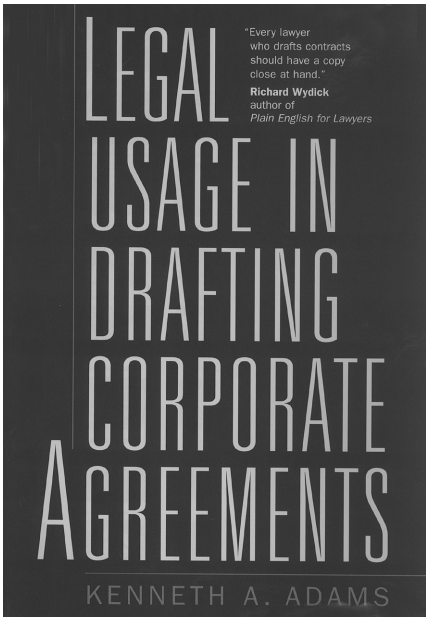
Before his graduation from the University of Pennsylvania Law School, Mr. Adams was an archaeologist in England, where his claim to fame is the published monograph "Monastery and Village at Crayke, North Yorkshire."

"It occupies a grand 22 pages of the *Yorkshire Archaeological Journal*," said Mr. Adams. "It may not be lengthy, but it sure represents untold hours [of] flying over the village to take aerial photographs, conducting excavations, surveying earthworks, walking the fields looking for artifacts, preparing elaborate illustrations, doing library research."

Tiring of what he referred to as "my church mouse archaeology days," Mr. Adams gladly became a lawyer. He keenly remembered a summer associate job at the Cleveland office of Jones, Day, Reavis & Pogue, and the divergence between the world of attorneys and that of church mice.

"The contrast was so profound. Those massed ranks of suits!" said Mr. Adams. "Here was solidity — now, and substantial — rather than earning a pittance digging up things from the First Millennium."

He began his career in earnest at the New York office of Jones Day. Fluent in French, he went on to work for the



Geneva office of the Chicago-based Winston & Strawn. Then in 1998, he returned to the U.S. and the job at Kramer Levin, where he handles securities matters, corporate finance and mergers-and-acquisitions.

Kramer Levin is given introductory credit in Mr. Adams' book for "providing a civilized environment for my reintroduction to New York practice."

But along with his reintroduction, "I found it unsatisfactory the way associates are expected to learn how to draft," Mr. Adams said. "I thought — Well, I'm a dab hand at it, and I might learn something more in the process of writing about it.

"I gradually realized that the subject was a more complicated one than I thought," he added. "Just getting the framework in my mind took a great deal of time. I had to hack at it for quite awhile."

Howard R. Sutherland, senior counsel for corporate law at Merrill Lynch & Company, said the author's time was well spent.

"Mr. Adams does not shy away from letting us know which usages he prefers and why," wrote Mr. Sutherland in a dust jacket blurb for the book. "At a time when the grammatical training of lawyers is probably as bad as it has ever been, this approach alone makes the book a valuable addition to the corporate lawyer's bookshelf."

Of Mr. Adams' literate and often witty style, Mr. Sutherland added, "He's trying to make it bearable to read. After all, it's a dry topic."

No Spoon Feeding

Professor Albert J. Rosenthal of Columbia University Law School has taught the dry topic for a good number of years. Now in semi-retirement, Professor Rosenthal suggested that his classroom approach in the matter of legal writing was similar to the tenor Mr. Adams' brought to *Legal Usage*.

"No course covers the subject matter perfectly," said Professor Rosenthal. "What you hope is to give your students general approaches. Rather than spoon-feed them with a lot of doctrines, I always thought it was better to teach how to analyze drafting problems, how to go into it in a rather relaxed manner.

"Good lawyers will learn rather quickly to bring something up from a precedent file and build on that," he added. "I tell students not to be enslaved by the precedent file, but not to act in isolation.

"And instead of pretending that form books don't exist, I tell them where they're available and to use what they want."

For the time being, Mr. Adams has what he wants in being back home in New York, with a job at Kramer Levin — and now with a book under his belt. But as for the future?

"In my dotage, I might go back to archaeology," he said. "I have, gathering dust at home, the draft of another article on the topic of a Roman military encampment I discovered while flying north of York.

"But who knows when it will see the light of day?"

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