

Book Review

Tom Goldstein and Jethro K. Lieberman, *The Lawyer's Guide to Writing Well*, 3rd Edition. California: University of California Press, 2016, pp. 296, \$29.95.

Reviewed by Hemanth C. Gundavaram

Imagine the times you have stared at a blank piece of paper¹ with pen in hand² wondering how to begin . . .

In the third edition of *The Lawyer's Guide to Writing Well*,³ Tom Goldstein and Jethro K. Lieberman address this problem by describing various approaches lawyers take to starting their writing.⁴ You might be a “Dawdler” who waits for a deadline you cannot escape (52). Or a “Scrawler” who quickly jots down ideas without regard to order or logic (52). You could be an “Outliner” who organizes first to get the creative and analytic juices flowing (52-53). Maybe you’re a “Perfectionist” who thinks long and hard before writing (53-54). Perhaps you’re a “Beginner” or a “Closer” who writes the introduction or conclusion first (54). Or a “Strategist” who formulates a different method to approach each type of writing (54-55).

Throughout the book, the authors rarely give you the answer you might seek to a problem they present; instead, they ask you to ponder the question and consider your options. Like a skilled yoga instructor, they calmly tell you to find your own path, because “there is no correct way to begin” your writing (55). But they do instruct you to get into the proper pose by asking

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1. Or a blinking cursor on a computer screen.
2. Or a keyboard and mouse.
3. The book is broken into four parts. Part I explains “Why Lawyers Write Poorly.” Part II is about “The Practice of Writing.” Part III is titled “Getting to the Point.” Part IV discusses “Revising for Clarity and Luster.” The book concludes with an assortment of smaller sections, such as usage notes, an editing checklist, and editing exercises.
4. In 1987 and 1988, the authors surveyed “650 people familiar with legal writing—practicing lawyers, judges, professors, writing instructors, and journalists who report on legal topics” for much of the information, and presumably many of the quotes, in this book (preface).

you to “plunge in” and “[y]ield to your quirks,” because the “most dangerous approach is not to begin at all” (55).⁵

Goldstein and Leiberan ask the writer to consider, before and above all other things, the audience (78).⁶ This question (for whom am I writing?) weighs heavily on the mind of most writers, legal or not. The authors surely must have faced the same dilemma when writing this book. For a legal writing text, three options come to mind as a potential audience: (1) legal writing professors;⁸ (2) law students; and (3) practicing lawyers.⁹ A book meant for the law professor would focus on, among other things, pedagogy and process, creating a syllabus and assignments, and providing feedback and evaluating work.¹⁰ If the audience is the law student, then the book must include a discussion of sources of law, the court structure, and types of legal writing, including internal research memoranda, motions and briefs to courts, client

5. Stephen King once said that “the scariest moment is always just before you start.” STEPHEN KING, *ON WRITING: A MEMOIR OF THE CRAFT* (2001).
6. Consider in this regard Barbara P. Blumenfeld, *Rhetoric, Referential Communication, and the Novice Writer*, 9 *LEGAL COMMUNICATION & RHETORIC: JALWD* 207, 208 (Fall 2012) (noting that the first key task of the writer is awareness of the audience). Thus, in order to anticipate the audience, a writer must: (1) learn about and understand the audience; and (2) implement writing that works for that audience. *Id.*; Bruce Ching, *Argument, Analogy, and Audience: Using Persuasive Comparisons While Avoiding Unintended Effects*, 7 *J. ASS’N LEGAL WRITING DIRECTORS* 311, 311 (Fall 2010) (“Like other rhetoricians, lawyers address their statements to particular audiences, and they shape their arguments in light of the characteristics of those audiences.”).
7. Unless you are J.D. Salinger, you are likely writing for some external audience, rather than your own pleasure. See Lacey Fosburgh, *J.D. Salinger Speaks About His Silence*, *N.Y. TIMES* (Nov. 3, 1974), <https://www.nytimes.com/books/98/09/13/specials/salinger-speaks.html> (“There is a marvelous peace in not publishing. It’s peaceful. Still. Publishing is a terrible invasion of my privacy. I like to write. I love to write. But I write just for myself and my own pleasure.”); see also Hugh McIntyre, *Prince Reportedly Left Behind Over 2,000 Songs*, *FORBES* (April 30, 2016, 8:45 AM), <http://www.forbes.com/sites/hughmcintyre/2016/04/30/prince-reportedly-left-behind-over-2000-unreleased-songs/> (“Some of the people that worked with the rock star for years estimate that there could be around 2,000 unreleased songs . . . in what looks like a bank vault.”).
8. Legal writing professors are often called “writing instructors.” The authors issue a valid (and much-appreciated) criticism that “writing instructors have the lowest prestige in the law schools in which they work, and the smallest claim on their resources” (preface). However, the authors still use the “writing instructor” title, which is avoided in this book review for the more respectful and accurate title of “writing professor.”
9. Some might argue that this list could, or should, include judges, scholars, jurists, and/or paralegals, but these positions, and many others, likely fit, with some degree of generality, within the larger grouping of practicing lawyers. Others might argue that any legal writing advice that is meant for a practicing lawyer would just as easily apply to a law student, but this opinion ignores the foundational writing knowledge that a law student requires to catch up to that of a practicing lawyer.
10. See, e.g., JOEL ATLAS, LARA GELBWASSER FREED, JOHN MOLLENKAMP, ANDREA J. MOONEY, URSULA H. WEIGOLD, MICHELLE A. FONGYEE WHELAN, *A GUIDE TO TEACHING LAWYERING SKILLS* (2001).

letters, and contract provisions.¹¹ And no such book could avoid a discussion of IRAC.¹² A book for a practicing lawyer is necessarily more advanced and would touch on the finer points of advanced legal writing.

This book seems meant primarily for the third group, the practicing lawyer: “[L]earning does not end in law school. We think lawyers in practice can improve, and we ask those who aim to write more clearly and efficiently—our readers—to heed the lessons, techniques, and tips in the pages that follow” (preface).

Having determined their audience, Goldstein and Lieberman realize that they must establish a need for their book to that audience.¹³ And the way they establish that need is the weakest part of an otherwise strong text. A perceptive point is made that the “writer who ignores what his audience knows, how his audience thinks, and what his audience feels is as likely to be ignored or rejected as the speaker who addresses a group of visitors in English without knowing that they speak only French” (78). The reason this is dangerous is that “you do not want to insult your readers by acting as though they know nothing...” (78).

Unfortunately, the authors fail to heed their own advice by showering the early part of their book with a downpour of disdain toward their intended audience. Too much time and space are spent on the point that “[m]ost lawyers write poorly” (3). For example, the book provides an exceedingly long list of complaints from a survey of lawyers across the country: “Modern legal writing is flabby, prolix, obscure, opaque, ungrammatical, dull, boring, redundant, disorganized, gray, dense, unimaginative, impersonal, foggy, infirm, indistinct, stilted, arcane, confused, heavy-handed, jargon- and cliché-ridden, ponderous, weaseling, overblown, vacuous, evasive, pretentious, convoluted, rambling, incoherent, choked, archaic, orotund, and fuzzy” (3). “Lawyers who ignore the art of writing . . . are guilty of malpractice” and “this form of malpractice is widespread” (6). The “simplest explanation of why lawyers write badly is that they were never taught how to write well” (31). “Poorly organized thoughts and cloudy concepts are also products of laziness and inadequate grounding

11. See, e.g., EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW* (4th ed. 2010); ALAN L. DWORSKY, *THE LITTLE BOOK ON LEGAL WRITING* (2d ed. 1992).

12. For the uninitiated, IRAC is an organizational tool for legal writing. First, state the “issue” (I). Then, develop the “rules” or law (R). Next, “apply” the rules or law to your facts (A). And, finally, “conclude” your discussion (C). In a recent book, Judge Richard Posner has taken exception to the IRAC method. See RICHARD A. POSNER, *DIVERGENT PATHS* 336 (2016) (finding such methods unduly “mechanical” and “formalistic”).

13. An author has a very short window to convince a potential reader that their book is necessary, or the reader instead convinces the author that it is, in fact, not necessary by choosing to not purchase or read the book. A similar point was made passionately by Jim Young, played by Ben Affleck, in a motivational speech to a group of stockbrokers at an investment firm in the film *Boiler Room*: “[T]here is no such thing as a no-sale call. A sale is made on every call you make. Either you sell the client some stock or he sells you a reason he can't. Either way a sale is made” *BOILER ROOM* (New Line Cinema 2000).

in what constitutes clear expression” (p. 29).¹⁴ By emphasizing this point over and over, the authors might lose the reader before they ever get to the business of solving the problem. This is unfortunate, because the rest of the book, especially with regard to the nuts and bolts of writing, is very helpful.¹⁵

The authors, for example, focus on the importance of facts in legal writing. They give a real-world example of the age-old advice for all writers to “show, don’t tell.”¹⁶ “To make the case that a person is unsavory, you are unlikely to succeed simply by labeling him ‘nasty’ or ‘a scoundrel.’ But if you can show that once in fit of rage he kicked his own grandmother, you will provide your readers with a factual basis on which they can draw your conclusion” (81).

Goldstein and Lieberman also ably address the ominous issue of writer’s block and provide a number of creative and interesting countermeasures from their surveys. Some suggestions include lowering your standards temporarily (to just get something on paper to edit), pretending to write a letter (“Dear Supervisor ...” or “Dear Client...”), writing the end of the document first (so that you can figure out how to get where you want to go), reading a fine piece of prose (for inspiration and reflection), and writing (something ... anything ...) every day (56-57).

As the book hits its stride in the section on “Writing the Lead,” the authors begin to “show” specific examples of bad legal writing, rather than “telling” the reader that lawyers are poor writers (85-95). Particularly valuable is an example of the “buried lead” where a practitioner accidentally hid a strong opening paragraph in a footnote (88). Another example is of a bad opening paragraph that is similar to many written even by “good” writers: “The U.S. Court of Appeals agreed Wednesday to review a lower court order that found the Nuclear Regulatory Commission in contempt of court for violating an order to hold open budget meetings” (94). This is appropriately described as the “tennis ball” lead,¹⁷ which conceptualizes in a vivid manner the reason this

14. Similarly, in order to further establish a need for this book, the authors make a number of unsupported claims, such as this one: “For all of the rapid improvement in communications technology since 1988, legal writing has improved little, if at all, since the first edition [of this book]” (preface). If the first two editions of this book, and many other similar texts, did nothing to improve legal writing in the profession during the past two decades, why did the authors endeavor to write a new edition? Another unsupported and false argument is that first-year legal writing courses “deliver little in the way of a sustained critique of writing” (7) and that “[w]riting instruction, at least in law schools, rarely emphasizes problem solving or composing a first draft” (39). This point is especially puzzling given that Lieberman was Director of the Writing Program at New York Law School for almost twenty-five years.

15. One of the first tips in the book is simple and powerful; the “two key principles to mastering writing” are to “(1) compose early” and “(2) edit late” (41).

16. Ernest Hemingway once wrote: “If a writer of prose knows enough of what he is writing about he may omit things that he knows and the reader, if the writer is writing truly enough, will have a feeling of those things as strongly as though the writer had stated them. The dignity of movement of an iceberg is due to only one-eighth of it being above water.” ERNEST HEMINGWAY, *DEATH IN THE AFTERNOON* (1996).

17. This book is full of wonderful quotes and terms, from all kinds of writers, like the one

type of paragraph does not work. “[W]e treat the reader’s mind like a tennis ball to be whacked back and forth across the net. Agreed to review. Bam! Contempt of court. Bam! For violating an order. Bam! . . . You can almost see the ball flying back and forth.” But, as the book rolls along, the authors do not just present poor writing, but provide revised examples, such as this: “The U.S. Court of Appeals agreed Wednesday to review a contempt finding against the Nuclear Regulatory Commission for holding a closed meeting.” These examples bring the reader, in a nonjudgmental manner, to clearer, more effective writing.

The strongest section of the book is titled “Wrong Words, Long Sentences, and Other Mister Meaners.” This is where the book really transforms into a “how to” text. This section, almost 50 pages in length, is full of examples of bad writing, most from the authors’ teaching of lawyers and students, with an explanation of the problem and then a suggested solution (117-163). Almost every major writing topic is covered, including vocabulary, usage, wordiness, verbs, pronouns, sentence order, sentence composition, and sentence length.¹⁸

Goldstein and Lieberman then move on from the process of writing to the process of editing in the section entitled “Revising Your Prose” (164-188). This is an often-ignored area, even though many skilled in the craft often repeat that “good writing is good editing.”¹⁹ The revision process is helpfully broken down into subparts, such as editing for structure, editing for length, editing for clarity, editing for continuity, and general proofreading. Also provided is an instructive example of a poorly written passage “edited in steps” (176-178). With each subsequent edit (three in total), the writing is trimmed of fat, gains muscle, and, therefore, becomes more powerful.

quoted here. It comes from Louis Boccardi, then president and CEO of the Associated Press.

18. The authors also do what few legal writing texts do, which is to address background, sexism, and other topics that are often discussed in the social justice and public interest worlds, but infrequently make their way to the corporate law universe. In understanding an audience, the authors note that “[p]eople of different backgrounds frequently have different sets of background assumptions about human behavior,” and, as a result, “[y]ou must always take account of your reader’s common sense, not to prove it right or wrong but to know enough about it to use it or counter it as necessary to make your case” (83). The authors also advise to “use gender-neutral terms to describe occupations, status, or positions,” such as “firefighter” rather than “fireman” (132). But a counterpoint from William Safire, the onetime language columnist for *The New York Times*, is provided that “[h]ypersensitivity to sexism in the language can pull the punch out of a good sentence.” Given the number of readers a writer might turn off by using sexist language, this response is not especially compelling. In any event, perhaps the next edition of this book will go more in-depth into these areas and address even more such topics.
19. Stephen King once said, with regard to editing: “Kill your darlings, kill your darlings, even when it breaks your egocentric little scribbler’s heart, kill your darlings.” STEPHEN KING, *ON WRITING: A MEMOIR OF THE CRAFT* (2001). Dr. Seuss, in a predictably more gentle (and lyrical) way, said similarly: “So the writer who breeds more words than he needs is making a chore for the reader who reads.”

The final section of the book is titled “Making Your Writing Memorable” (pp. 189-211). Most legal writing texts end with the business of proofreading. But this book proceeds one step beyond. The reader is challenged to make writing more than “technically acceptable,” but instead to “transcend the mundane and make a piece of writing memorable” (189). In the service of that goal, the authors “provide illustrations of prose that misses” and “examples that instruct, entertain, and sing” (190).

The illustration of prose that fails often suffers from trying too hard. A paragraph submitted to the authors that was lifted from a brief is a prime example: “Absent definition, the statute is a right without a remedy, a tiger without fangs – an osmotic membrane masquerading as a shield for abused children” (190). Unfortunately, “just because this language differs from the ordinary does not make it effective” (190). And then there is the problem of mixed metaphors, which often muddies the waters of clarity and clear thinking.

Instead, “eloquence comes more from simplicity than from a profusion of lush and overblown words” (201). Less is more is the name of the game;²⁰ “sometimes one memorable line can elevate an otherwise mundane brief” or a “single sentence in legal discourse can recast or transform the debate” (202). Justice Benjamin Cardozo (1926): “The criminal is to go free because a constable has blundered” (203). Justice Oliver Wendell Holmes (1919): “The most stringent protection of free speech would not protect a man in falsely shouting ‘fire’ in a theatre and causing panic” (p. 203). Justice Thurgood Marshall (1985): “A sign that says ‘men only’ looks very different on a bathroom door than a courthouse door” (203). Chief Justice Earl Warren (1964): “Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests” (206).

The beauty of such language is that there are “no words of art, no foreign terms, no polysyllabic tongue twisters” (203). This writing is “plain, homespun, and evocative” (203). While ordinary men and women might have trouble recreating the work of these legal writing legends, these examples serve as evidence that it is possible and, perhaps, with the help of this book, a little closer to reality.

Other than an early misstep or two, Tom Goldstein and Jethro K. Lieberman’s third edition of *The Lawyer’s Guide to Writing Well* is a valuable addition to the genre. In just under 300 pages, almost every major, and many minor, legal writing topic is covered and with surprising depth. For each topic, the authors provide an explanation of the problem and competing theories on ways to solve it. Furthermore, they offer examples of situations in which these competing theories play out and interesting quotes regarding issues at the heart of the problem. This is a book that belongs on your shelf next to the previous edition as you wait in anticipation for the next.

20. Cue the famous Coco Chanel line: “Before you leave the house, look in the mirror and remove one accessory.”