

# Legal Communication & Rhetoric: JALWD

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## BOOK REVIEWS

**Tom Goldstein & Jethro K. Lieberman**  
**The Lawyer's Guide to Writing Well**

Wayne Schiess, reviewer

# Third Time Still Charms

*The Lawyer's Guide to Writing Well*

Tom Goldstein & Jethro K. Lieberman (University of California Press 3d ed. 2016), 284 pages

Wayne Schiess, reviewer\*

This book changed my life. Well, my professional life. When I read the first edition of *The Lawyer's Guide to Writing Well* in 1994, a stark reality struck me and stuck: as lawyers, we are professional writers, but we don't act like it. That truth has informed my teaching and writing ever since.

*The Lawyer's Guide to Writing Well*, first published in 1989<sup>1</sup> with a second edition in 2002,<sup>2</sup> is now in its third edition.<sup>3</sup> The authors, Tom Goldstein (a professor of journalism) and Jethro K. Lieberman (an emeritus law professor and former legal writing director), issue the same challenge they did in the first two editions: lawyers can write better, and here's how. *The Lawyer's Guide* is a motivational legal writing style guide—not a reference; you can't look up rules for commas and capitals—but a guide.

The book has twelve chapters separated into four parts:

- Why Lawyers Write Poorly
- The Practice of Writing
- Getting to the Point
- Revising for Clarity and Luster

This four-part approach could be expressed like this: legal writing has problems. Boy, does it ever. So first, here's what good legal writers do as

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<sup>1</sup> TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER'S GUIDE TO WRITING WELL* (1989) [hereinafter *THE LAWYER'S GUIDE TO WRITING WELL* (1st ed.)].

<sup>2</sup> TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER'S GUIDE TO WRITING WELL* (2d ed. 2002).

<sup>3</sup> TOM GOLDSTEIN & JETHRO K. LIEBERMAN, *THE LAWYER'S GUIDE TO WRITING WELL* (3d ed. 2016) [hereinafter *THE LAWYER'S GUIDE TO WRITING WELL* (3d ed.)].

they tackle the challenges of legal writing. Now, here's what you can do to improve your own writing.

Lawyers should read *The Lawyer's Guide*, and if you're a legal writing teacher, you should definitely read it: there's plenty in it you can use. Naturally, it isn't perfect, and you'll have to overlook some minor flaws and slights. But on the whole, *The Lawyer's Guide* is beautifully written and offers sound advice. Let me first mention some quibbles and then some praise.

## I. Quibbles

One of the things I most liked about the first and second editions was chapter 6, called "Lessons from a Writing Audit."<sup>4</sup> The authors interviewed everyone working at a medium-sized law firm and, after drawing some conclusions, offered suggestions for improving the firm's ability to produce high-quality legal writing. This exceptional idea—a writing audit!—and the advice that grew out of it are missing from the third edition. That's too bad. Granted, the writing audit took place twenty-eight years ago, in 1988. But if you've spent much time talking with lawyers about writing, Goldstein and Lieberman's insights, which they repeat in the third edition, pinpoint a key problem:

We found a discrepancy between the partners' perception and that of the younger lawyers on the importance of good writing. This discrepancy arose because the senior partners differed about what constitutes good writing. . . . The differing perceptions also arose because the partners were too busy to convey explicitly to associates that they value good writing or what they meant by it.<sup>5</sup>

I believe this discrepancy still exists today.

A second quibble is the mild overuse of nonlegal examples. We can all learn from great writing in other fields, but the authors strayed too far in chapter 8: "Writing the Lead."<sup>6</sup> Of the seventeen example "leads" or openers, only seven are from legal documents. The other ten are from journalism.<sup>7</sup> Yes, lawyers can learn from journalists, but examples from legal documents would have been more convincing to their lawyer-audience.

4 THE LAWYER'S GUIDE TO WRITING WELL (1st ed.), *supra* note 1, at 68.

5 *Id.* at 69.

6 THE LAWYER'S GUIDE TO WRITING WELL (3d ed.), *supra* note 3, at 85.

7 *Id.* at 85–95.

The biggest quibble is that the authors seem to know little about the ABA's requirements for teaching legal writing to law students. Instead, the authors assert that law schools do not provide adequate writing instruction and, after reciting law schools' excuses, which sound to me like excuses from the 1980s and not from 2016, they don't address the subject again. What's more, in chapter 4, where the authors recount the writing habits and processes of successful lawyers, judges, and law professors, there's not a single account from a legal-writing professor.<sup>8</sup> Or from a woman.

## II. Praise

I'm willing to overlook my quibbles because the book has so much excellent content. For example, the authors acknowledge what we all know: that writing is a process best tackled in phases.<sup>9</sup> Thank you. They assert, correctly, that legal writing is problem-solving.<sup>10</sup> Amen. And chapter 10 is superb. There, they raise, explain, and advise on more than thirty word- and sentence-level concerns that recur in legal writing.<sup>11</sup> They address a few basic problems like subject-verb agreement and run-on sentences,<sup>12</sup> several well-known concepts like nominalizations and passive voice,<sup>13</sup> and a few finer points such as focus (when "the central point is not the topic of the sentence")<sup>14</sup> and "fused participles"<sup>15</sup> (the difference between "do you mind me writing the brief?" and "do you mind my writing the brief?"). The chapter is full of useful before-and-after examples.

Even better is the consistent, insistent, persistent focus on editing, editing, editing. Chapter 11, "Revising Your Prose," introduces a sophisticated process for editing a legal document, suggesting big-picture edits for structure, length, clarity, and continuity plus a proofreading process with passes for spelling and typos, punctuation, and style.<sup>16</sup> Lawyers must edit in steps, the authors affirm, and they take us through three good examples.<sup>17</sup>

Although the writing audit the authors conducted in 1988 was deleted from the third edition, what they learned and what they recommend is still here. "Every week, a small law office publishes (that is, produces for distri-

8 *Id.*

9 *Id.* at 42.

10 *Id.* at 39.

11 *Id.* at 117.

12 *Id.* at 145, 159.

13 *Id.* at 142, 139.

14 *Id.* at 157.

15 *Id.* at 149.

16 *Id.* at 164.

17 *Id.* at 176–86.

bution to outside readers) more material than a major book house or national newspaper.”<sup>18</sup> Lawyers, it’s clear, are publishers, and the authors spend chapter 6 reminding us of that.<sup>19</sup> Law offices, the authors further assert, need a systematic editorial process like those used in newspapers, magazines, and book publishers.<sup>20</sup> Lawyers need professional editors, the authors argue, and new lawyers should learn to work with an editor.<sup>21</sup> And every law office should create or adopt a comprehensive style reference all the lawyers must follow.<sup>22</sup> Goldstein and Lieberman recommend three, none of which is specific to legal writing,<sup>23</sup> which is too bad because there are some excellent legal writing style references they might have recommended.<sup>24</sup>

Although the recommendations are irrefutable, most remain as unheeded today as they were in 1989. That’s because the recommendations bump up hard against the reality of filing deadlines, billable hours, and client demands for lower fees. There’s also some ego at work. I once told a senior partner in a Houston law firm that one way to improve the firm’s writing would be to adopt an in-house style reference everyone had to follow. He laughed, “We could never get all the partners to agree on a style manual, let alone get them all to follow it.”

That’s why a book like *The Lawyer’s Guide* is still needed, twenty-eight years after its original publication. Legal writing still isn’t as good as it should be, lawyers still lack proficiency in editing, and poor legal writing still wastes time and money. Occasionally, it also loses cases. Many readers of this review probably have the first or second editions of *The Lawyer’s Guide* on their bookshelves. Well, the third edition is worth reading. Legal writers in any profession will love it, and when you’re done, give it to a senior attorney who practices law.

18 *Id.* at 67.

19 *Id.*

20 *Id.*

21 *Id.* at 71.

22 *Id.* at 175.

23 *Id.* (listing THE U.S. GOV’T PRINTING OFFICE STYLE MANUAL, THE N.Y. TIMES MANUAL OF STYLE & USAGE, and THE CHICAGO MANUAL OF STYLE).

24 To name just three: ANNE ENQUIST & LAUREL CURRIE OATES, JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER (4th ed. 2013); BRYAN A. GARNER, THE REDBOOK: A MANUAL ON LEGAL STYLE (3d ed. 2013); JOAN AMES MAGAT, THE LAWYERS’ EDITING MANUAL (2009).