

# Legal Communication & Rhetoric: JALWD

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## BOOK REVIEWS

**Ross Guberman**

***Point Taken: How to Write Like the World's Best Judges***

Megan E. Boyd, reviewer

# On Point

*Point Taken: How to Write Like the World's Best Judges*  
Ross Guberman (Oxford Univ. Press 2015), 376 pages

Megan E. Boyd, reviewer\*

Ross Guberman's latest book, *Point Taken*,<sup>1</sup> is an instruction manual on judicial-opinion writing. Guberman takes the approach that simply telling others how to be good writers will not make them good writers—they have to learn by example through studying good writing. And that is exactly what Guberman does in *Point Taken*; he offers excellent snippets from the world's best judicial-opinion writers<sup>2</sup> to teach and inspire.

Even though *Point Taken* focuses on judicial opinions, many of Guberman's tips and suggestions apply equally to brief writers and opinion writers—the value of introductions and headings, the importance of accuracy in the recitation of facts, and the need to fully analyze the authority, just to name a few. Therefore, while *Point Taken* targets opinion writers—and is a must-read for anyone starting a judicial clerkship—it is good reading for all legal writers.

According to Guberman, every good opinion has three main parts, “The Opening,”<sup>3</sup> “The Facts,”<sup>4</sup> and “The Legal Analysis,”<sup>5</sup> and he dedicates the first half of *Point Taken* to strategies for drafting each. In “The

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<sup>1</sup> ROSS GUBERMAN, *POINT TAKEN: HOW TO WRITE LIKE THE WORLD'S BEST JUDGES* (2015).

<sup>2</sup> Of course, the term “best” is highly subjective. Guberman's “best” judicial-opinion writers include Chief Justice John

Roberts, Justice Ruth Bader Ginsburg, Judge Richard Posner, Judge Diane Wood, Lord Alfred Denning, Lady Brenda Hale, and many others.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 41.

<sup>5</sup> *Id.* at 79.

Opening,” Guberman explains the various styles of introductions, from the “succinct and unresolved teaser” opening that “piques readers’ curiosity”<sup>6</sup> to the “detailed and resolved op-ed opener” that appears as a “self-contained . . . short essay.”<sup>7</sup> Guberman suggests types of cases where writers might want to use a “succinct and unresolved” introduction (i.e., where disputes are purely legal and facts are straightforward)<sup>8</sup> versus types of cases in which a “detailed and resolved” introduction is more appropriate (i.e., where the facts or law are highly complex or the case has broad legal implications).<sup>9</sup> Guberman offers many examples of the various styles and then gives pointers for drafting each type of opening.

Next, Guberman moves to “The Facts,” where he recommends “shorter and more focused background section[s]” for “more persuasive and enduring decision[s].”<sup>10</sup> Guberman offers tips for removing “clutter”<sup>11</sup> from fact sections and streamlining facts to “turn down the noise”<sup>12</sup> and ensure only the most salient facts come through. For example, he shows readers how removing dates, proper nouns, addresses, and other overly specific information leads to an “engaging”<sup>13</sup> set of facts that includes “[o]nly those details that will matter to the court’s analysis.”<sup>14</sup>

Guberman then moves to the “meat” of every opinion—“The Legal Analysis.” According to Guberman, every opinion writer should consider six questions before drafting the analysis and should construct the analysis to answer “logical questions [that] might occur to a reader who is skeptical” of the reasoning.<sup>15</sup> Guberman gets readers thinking about how an opinion writer should organize the analysis, how much analysis the writer should offer, and how the writer should address counterauthority and counterarguments. *Point Taken* offers answers to these questions, and others, all the while giving interesting examples of analyses from trial and appellate judges, both in the United States and abroad.

In the second half of *Point Taken*, Guberman gives readers his “Style Must-Haves,”<sup>16</sup> such as variations in sentence length and form,<sup>17</sup> parallelism,<sup>18</sup> seamless transitions,<sup>19</sup> and sixteen key phrases to remove from writing (e.g., “with respect to,” “with regard to,” “assuming *arguendo*”).<sup>20</sup> For the more ambitious writers, *Point Taken* includes “Style Nice-to-

6 *Id.* at 3.

7 *Id.* at 30.

8 *Id.* at 11.

9 *Id.* at 35, 37.

10 *Id.* at 42.

11 *Id.* at 44.

12 *Id.*

13 *Id.* at 45.

14 *Id.* at 47.

15 *Id.* at 81.

16 *Id.* at 157.

17 *Id.* at 185.

18 *Id.* at 188.

19 *Id.* at 219.

20 *Id.* at 197.

Haves,”<sup>21</sup> including metaphors,<sup>22</sup> similes,<sup>23</sup> analogies,<sup>24</sup> and rhetorical devices, such as word repetition (e.g., John Roberts’ “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”).<sup>25</sup>

Finally, Guberman concludes *Point Taken* with a short chapter on dissenting opinions, which he notes can ultimately “shape legal history over the long term” and, in the short term, can “reassure the losing party that its position has been granted due consideration.”<sup>26</sup> Guberman believes dissents should be “different” from majority opinions in scope, content, and tone; therefore he offers techniques to enable dissenters to persuasively argue that the majority got the facts, the law, or the public-policy concerns (or all three) wrong.

As they were in Guberman’s first book, *Point Made*,<sup>27</sup> the good examples Guberman offers in *Point Taken* are varied and entertaining. They span from intra-family fights over trusts to federal drug cases to copyright and trademark disputes (e.g., the Seventh Circuit’s Pull My Finger® Fred case<sup>28</sup>—because who doesn’t love a little potty humor), making the book both seriously enjoyable and eminently informative, even for those of us steeped in the “rules” of legal writing.

*Point Taken* is an excellent resource for law students who are interested in or have already secured judicial clerkships, lawyers who want to strengthen their written advocacy, and judges looking to improve their opinions. *Point Taken*’s tips likely are too advanced for most first-year law students to implement, but that does not mean they will not benefit from reading this book. Many of the opinions law professors ask first-year students to read are terrible—they are dense, they are archaic, they are not the type of writing we want students to mimic. *Point Taken* helps students begin to recognize the common elements of good legal writing, even if they are not quite ready to put what they have learned into practice, and gives students a stronger foundation on which to build their skills. And improving students’ (and lawyers’) writing skills is a point we can all agree on.

21 *Id.* at 235.

22 *Id.* at 237.

23 *Id.* at 243.

24 *Id.* at 247.

25 *Id.* at 264 (quoting *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007)).

26 *Id.* at 271.

27 See Lauren L. Fontana, *Advocacy Lessons from Legal Celebrities*, 12 Legal Comm. & Rhetoric 265 (reviewing ROSS GUBERMAN, *POINT MADE: HOW TO WRITE LIKE THE NATION’S TOP ADVOCATES*).

28 *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910 (7th Cir. 2007).