The Fraternity of Legal Style

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This article reports the findings of an empirical study of writing experts mentioned in popular legal style books. The study shows that these experts are overwhelmingly men.[1] This study complements the many other studies showing that gender and racial bias exists throughout the legal profession,[2] but it focuses on one area that has not yet been examined: bias in books that give writing advice to lawyers. I call these books "legal style books." The area of legal writing advice books is admittedly niche. However, it is worth studying because writing is central to lawyering.

Writing is central to three of the highest status positions in law: federal judge, tenured law professor, and Supreme Court advocate. Because writing well is so attached to these highly regarded positions, being known as an expert legal writer conveys status—that the person is an authority figure, an influencer, a person others should emulate.[3]

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[1] I take as a premise that gender and racial biases in the legal profession are bad things that should be reduced.

[2] *See, e.g.*, Minority Corp. Couns. Ass'n & Am. B. Ass'n Comm'n on Women in the Prof., You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession 2 (2018) [hereinafter You Can't Change What You Can't See].

[3] This suggests that, while being widely regarded as an expert legal writer confers high status, either (1) being regarded an expert teacher of legal writing does not or (2) those who teach legal writing to law students are simply not seen as experts. Decades of scholarship analyzing the occupational segregation of legal writing professors supports this suggestion. *See, e.g.*, Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The "Pink Ghetto" Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. Det. Mercy L. Rev. 525, 527 (2019) (explaining that "[l]aw schools have bolstered their overall faculty diversity by hiring women for non-tenure track clinical and legal writing faculty positions" while these bolstering women "suffer 'occupational segregation' characterized by lower pay, lack of job security, and limits on the subject areas they are permitted to teach") (citing Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. Legal Educ. 562, 565 (2000)).

These high-status positions in law still tend to be occupied by men, but women's share is increasing. For example, in 1977, 1.2% of federal judges were women,[4] but by 2022, about 30% were women.[5] And, in 1970, only 2.2% of tenured or tenure-track law professors were women, but by 2013, that percentage had grown to 36%.[6] Even the high-status position of Supreme Court oral advocate has become more female, with the percentage of lawyers appearing in argued cases increasing from 14% during the 1993–2001 terms[7] to 17% during the 2018–2019 term.[8] All of these percentages still lag far behind the percentage of J.D. students who are women: that percentage has been around or above 50% since 2003.[9] Figure 0 below summarizes the percentage of women in law school and in high-status positions over time. Although the data is incomplete, the overall pattern is obvious.

Figure 0

Percentages of women as law students, as lawyers, as tenured or tenure-track professors, as federal judges, and as oral advocates before the U.S. Supreme Court. Empty cells indicate incomplete data.

Year	Female J.D. Students	Female Attorneys	Female Tenure-track Professors	Female Federal Judges	Appearances in Argued Cases at SCOTUS
1880		0.1%[10]			
1960		3.5%[11]			
1967			1.7%		
1970	8.6%	4%	2.2%		
1977				1.2%[12]	
1980	34.2%	8.1% or 12%[13]	10.8%[14]		

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4 Linda Greenhouse, *Pipeline to the Bench: Women's Legal Career*s, 16 U. St. Thomas L.J. 138, 140 (2020). Five district court judges plus one circuit court judge were women out of "nearly 400 judges" serving on the federal district courts and ninety-seven judges on the courts of appeals. 6/497 = 0.01207.

5 Am. B. Ass'n, 2022 ABA Profile of the Legal Profession 11 (2022), https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf [hereinafter 2022 ABA Profile].

6 Kristen K. Tiscione, *Gender Inequity Throughout the Legal Academy: A Quick Look at the (Surprisingly Limited) Data*, 69 J. Legal Educ. 116, 117 (2019).

7 Tammy A. Sarver, Erin B. Kaheny & John J. Szmer, *The Attorney Gender Gap in U.S. Supreme Court Litigation*, 91 Judicature 238, 241 (2008).

8 Greenhouse, *supra* note 4, at 142.

9 Sarver, Kaheny & Szmer, *supra* note 7, at 239 ("The gap between the number of women entering/completing law school and holding prestigious legal positions indicates that contemporary women lawyers still face serious barriers to advancement and access to power.").

10 *Id.* at 238 (noting that in 1880 there were seventy-five women lawyers and 64,000 men lawyers).

11 *Id.*

12 Greenhouse, *supra* note 4, at 140. Five district court judges plus one circuit court judge were women out of "nearly 400 judges" serving on the federal district courts and ninety-seven judges on the courts of appeals. 6/497 = 0.01207.

1993–2001					13.91%[15]
2006	46.9%[16]	30.2%[17]	31%[18]	< 25%[19]	
2007-2008			35%[20]		
2009			28%[21]		
2012		33%[22]			
2013			36%[23]		
2018-2019	51%[24]				17%[25]
2021	55%[26]				
2022		38%[27]		30%[28]	

Given the rise in female legal writing experts in real life, I was curious about the percentage of female experts cited in popular legal style books.

I now teach and write about legal writing,[29] but before all that I was just a lawyer who wrote and needed help with her writing. Back then, I had noticed that the legal style books I used were written exclusively by men. Some examples are *Plain English for Lawyers* by Richard Wydick,

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13 Sarver, Kaheny & Szmer, *supra* note 7, at 238.

14 This percentage was calculated from Appendix 2 in Richard H. Chused's *The Hiring and Retention of Minorities and Women on American Law School Facultie*s by adding together tenured and tenure-track "classroom" and "clinical" faculty. 137 U. Pa. L. Rev. 537, 557 (1988). Only contract-status legal writing faculty were reported.

15 Sarver, Kaheny & Szmer, *supra* note 7, at 241.

16 *Id.* at 239.

17 *Id.* at 238.

18 Minna J. Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the "Top Ten" Law Reviews*, 31 Women's Rts. L. Rep. 385, 419 (2009) (using ABA data).

19 *Id.*

20 *Id.* at 417 (using AALS data from 2007–2008. Kotkin also notes that sixty percent of contract faculty in the 2007–2008 academic year were female.

21 Tiscione, *supra* note 6, at 117.

22 Am. B. Ass'n, 2022 ABA National Lawyer Population Survey, https://www.americanbar.org/content/dam/aba/administrative/market_research/2022-national-lawyer-population-survey.pdf.

23 Am. B. Ass'n, 2013 Legal Education and Admissions to the Bar, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_school_staff_gender_ethnicity.xlsx.

24 Greenhouse, *supra* note 4, at 141.

25 *Id.* at 142.

26 Am. B. Ass'n, *Profile of the Legal Profession 2022, Legal Education: Law School Demographics*, https://www.abalegal-profile.com/legal-education.php

27 Am. B. Ass'n, 2022 ABA National Lawyer Population Survey, https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2012-2022.pdf. Note, however, that these data were collected from individual state bar associations and licensing agencies, and not all states reported statistics to the ABA. *Id.* n.27.

28 2022 ABA Profile, *supra* note 5, at 11.

29 For example, I've written two textbooks about legal writing: The Complete Legal Writer (2d ed. 2020) and The Complete Bar Writer (2020), both with Katie Rose Guest Pryal. And I've published an article about how to integrate in-line legal citations more stylishly: *Stylish Legal Citation*, 71 Ark. L. Rev. 823 (2019).

The Lawyer's Guide to Writing Well, by Tom Goldstein and Jethro K. Lieberman, and of course the many legal style books by Bryan A. Garner, such as *The Elements of Legal Style*.

Later, while reviewing legal style books for an earlier study,[30] I noticed a second thing: the same "great writers" and even some of the same "great passages of legal writing" appeared in multiple books by different authors. For example, the opening passage from *Palsgraf v. Long Island Railroad* appears as an example of good legal writing in both *Plain English for Lawyers* and Stephen V. Armstrong and Timothy R. Terrell's *A Lawyers Guide to Effective Writing and Editing*.[31] And when I looked more closely inside my legal style books, I noticed that they were filled with men—men giving advice about writing, men whose words were models to follow, and men who were declared to be great legal writers. Everywhere I looked inside these books, men. For example, here is the first paragraph of *The Elements of Legal Style*, which names eight men:

> Why should we need a book on the elements of *legal* style? After all— above all—good legal style is good English style. Take the opinions of Justice Oliver Wendell Holmes, Justice Robert H. Jackson, or Judge Learned Hand; the commentary of William Prosser or Fred Rodell; or the advocacy of Clarence Darrow. These lawyers wrote superb prose. If that's your aim as well, then a thorough understanding of Strunk and White's *The Elements of Style* might be all you need.[32]

These men were also all dead by the time *The Elements of Legal Style* was written, E. B. White being the last to die in 1985.

Once I noticed this pattern of male writers talking up other male writers, I couldn't stop seeing it. To my friends, I referred to the pattern as "dudes duding."[33] This was a useful shorthand but probably not appropriate for a professional law journal publication like this one. As I read other studies about gender disparities in legal writing, I saw that I was not the only one to have noticed this dudes-duding pattern. For example, in a 1984 article looking at who cites whom in civil rights legal scholarship, Professor Richard Delgado described "an inner circle of about a

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30 Alexa Z. Chew, *Stylish Legal Citation*, 71 Ark. L. Rev. 823 (2019).

31 *Id.* at 841, 843.

32 Bryan A. Garner, The Elements of Legal Style 1 (2d ed. 2002) [hereinafter Garner, Elements of Legal Style].

33 My friends also referred to the pattern as dudes duding, including Katie Rose Guest Pryal, who wrote about her early-aughts letter to the editors of literary magazine *The Believer*, in which "[a]ll of the feature pieces were written by men," and "[a]ll of them were about men as well, except one, which profiled a female baker." Katie Rose Guest Pryal, *Pretending I'm Not a Woman, on Betrayals Large and Small*, Katie Rose Guest Pryal (May 13, 2022), https://katieroseguestpryal.com/2022/05/13/pretending-im-not-a-woman-on-betrayals-large-and-small/.

dozen white, male writers who comment on, take polite issue with, extol, criticize, and expand on each other's ideas."[34] Delgado referred to the phenomenon as "something like an elaborate minuet," a more elegant turn of phrase than "dudes duding." At about the same time, Professor Mary Joe Frug analyzed a contracts casebook authored by three men, which she found to be so filled with men writing about men that it gave the impression that "men monopolize legal authorship in contracts."[35]

One reason men write about men is that men have written most of the source material.[36] In the legal realm, men have authored way more stuff than women—more judicial opinions, legislation, briefs for the Supreme Court, law review articles,[37] student notes, and reading materials in the first-year law school curriculum.[38] This gender disparity in writing makes sense given the miniscule number of women in high-status legal writing positions until the 1970s. Professor Nancy Leong has argued that this disparity "distorts" legal writing by "conforming that discourse to male perspectives."[39]

Legal style books can reinforce this distortion with writing rules derived from opinions, briefs, and commentary written by men. As Professor Kathryn Stanchi explained, the rules of legal writing "are not necessarily elemental or natural"—they "are created and validated by legal culture."[40] Given that the culture has included so few women federal judges and tenured professors and Supreme Court advocates, one would expect legal style books to replicate that culture. But legal writing rules created by a culture can also be questioned by the culture, and Stanchi's article invites us "to ask what (or who) is the source of these persuasive writing rules."[41]

This article answers Stanchi's question by cataloguing the writing experts that legal style books use to convince their audiences that their writing rules are the ones lawyers should follow. A real quick answer to

34 Richard Delgado, *Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. Pa. L. Rev. 561, 563 (1984).

35 Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 Am. U. L. Rev. 1065, 1096, 1097 (1985).

36 Nancy Leong, *Discursive Disparities*, 8 FIU L. Rev. 369, 369 (2013). Professor Leong systematically reviewed "the under-representation of women in most forums in which people write," *id.* at 371, and argued that this gender disparity harms women, crowding out writing that is informed by women's experiences in a society that treats them differently than men.

37 Professor Minna J. Kotkin studied articles published in the "top ten" (by "top ten" she meant "fifteen") law reviews and found that only 20.4% of those journals' authors were women. *See* Kotkin, *supra* note 18, at 395 ("The analysis yielded a total of 629 pieces, with 1373 authors. Of these, 292 were women, for an overall percentage of 21.26.").

38 Leong, *supra* note 36, at 369, 373–74.

39 *Id.* at 370. By "male perspective," Leong doesn't mean that men have a particular perspective that is essentially different than women's but a perspective derived from their experiences in society.

40 Kathryn M. Stanchi, *Feminist Legal Writing*, 39 San Diego L. Rev. 387, 435 (2002).

41 *Id.*

the question of who writes the rules is this: white male writers writing about other white male writers who went to elite schools and held elite lawyering jobs and are probably dead. But read on for more nuances about which elite schools they attended, how many were federal judges versus tenured law professors, and how many were born before the Titanic sank.

1. Basic methodology

This section describes how I gathered my data about experts named in legal style books. I designed my own methodology.[42] I didn't see any other similar studies in my literature review, or I would have tried to borrow from them. That said, my methodology was straightforward. Here's a quick overview: (1) identify a group of legal style books to study, (2) review those books to identify the experts named in each one, (3) assign a gender to each expert, and (4) for the most popular experts, gather biographical data.

1.1. How I chose which legal style books to study

For this project, I was interested in legal writers who are presented as experts in books like *Plain English for Lawyers* and *The Elements of Legal Style*, meaning style books written for lawyers rather than textbooks written for law students. These are the books that create the professional reality of "good legal writing" because their authors describe what experienced practitioners should aspire to. These books identify expert legal writers and share their writing wisdom, their words, and their techniques. These books also create legal writing experts simply by treating those writers as experts. As librarian and information scientist Patrick Wilson put it, "A 'leading expert in the field' is recognized as such simply by discovering that other practitioners in the same field think highly of him."[43]

To select books for this study, I started with eight legal style books I had heard of and either owned or had borrowed often enough that I should have just bought them. In my mind at least, these books were well known, popular legal writing books:

1. Stephen V. Armstrong and Timothy R. Terrell, *A Lawyers Guide to Effective Writing and Editing* (2d ed. 2009)

2. Robert E. Bacharach, *Legal Writing: A Judge's Perspective on the Science and Rhetoric of the Written Word* (2020)[44]

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43 Patrick Wilson, Second-Hand Knowledge: An Inquiry into Cognitive Authority 22 (1983).

44 Because I later limited my study to books published between 1998 and 2018, it does not include this book by Judge Bacharach.

3. Bryan A. Garner, *The Elements of Legal Style* (2d ed. 2002)

4. Bryan A. Garner, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (2d ed. 2004)

5. Tom Goldstein & Jethro K. Lieberman, *The Lawyer's Guide to Writing Well* (3d ed. 2016)

6. Ross Guberman, *Point Made: How to Write Like the Nation's Top Advocates* (2d ed. 2014)

7. Steven D. Stark, *Writing to Win: The Legal Writer* (1999)

8. Richard Wydick, *Plain English for Lawyers* (5th ed. 2005)

The next step was to identify what category all of these books belonged to so that I could identify other books in that category. I used WorldCat for this process because multiple law librarians suggested it. WorldCat is the "world's largest library catalog" and connects "thousands of libraries' collections in one place."[45] This online catalog had more than 540 million bibliographic records as of April 2023.[46]

All eight books were classified under the subject heading "Legal Composition" in the WorldCat library catalog. A query of WorldCat run in OCLC FirstSearch for books published between 1998–2018 with the subject heading "Legal Composition" produced 3,448 results.[47] These results were then further filtered to limit them to print books and then ranked by the number of libraries that held each book.[48] I thought that the number of libraries that held each book was a reasonable proxy for each book's popularity, especially because sales data were not available.[49]

From there, I assessed the 100 books that were held by the most libraries (most popular) to determine if they fit into the legal style category that I wanted to study.[50] I define legal style books as those with a primary audience of attorneys, with a primary purpose of helping those attorneys write better by giving advice about legal writing, in the form of a cohesive book that can be read from beginning to end. Thus, I excluded books written primarily for law students or judges as well as books written

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[45] *About WorldCat.org*, OCLC, https://www.worldcat.org/about (last visited May 29, 2023).

[46] *Inside WorldCat*, OCLC, https://www.oclc.org/en/worldcat/inside-worldcat.html (last visited May 29, 2023).

[47] This was the initial query, using FirstSearch: su="Legal composition" and dt="bks" and yr:1998-2018.

[48] This brought the number of results down to about 2000.

[49] In general, book publishers and retailers do not publish sales data for books of any genre, not just legal style books.

[50] The decision to look at the 100 "legal composition" books with the most holdings was made mostly out of the practical need to limit the number of books I reviewed. There is a natural break in the number of holdings, between *Thinking Like a Writer* (413 holdings) and *Legal Writing and Analysis in a Nutshell* (240 holdings), so I considered looking only at the books with more than 400 holdings, but doing so would have excluded books authored by women. Given the nature of this project, studying only books written by men seemed wrong. So I stuck with the top 100 books in the legal composition category—a nice, round number that I thought would both capture the most popular books and also be small enough for me to work with.

primarily as reference books,[51] textbooks for group instruction,[52] and collections of previously published essays.[53] I also excluded "legal drafting" books, those whose primary purpose was writing contracts, legislation, and the like.[54]

To determine whether a book fit the parameters of my study, I reviewed each book's WorldCat abstract for purpose and audience. If I could not determine whether a book met my criteria based on the abstract, I reviewed the book's introduction or preface. For a handful of books, I read a few chapters to be sure.[55] After this review was complete, I had my final list of books. For books with multiple editions on the list, I combined the number of holdings across editions and listed each book only once; for those with multiple editions on the list, I reviewed the most current edition.[56]

In total, I ended up with nineteen books to review. Figure 1.1 shows the authors, books, and publication dates and editions. The books are ordered by my proxy for popularity—number of holdings—with the highest number of holdings at the top.

Figure 1.1
Legal writing books included in this study, listed by popularity

WorldCat Holdings	Author(s)	Title	Year & Editions
986	Antonin Scalia & Bryan A. Garner	Making Your Case: The Art of Persuading Judges	2008
965	Bryan A. Garner	Legal Writing in Plain English: A Text with Exercises	2013 (2d ed.) 2001
924	Bryan A. Garner	The Elements of Legal Style	2002

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51 For example, Joan Ames Magat, The Lawyer's Editing Manual (2009), which had 161 holdings.

52 For example, Teresa J. Reid Rambo & Leanne J. Pflaum, Legal Writing by Design: A Guide to Great Briefs and Memos (2d ed. 2013), which had 166 holdings.

53 For example, Gertrude Block, Legal Writing Advice: Questions and Answers (2004), which had 176 holdings.

54 For example, Peter Butt, Modern Legal Drafting: A Guide to Using Clearer Language (3d ed. 2013), which was a popular book with 675 holdings. The two books by Wayne Schiess include a lot of legal drafting content, but enough of each book addressed other kinds of legal writing that I included both in my study.

55 One example is Peter Butt's *Modern Legal Drafting*, which is a legal drafting book. Although the title includes the word "drafting," that word is sometimes synonymous with the word "writing."

56 For example, several editions of *Plain English for Lawyers* appeared in my top 100 list, but I reviewed only the most recent one listed, the fifth edition. But for another book, *Writing to Win*, only the first edition appeared on my top 100 list, and so I reviewed the first edition even though a second edition was published before 2018.

797	Bryan A. Garner	The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts	2014 (3d ed.) 2004 (2d ed.) 1999
755	Richard C. Wydick	Plain English for Lawyers	2005 (5th ed.) 1998 (4th ed.)
538	Ross Guberman	Point Made: How to Write Like the Nation's Top Advocates	2014 (2d ed.) 2011
446	Tom Goldstein & Jethro K. Lieberman	The Lawyer's Guide to Writing Well	2016 (3d ed.) 2002 (2d ed.)
413	Stephen V. Armstrong & Timothy P. Terrell	Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing	2009 (3d ed.) 2003 (2d ed.)
240	Lynn Bahrych, Jeanne Merino & Beth McLellan	Legal Writing and Analysis in a Nutshell	2017 (5th ed.) 2003 (4th ed.)
238	Steven D. Stark	Writing to Win: The Legal Writer	1999
232	Wayne Schiess	Preparing Legal Documents Nonlawyers Can Read and Understand	2008
230	Sandra Oster	Writing Shorter Legal Documents: Strategies for Faster and Better Editing	2011
227	Lenné Eidson Espenschied	The Grammar and Writing Handbook for Lawyers	2011
223	Marie P. Buckley	The Lawyer's Essential Guide to Writing: Proven Tools and Techniques	2011
211	Jane N. Richmond	Legal Writing: Form and Function	2002
205	Judith D. Fischer	Pleasing the Court: Writing Ethical and Effective Briefs	2005
196	Wayne Schiess	Writing for the Legal Audience	2003
175	Jayne Kracker	ABA Basic Guide to Punctuation, Grammar, Workplace Productivity, and Time Management	2012
173	Austen L. Parrish & Dennis T. Yokoyama	Effective Lawyering: A Checklist Approach to Legal Writing and Oral Argument	2007

1.2. How I categorized legal writing experts

I created three categories of experts who might appear in the legal writing books I studied: advisors, heroes, and models.

The advisor category is for people a book's author quoted as having something wise to say about good writing. A clear example of a quoted authority is from one of Bryan Garner's lists of "quotable quotes" in *The Winning Brief.* At the beginning of each chapter, under the heading of "quotable quotes," appear several quotations about the chapter's topic. At the beginning of chapter 48, which advises using "but" to begin sentences, is this quote by William Zinsser, "I can't overstate how much easier it is for readers to process a sentence if you start with 'but' when you're shifting direction."[57] I coded that quote by Zinsser as an "advisor" mention because he was giving writing advice.

The hero category is for people whom a book's author declared to be a good writer. A clear example of a declaration is "Judges such as Holmes and Brandeis are staples of literary excellence, known to everyone and studied by everyone."[58] Here's an example of a more subtle declaration, "When I practiced as a litigator and had to write a brief in, say, an administrative case, the first thing I wanted to see was a selection from a comparable brief by a Laurence Tribe or a Kathleen Sullivan."[59] I would have coded each declaration as a "hero" mention: one each for Holmes, Brandeis, Tribe, and Sullivan. Heroes also showed up in lists, such as Ross Guberman's "Best Advocates" appendix at the end of *Point Made.*

The model category is for instances in which a book's author reproduces a passage written by the expert, presenting it to readers as a model of good legal writing.[60] The passage could be as long as an entire brief or as short as a phrase. An example from later in *The Winning Brief*'s chapter 48 is this quote by Lon L. Fuller, presented as a model of beginning with "but": "When a vessel at sea begins to founder there comes a time when it must be given up as lost. But we do not give the order to abandon ship as soon as, let us say, a fuel pump begins to function erratically."[61] I coded that quotation as a "model" mention because Fuller's words were presented as a model of how to begin a sentence with the word "but."

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57 Bryan A. Garner, The Winning Brief: 100 Tips For Persuasive Briefing in Trial and Appellate Courts 246 (3d ed. 2014).

58 Tom Goldstein & Jethro K. Lieberman, The Lawyer's Guide to Writing Well 210 (3d ed. 2016).

59 Steven D. Stark, Writing to Win: The Legal Writer xiii–xiv (1999).

60 Sometimes the examples are bad, but that's much less common. Roughly 50 of 1500 excerpts were presented as bad examples.

61 Garner, The Winning Brief, *supra* note 57, at 247 (quoting Lon L. Fuller, Anatomy of Law 21 (1968)).

The experts in these categories include more than just *legal* writers. This makes sense given the popular view that "good legal style is good English style." I also thought that there might be more opportunities to find women experts if I kept the categories inclusive. But including all writers was also a practical decision I made once I saw the huge lists of advisors in my data. Limiting advisors to just legal writers would have required extensive biographical research as well as criteria for determining whether a writer was a legal writer.

When reviewing the books, I only counted experts who were referred to by name in the text —"above the line." Experts who were named only in footnotes or endnotes were not included. My reason for this was that I thought people mentioned above the line were those who were most imbued with expertise and most likely to influence readers.

1.3. How I assigned genders to writers

I assigned genders to each writer using the same method as Keerthana Nunna, W. Nicholson Price II, and Jonathan Tietz in their recent "quantitative study of one way to observe the impact of hierarchy, race, and gender: the acknowledgments sections of law review footnotes and what they can tell us about legal scholarly networks."[62] These acknowledgement footnotes, also known as "star" or "dagger" footnotes, "give[] a peek into who contributed (nominally, at least) to the intellectual product that is the final, published law review author."[63] By aggregating these peeks into about 30,000 law review articles, Nunna, Price, and Tietz revealed a new picture of "the underlying relationships, interactions, and social networks that make up legal academia."[64] They then studied "that picture for signs of the effects of hierarchy, race, and gender to see whether those characteristics show up in a quantitatively observable fashion," and found those signs aplenty.[65]

To assign gender to the names appearing in these 30,000+ footnotes, the authors "first assigned a 'gender likelihood score' resulting from [their] analysis of the Social Security baby names database" in a prior paper.[66] This

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[62] *See* Keerthana Nunna, W. Nicholson Price II & Jonathan Tietz, *Hierarchy, Race & Gender in Legal Scholarly Networks,* 75 Stan. L. Rev. 71, 73 (2023).

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.* at 102 (citing and describing the methodology in Price and Tietz's earlier paper, Jonathan I. Tietz & W. Nicholson Price II, *Commentary, Acknowledgments as a Window into Legal Academia*, 98 Wash. U. L. Rev. 307, 322 & n.60 (2020)). The explanatory example given in both papers is the same: "[T]he database has 1,228,719 male examples of 'Mark' and 3984 female examples. The gender likelihood score reflects that 99.68% of Marks are listed as male. The name 'Pat,' though, has 11,998 male entries and 8455 that are female—so the score would reflect that this name is 58.66% likely to be male."

score "corresponds to sex assigned at birth," a limitation of both their data set[67] and mine. For names overwhelmingly associated with one gender—eighty percent likelihood or higher—the authors used that gender. And for the remainder of the names, they manually checked for which pronouns were used in other documents referring to those people.[68] This method is imperfect. As Nunna, Price, and Tietz recognized, "race and gender are more complicated than the binaries" they (and I) "turned to for tractability of analysis."[69] Identifying writers' race and gender is "a complex and potentially fraught task given the lack of readily available, high-quality self-identified gender and race information."[70] For their gender analysis, they used the binary of "men versus women and nonbinary scholars."[71] For my study, I used the binary of men versus women; I didn't identify any nonbinary writers.

Nicholson Price and Jonathan Tietz were kind enough to share their database of gender likelihood scores, which I used to initially assign gender to the experts in my dataset. Like them, I used the cutoff of eighty percent to assign gender to the experts' first names. For names outside that eighty percent cutoff, I conducted a manual review looking for pronoun usage. Because this process resulted in only 115 female experts or so (out of about 850), I reviewed those manually to check whether the experts were referred to with female pronouns.

1.4. How I gathered biographical information and assigned most notable job

My research assistants and I gathered additional biographical information for the experts who were mentioned in at least three of the nineteen books in my study. Although somewhat arbitrary, I used this three-book cutoff because it seemed to me like a reasonable indicator of influence within this category of books. For each of these experts, we recorded the person's year of birth and whether they were trained as a lawyer in the United States. For the lawyers in the list, we recorded the law school they attended and their most notable job. In general, we relied on court websites, employer websites, and Wikipedia pages for these details.

This information was straightforward to gather except for designating the most notable lawyering job, as many experts had multiple notable jobs. For example, Elena Kagan was a law professor at the University of

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67 *Id.*

68 *Id.*

69 *Id.* at 101.

70 *Id.*

71 *Id.*

Chicago School of Law and Harvard Law School, then dean of Harvard Law School, then an Associate Justice of the U.S. Supreme Court. For purposes of this study, I assigned "SCOTUS justice" as her most notable job. In general, I used the following hierarchy of notable jobness to pick just one job for each expert:

1. Justice at the Supreme Court of the United States

2. Judge at a U.S. Circuit Court

3. Judge at a U.S. District Court or Bankruptcy Court

4. Judge at a state court

5. Law professor (full-time)

6. Practitioner

To be clear, I don't mean to advance this hierarchy as my personal judgment about which law jobs are more important than others. I do think the first four items in the list reflect a generally understood hierarchy of judge prestige within the United States. I ranked law professor higher than practitioner because professor seemed to be the anchor job that experts returned to. For example, Walter Dellinger was a law professor at Duke University School of Law for the majority of his career but also practiced law, including high profile practitioner roles as the U.S. Attorney General and Solicitor General.

2. Results

This section describes the results of my study. The first part describes the expert mentions by book. An "expert mention" means that the expert was mentioned once. That expert might be mentioned more times, in which case that person would have multiple expert mentions. By contrast, the second part in the results section describes the "experts mentioned" (or "mentioned experts"). "Experts mentioned" refers to individual people who might be mentioned once or twice or thirty times.

2.1. Expert mentions by book

Of the nineteen legal writing books that I reviewed for this study, sixteen referred to experts. Of those sixteen, four referred to experts five times or fewer. And six referred to experts between 6 and 100 times. The remaining six books referred to experts over 100 times, with the largest number of mentions being 621 in Bryan Garner's *The Winning Brief*. Each book's total number of expert mentions is listed in the second column of

figure 2.1.1 below. The total number of expert mentions across all sixteen books was 2,249.

Of the 2,249 expert mentions in the books, 1,978 of them—or 88%—are to men. Of the six books that make more than 100 mentions, Wayne Schiess's *Writing for the Legal Audience* has the lowest percentage of men (76%), followed by Ross Guberman's *Point Made* (81%). Of those same six books, Bryan Garner's *The Elements of Legal Style* has the highest percentage of men (97%), followed by Tom Goldstein and Jethro K. Lieberman's *The Lawyer's Guide to Writing Well* (94%).

Figure 2.1.1
Experts mentioned in each book, including male versus female experts

WorldCat Holdings	Book	Total Expert Mentions	Male Expert Mentions	Female Expert Mentions	Male Expert %
986	Scalia & Garner	97	95	2	98%
965	Garner (Plain English)	36	33	3	92%
924	Garner (Elements)	261	254	4	97%
797	Garner (Winning Brief)	621	549	72	88%
755	Wydick	4	4	0	100%
538	Guberman	472	383	89	81%
446	Goldstein & Lieberman	269	252	16	94%
413	Armstrong & Terrell	18	18	0	100%
240	Bahrych, Merino & McLellan	5	4	1	80%
238	Stark	138	125	14	91%
232	Schiess (Nonlawyers)	77	64	13	83%
230	Oster	0	0	0	-
227	Espenschied	5	2	3	40%
223	Buckley	58	52	6	90%
211	Richmond	0	0	0	-
205	Fischer	8	8	0	100%
196	Schiess (Legal Audience)	131	99	32	76%
175	Kracker	0	0	0	-
173	Parrish & Yokoyama	49	36	13	73%
	Total	2249	1978	268	88%

The biggest share of expert mentions was to advisors, with 64% being words of wisdom about writing. Twenty-eight percent of the mentions were models of good writing and 8% were declarations of writing heroes. The gender breakdown across all three categories was similar to each

other and the overall gender breakdown of about 88% male. The gender breakdown of the three categories of experts is summarized in figure 2.1.2 below. Note that figure 2.1.2 only includes the sixteen books that mentioned experts.

Figure 2.1.2
Gender breakdown of advisors, heroes, and models in each book

WorldCat Holdings	Book	Advisor Mentions		Hero Mentions		Model Mentions	
		M	F	M	F	M	F
986	Scalia & Garner	79	1	13	1	3	0
965	Garner (Plain English)	3	1	23	2	7	0
924	Garner (Elements)	113	2	20	0	120	2
797	Garner (Winning Brief)	506	65	5	1	38	6
755	Wydick	3	0	0	0	1	0
538	Guberman	50	8	47	15	286	66
446	Goldstein & Lieberman	206	15	27	1	20	0
413	Armstrong & Terrell	6	0	1	0	11	0
240	Bahrych, Merino & McLellan	3	1	1	0	0	0
238	Stark	76	8	8	1	40	5
232	Schiess (Nonlawyers)	64	13	0	0	0	0
227	Espenschied	2	3	0	0	0	0
223	Buckley	22	6	3	0	27	0
205	Fischer	8	0	0	0	0	0
196	Schiess (Legal Audience)	92	30	7	2	0	0
173	Parrish & Yokoyama	34	13	0	0	2	0
	Total	1267	166	155	23	555	79
	Percentage male	88%	12%	87%	13%	87%	12%

2.2. Results by experts mentioned

Across the sixteen books that mentioned experts, I counted 830 unique experts. Many of these experts were mentioned multiple times—in multiple books or multiple times within the same book. The most books that any expert was mentioned in was nine, and the vast majority of experts (83%) were mentioned in only one book. Like the expert mentions, the mentioned experts skew heavily male (87%). Figure 2.2 summarizes the results by unique experts mentioned.

Figure 2.2
All experts mentioned and experts mentioned in multiple books

	Total	Male	Female
Unique experts mentioned across all books	830	720	110
Experts mentioned in 9 books	3	3	0
Experts mentioned in 8 books	1	1	0
Experts mentioned in 7 books	2	2	0
Experts mentioned in 6 books	5	4	1
Experts mentioned in 5 books	11	19	1
Experts mentioned in 4 books	13	13	0
Experts mentioned in 3 books	30	27	3
Experts mentioned in 2 books	78	70	8
Experts mentioned in 1 book	685	588	97

2.3. Results for most-mentioned writing experts

This section describes the subset of sixty-five experts who were mentioned in at least three books. Figure 2.3.1 lists these sixty-five experts, as well as their gender, how many times each was mentioned in my data set, how many books each was mentioned in, their birth year, the law school they attended (if any), and the top lawyering job they held (if any).

Figure 2.3.1
Experts mentioned in three or more books

Name	M/F	Total Mentions	Books Mentioned in	Birth Year	Law School Attended	Top Lawyer Job
Holmes, Oliver Wendell Jr.	M	35	9	1841	Harvard	SCOTUS
Posner, Richard A.	M	14	9	1939	Harvard	federal circuit
White, E. B.	M	17	9	1899	-	-
Garner, Bryan A.	M	76	8	1958	Texas	lexicographer
Cardozo, Benjamin N.	M	25	7	1870	Columbia	SCOTUS
Strunk, William Jr.	M	12	7	1869	-	-
Jackson, Robert H.	M	22	6	1892	Albany	SCOTUS
Marshall, Thurgood	M	9	6	1908	Howard	SCOTUS
Scalia, Antonin	M	8	6	1936	Chicago	SCOTUS

Wald, Patricia M.	F	14	6	1928	Yale	federal circuit
Zinsser, William K.	M	15	6	1922	-	-
Churchill, Winston	M	7	5	1874	-	-
Easterbrook, Frank R.	M	11	5	1948	Chicago	federal circuit
Fowler, H. W.	M	12	5	1858	-	-
Ginsburg, Ruth Bader	F	12	5	1933	Columbia & Harvard	SCOTUS
Kozinski, Alex	M	10	5	1950	UCLA	federal circuit
Llewellyn, Karl N.	M	16	5	1893	Yale	law professor (Columbia)
Mellinkoff, David	M	12	5	1914	Harvard	law professor (UCLA)
Orwell, George	M	8	5	1903	-	-
Rehnquist, William H.	M	7	5	1924	Stanford	SCOTUS
Stark, Steven D.	M	14	5	1951	Yale	author
Twain, Mark	M	7	5	1835	-	-
Aldisert, Ruggero J.	M	14	4	1919	Pittsburgh	federal circuit
Aristotle	M	6	4	384 B.C.E.	-	-
Flesch, Rudolf	M	16	4	1911	University of Vienna	writing professor
Frank, Jerome	M	10	4	1889	Chicago	federal circuit
Johnson, Samuel	M	4	4	1709	-	-
Painter, Mark P.	M	7	4	1947	Cincinnati	state court (Ohio Ct. App.)
Prosser, William	M	8	4	1898	Minnesota	law professor (Berkeley, Hastings, Harvard)
Roberts, John G.	M	32	4	1955	Harvard	SCOTUS

Tribe, Laurence H.	M	20	4	1941	Harvard	law professor (Harvard)
Trimble, John R.	M	19	4	1940	-	-
Wiener, Frederick B.	M	20	4	1906	Harvard	practitioner
Wright, Charles Alan	M	9	4	1927	Yale	law professor (Minnesota)
Wydick, Richard C.	M	6	4	1937	Stanford	law professor (UC Davis)
Alterman, Irwin	M	4	3	1941	Columbia	federal district
Asprey, Michele M.	F	11	3	-	Australian lawyer	plain language consultant
Barzun, Jacques	M	12	3	1907	-	-
Bernstein, Theodore M.	M	6	3	1904	-	-
Brandeis, Louis D.	M	8	3	1856	Harvard	SCOTUS
Cooper, Frank E.	M	4	3	1910	Michigan	practitioner
Davis, John W.	M	5	3	1873	Washington and Lee	practitioner
Douglas, William O.	M	3	3	1898	Columbia	SCOTUS
Dworkin, Ronald	M	10	3	1931	Harvard	law professor (NYU, Yale)
Eliot, T. S.	M	3	3	1888	-	-
Enquist, Anne	F	4	3	1950	-	-
Frankfurter, Felix	M	7	3	1882	Harvard	SCOTUS
Friedman, Daniel M.	M	10	3	1916	Columbia	federal circuit
Friedman, Lawrence M.	M	6	3	1930	Chicago	law professor (Harvard)
Hand, Learned	M	9	3	1872	Harvard	federal circuit
Harlan, John Marshall	M	3	3	1833	Transylvania University	SCOTUS

Hemingway, Ernest	M	4	3	1899	-	-
Kimble, Joseph	M	21	3	1945	Michigan	law professor (WMU Cooley)
Lambuth, David	M	6	3	1879	-	-
Leonard, Elmore	M	3	3	1925	-	-
Lincoln, Abraham	M	3	3	1809	self-taught	practitioner
Miner, Roger J.	M	6	3	1834	New York Law School	federal circuit
Raymond, James C.	M	5	3	1940	-	-
Rodell, Fred	M	20	3	1907	Yale	law professor (Yale)
Schopenhauer, Arthur	M	5	3	1788	-	-
Shaw, George Bernard	M	3	3	1856	-	-
Stevens, John Paul	M	4	3	1920	North-western	SCOTUS
Williams, Joseph M.	M	4	3	1933	-	-
Williams, Robin	F	3	3	1953	-	-
Wisdom, John Minor	M	5	3	1905	Tulane	federal circuit

Of the sixty-five most-mentioned experts, sixty are men and five are women; forty of these experts were born more than a century ago (all men). Forty-three of the most-mentioned experts are lawyers, meaning they trained as lawyers by getting a law degree or "reading the law." Of those forty-three lawyers, eleven of them attended Harvard Law School, and thirteen served as justices on the U.S. Supreme Court. Figure 2.3.2 summarizes the breakdown of most-mentioned experts by gender, birth year, lawyer status, law school attended, and top job held.

Figure 2.3.2
Summary of characteristics of most-mentioned experts

Men	Women
60	5
Year Born	
Born before 1850	8
Born 1851–1900	18
Born 1901–1950	34
Born 1951–2001	4
Lawyers	Non-lawyers
43	22
Law Schools Attended	
Harvard	10
Columbia	5
Yale	5
Chicago	4
Michigan	2
Stanford	2
Albany, Cincinnati, Howard, Minnesota, New York Law School, Northwestern, Pittsburgh, Texas, Transylvania University, Tulane, UCLA, Vienna	1
Top Jobs Held	
SCOTUS justice	13
Federal circuit court judge	10
Federal district court judge	1
State court judge	1
Law professor	10
Practitioner	4
Other	3

3. Discussion

The results mostly met my expectations. The writing experts are mostly men and the most mentioned experts are mostly graduates of elite law schools who held elite law jobs. There were a few surprises, though, including the percentage of women experts being lower than even my inner cynic imagined.

3.1. Who writes these books (mostly men, mostly Bryan Garner)

The nineteen books in my study skew male in all respects. The nineteen books were written by twenty-one different authors, 57% of whom are male. Although several of the books were written by multiple authors, the groups of co-authors were all one gender; for example, co-authors Austen Parrish and Dennis Yokoyama are both male. Thus, each book has only one gender of author. Of the nineteen books, 63% were authored by men. If we look at the number of library holdings for all the books, which totals 6,663, the vast majority of those holdings (82%) are for the twelve male-authored books. Figure 3.1.1 summarizes the gender attributes of the books, their authors, and their holdings.

Figure 3.1.1
Gender breakdown of authors, books, and holdings

	Male	Female	% Male
Individual authors	12	9	57%
Individual books	12	7	63%
Library holdings	6663	1511	82%

The disparity in male and female discourse in legal style books is somewhat surprising because legal writing is "coded as female" in law school.[72] However, it is not so surprising if we think of teaching legal writing as a service role[73] and being a legal writing expert as an authority role. Service roles and authority roles split along gender lines, with the lower status service roles being predictably held by women and the higher status authority roles being predicably held by men. Time spent care-taking is time that cannot be spent convincing other practitioners in the same field to think highly of you and tell everyone that you are a leading expert in the field.[74]

The percentage of authors in my study who are male is much higher than the percentage of male legal writing professors. As of the 2020–2021 academic year, 22.5% of legal writing professors self-identified as male.[75] And in 2008, at the midpoint of my survey period, 25%–30%

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[72] *See* Kotkin, *supra* note 18, at 426 (describing research in Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. Rev. 293, 306–08 (2004).

[73] Allen et al., *supra* note 3, at 527 ("In law schools, women in 'pink ghettos' predominately occupy skills positions like legal writing, clinic, academic success, bar preparation, and the law library.").

[74] *See* Wilson, *supra* note 43, at 20; Allen et al., *supra* note 3, at 526 ("In academia, women most often engage in non-promotable, service-related activities, while men engage in promotable tasks like research and scholarship.").

[75] *ALWD/LWI Legal Writing Survey 2020–2021: Report of the Annual Legal Writing Survey*, Leg. Writing Inst. 123 (2021), https://www.lwionline.org/sites/default/files/2020-2021-ALWD-and-LWI-Individual-Survey-report-FINAL.pdf.

of legal writing professors were identified as male.[76] Six of the authors in my study worked primarily as legal writing professors at law schools: Judith D. Fischer, Jethro K. Lieberman, Beth McLellan, Jeanne Merino, Wayne Schiess, and Dennis Yokoyama. These six legal writing professors authored five of the books in my study, or 26%. The small percentage of legal writing professors—a group one might think would be authors of popular legal style books—is not surprising given the low status accorded such professors.[77]

A quick glance at the list of books shows that the four most popular books are authored by Bryan Garner. Not only did Garner write the four most popular books in my study, but more than half of all the holdings in my study are for one of those four books.[78] These results are not surprising given his decades spent becoming the most influential figure in legal writing and perhaps judicial decisionmaking. Since 1995, Garner has been the editor of *Black's Law Dictionary*.[79] He is prolific and some of his books are uniquely useful, like his *Dictionary of Legal Usage* and *The Redbook: A Manual on Legal Style*. Several of his books are also uniquely influential. For example, Professor Amy Griffin recently analyzed *The Law of Judicial Precedent*, Garner's "unofficial codification" of rules that govern how courts use precedent.[80] Judges rely on this book in their decisionmaking, along with its more popular "sister treatise,"[81] *Reading Law: The Interpretation of Legal Texts*, which Garner co-wrote with Justice Scalia.

3.2. How the books use experts

The use of experts varied across the nineteen books in my study. Three of them referred to no experts at all. At the other end of the spectrum is Garner's *The Winning Brief*, which calls on other writers' authority more than 600 times. Figure 3.2 lists the books from most expert mentions to least. The number of each type of mention—advice, hero, model—is also listed.

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76 Ass'n of Legal Writing Dirs. & Leg. Writing Inst., *2008 Survey Results*, Leg. Writing Inst. 45, A-1 (2008), https://www---staging-mp6ykpkm7cbbg.us.platform.sh/sites/default/files/2008Surveyresults(REVISED).pdf.

77 *See* L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 Utah L. Rev. 847 n.50 (summarizing ways to slice law school castes, with legal writing professors always being in the lower half of the described systems).

78 Of the 6663 holdings in my study, 3672 of them are for one of Garner's four books.

79 David Lat, *Black's Law Dictionary: An Interview with Bryan A. Garner*, Above the Law (July 2, 2014), https://abovethelaw.com/2014/07/blacks-law-dictionary-an-interview-with-bryan-a-garner/.

80 Amy J. Griffin, *If Rules They Can Be Called*, 19 Legal Comm. & Rhetoric 156, 168 (2022).

81 *Id.* at 166.

Figure 3.2
Books listed by expert mentions

Book	Author's Gender	Advice	Hero	Model	Total Mentions
Garner (Winning Brief)	M	571	6	44	621
Guberman	M	58	62	352	472
Goldstein & Lieberman	M	221	28	20	269
Garner (Elements)	M	118	20	123	261
Stark	M	84	9	45	138
Schiess (Legal Audience)	M	122	9	0	131
Scalia & Garner	M	80	14	3	97
Schiess (Nonlawyers)	M	77	0	0	77
Buckley	F	28	3	27	58
Parrish & Yokoyama	M	47	0	2	49
Garner (Plain English)	M	4	25	7	36
Armstrong & Terrell	M	6	1	11	18
Fischer	F	8	0	0	8
Bahrych, Merino & McLellan	F	4	1	0	5
Espenschied	F	5	0	0	5
Wydick	M	3	0	1	4
Oster	F	0	0	0	0
Richmond	F	0	0	0	0
Kracker	F	0	0	0	0

When arranged this way, it's easy to see that the books by women mention few experts. Of the seven books by women, six of them have fewer than ten expert mentions. The seventh, *The Lawyer's Essential Guide to Writing* by Marie Buckley, has fifty-eight. Only three of the twelve books by men have fewer mentions than Buckley's book. This distribution invites the question of why female authors don't refer to experts at the same rate as their male counterparts. I don't know the answer (or even how I would figure it out), but one possible reason is that the women wrote with more self-assurance that their advice was self-recommending. This makes some sense for the authors who taught legal writing for many years, like Bahrych, Fischer, McLellan, and Merino. However, this reason is at odds with the many studies showing that "women and people of color often need to provide more evidence of competence than majority men in order to be seen as equally competent."[82]

. . . .

[82] You Can't Change What You Can't See, *supra* note 2, at 11 (describing the Prove-It-Again bias).

Of the expert mentions in my data set, advice mentions were by far the most common. For example, advice makes up 92% of the 621 mentions in *The Winning Brief* and 82% of the 269 mentions in *The Lawyer's Guide to Writing Well*. This makes sense because advice is the easiest of the three types of mentions to incorporate. All it requires is a quote on a relevant topic. You don't need to read the document from which the quote was taken or apply judgment to the quote itself. By contrast, a model mention requires the style book author's judgment that the quoted model is a good one. Gathering models is also more challenging unless they are well known, like the facts passage of *Palsgraf v. Long Island Railroad*.[83] Otherwise, finding models requires knowing where to look for them, culling passages that don't make the cut, and articulating how the chosen passages model particular writing points. Like quoting models, naming heroes requires judgment. Although it's certainly possible to name a hero based on no evidence at all, presumably the authors of the style books in this study had evidence to support their claims—and that evidence was gained by the authors' own assessment of the hero's writing or by researching others' assessments of the hero's writing.

One book breaks strongly from this pattern: Ross Guberman's *Point Made*. That book is dominated by models—75% of the 472 mentions are excerpts from real briefs filed in real courts. This breakdown aligns with (1) the book's stated purpose of taking a "more empirical" approach than simply telling the reader how Guberman thinks they should write, and (2) its methodology of "identifying dozens of the most renowned and influential advocates" by consulting ratings and lists that rely on expert judgment.[84] *Point Made* stands out not just because the overwhelming majority of its mentions are models but also because it provides nearly *all* the female-written models in this study. As seen in Figure 2.1.2, only 79 of the 634 model mentions are to women. Of those 79, 66 are in *Point Made*. Similarly, of the 23 female hero mentions, 15 of them are in *Point Made*.

3.3. Gender breakdown of experts in books is worse than in real life

As explained in this paper's introduction, women don't make up a majority of any of these elite law jobs: federal judges, tenured law professors, or Supreme Court advocates. The percentage of women in these positions has increased over time, but none of them is even approaching fifty percent, even though women have made up about half of

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83 *See* Chew, *supra* note 30, at 845.

84 Ross Guberman, Point Made: How to Write Like the Nation's Top Advocates xxx (2d ed. 2014).

all J.D. candidates for the past twenty years. However, women have made up a third of all J.D. candidates only for the past forty-five years or so, and the percentage of federal judges and tenured law professors who are women has crept up on one-third.

Given this well-documented reality, I expected that far fewer than half of the expert mentions (and mentioned experts!) in my study would be women. At best, I thought it would be even with the proportion of female federal judges or tenured law professors, about one in three. At worst, I thought it would be even with the proportion of women who gave oral arguments at the Supreme Court in the 1990s, about one in six.

As it turns out, the proportion of female experts in legal writing books is only one in seven, much lower than the proportion of women in federal judgeships and tenured professorships. And lower even than the proportion of women giving Supreme Court oral arguments during the original run of *Walker, Texas Ranger*.[85]

Yikes!

This is concerning because there's so much discretion in who a book author can include as a writing expert. Even assuming that some experts must be included because they are true legal writing heroes—men like Oliver Wendell Holmes or Bryan Garner—over eighty percent of the experts are mentioned only once and could, theoretically, be subbed out for a female expert saying the same thing.[86]

This bias towards men as experts in legal writing matters because these books both represent legal culture and create legal culture. As Professor Frug observed about casebooks, readers might "draw their sense of current legal culture" from the books they read and interpret the absence of women in ways that the authors didn't intend.[87] Frug found so few women in the contracts casebook she studied that readers who might "look for women among the authors and in the casebook language because they need and seek some assurance that women or womanly people are

. . . .

[85] *Walker, Texas Ranger* (CBS television series 1993–2001); see *supra* note 15 for the 1993–2001 study period for oral arguments.

[86] That the crowd of one-off experts named in these books could be gender-swapped reminds me of actor Geena Davis's research into gender disparities in movies. She looked at the crowd scenes in family-rated films and found that the percentage of female characters in those crowd scenes was seventeen percent, and that this had been the gender composition of the usual movie crowd since 1946. I think she was on to something when she suggested that gender ratios in life might follow gender ratios in movies: "Couldn't it be that the percentage of women in leadership positions in many areas of society—Congress, law partners, Fortune 500 board members, military officers, tenured professors and many more—stall out at around 17 percent because that's the ratio we've come to see as the norm?" *See* Geena Davis, *Geena Davis's Two Easy Steps to Make Hollywood Less Sexist*, HOLLYWOOD REP., Dec. 11, 2013, https://www.hollywoodreporter.com/news/general-news/geena-davis-two-easy-steps-664573/.

[87] Frug, *supra* note 35, at 1097 (emphasis omitted). Frug also noted that "the casebook conveys the mistaken impression that legal authors are exclusively male." *Id.* at 1096.

not excluded from the profession" would not be reassured.[88] That discouragement could also confirm other readers' "view[s] that women are as unimportant in the legal world as they are (or should be) elsewhere."[89]

3.4. Replication of elite educational hierarchies is as expected

The legal profession's affection for elite hierarchies is well documented,[90] and the results of my study mark another data point showing that expert lawyering positions tend to be dominated by lawyers who graduated from elite law schools. Of the forty-one most-mentioned experts who received their legal training in the United States, sixty-three percent attended one of these five schools: Harvard (10), Columbia (5), Yale (5), Chicago (4), or Stanford (2). If we include Michigan (2), Minnesota (1), Texas (1), and UCLA (1) as elite law schools, the percentage increases to 76%.

Of the most-mentioned lawyers who did not attend one of these elite (or elite-ish) law schools, only one was born in the last 100 years: Ohio Judge Mark Painter, who was born in 1947 and graduated from the University of Cincinnati College of Law. Here are the other nine, their titles, where they received their legal training, and their year of birth:

- John Minor Wisdom (Tulane), born in 1905

- Judge Roger J. Miner (New York Law School), born in 1834

- Justice John Marshall Harlan (Transylvania University), born in 1833

- Attorney John W. Davis (Washington & Lee), born in 1873

- Professor William Prosser (Minnesota), born in 1898

- Judge Ruggero J. Aldisert (Pittsburgh), born in 1919

- Justice Thurgood Marshall (Howard), born in 1908

- Justice Robert H. Jackson (Albany drop-out), born in 1892

- President Abraham Lincoln (self-taught), born in 1809

3.5. Replication of elite employment hierarchies is as expected

Also unsurprising in my results was the replication of elite employment hierarchies. Of the forty-one most-mentioned U.S. lawyers,

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88 *Id.* at 1097.

89 *Id.*

90 *See, e.g.*, Nunna, Price & Tietz, *supra* note 62, at 75 ("Legal academia is obnoxiously hierarchical."); John P. Heinz & Edward O. Laumann, *The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies*, 76 Mich. L. Rev. 1111, 1111 (1978) ("The best-known studies [of the legal profession] examine lawyers at the extremes of the profession's prestige hierarchy . . . .").

59% are federal judges (24), and more than half of those judges are U.S. Supreme Court justices (13). The next biggest grouping (24%) was tenured professors at law schools, of which there were ten. As shown in the list below, the mentioned law professors were mostly employed at elite schools:

• Karl Llewellyn (Columbia Law School)

• David Mellinkoff (UCLA)

• William Prosser (Berkeley, Hastings, and Harvard)

• Laurence Tribe (Harvard)

• Charles Alan Wright (Minnesota)

• Richard C. Wydick (UC Davis)

• Ronald Dworkin (NYU and Yale)

• Lawrence M. Friedman (Harvard)

• Joseph Kimble (WMU Cooley)

• Frank Rodell (Yale)

Yet again, Judge Mark Painter of the Ohio Court of Appeals was in a category all his own. In addition to being the only most-mentioned expert who attended a non-elite law school (Cincinnati), he is also the only most-mentioned expert who is a state judge. This reflects a general snobbery towards both state law and state judges, a snobbery that is cultured in law schools.[91]

This group of forty-one most-mentioned experts has between four and six practitioners, depending on how you count them. Bryan Garner and Steven Stark, who are also authors of books in this study, practiced law. However, they both have worked mainly as writers and writing coaches rather than as practicing attorneys. The other four all practiced law, but one was Abraham Lincoln, who is better known for being a U.S. President.

Two of the other three practitioners, John W. Davis and Frederick B. Wiener, argued numerous cases at the U.S. Supreme Court. Davis was the Solicitor General under President Woodrow Wilson, and as a private attorney he won the casebook classic *Youngstown Sheet & Tube Co. v. Sawyer*, in which the Supreme Court in 1952 ruled against President Harry Truman's seizure of the nation's steel plants.[92] Like Davis, Wiener

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91 By the way, in 2023, there were about 500 women state appellate judges. That's a lot of lady legal writers to choose from! *See* Nat'l Ass'n of Women Judges, *2023 Representation of United States State Court Women Judges*, www.nawj.org/statistics/2023-us-state-court-women-judges (citing Forster-Long, LLC, The American Bench 2023 (2023)).

92 *See generally* William H. Harbaugh, Lawyer's Lawyer: The Life of John W. Davis (1973).

successfully argued a landmark case at the Supreme Court: *Reid v. Covert.*[93]

The last of the remaining practitioners, Frank E. Cooper, worked as a lawyer in Detroit but also held a part-time professorship at Michigan Law School.[94] He wrote several books about legal writing as well as a book for law students called *Living the Law* in which he discussed vital skills for the practicing attorney that were not taught in law schools: predicting how controversies will be decided, legal planning, negotiation, draftsmanship, and advocacy.[95] By most accounts, Cooper was a delightful writer, as shown by the closing sentence of one book review: "Mr. Cooper's intelligent and very readable treatment of these subjects serves as an appetizer to the student for the adventure which lies ahead."[96]

3.6. Race also looks bad

Of the sixty-five most mentioned experts, only one appears to be a person of color: Justice Thurgood Marshall. Coding the experts by race is fraught and beyond the scope of this paper, but most of the experts in the top sixty-five were well-known enough to assign a race to. This result was also expected, given how many obstacles have limited people of color's access to legal education, licensure, and elite lawyering jobs.

It appears that the only non-white "hero" mentions—declarations that so-and-so is a great legal writer—appear in one book: Ross Guberman's *Point Made.* Indeed, his book includes excerpts from eight non-white lawyers. In addition to three mentions of Thurgood Marshall, Guberman cites the following non-white lawyers, none of whom are mentioned in the other books: Morgan Chu (12 mentions), Miguel Estrada (9), Eric Holder (8), Barack Obama (5), Sri Srinivasan (5), John Payton (7), and Ted Wells (7). As with gender, this inclusion is likely the result of Guberman's empirical approach described in section 3.2 above. When Guberman went looking for "the most renowned and influential advocates," he looked beyond federal judges and solicitors general and to plaintiffs' lawyers, specialists, and the legal directors of the NAACP and ACLU.[97] Indeed, several of his Black experts led the NAACP'S Legal Defense Fund.

As is usually the situation, an intersectional peek at the data looks worst of all. Of the sixty-five most mentioned experts, none are women

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93 354 U.S. 1 (1957); *see* Frederick B. Weiner, *Persuading the Supreme Court to Reverse Itself:* Reid v. Covert, 14 Litig., Summer 1988, at 6.

94 Allan F. Smith, *In Memoriam; Frank E. Cooper*, 1 U. Mich. J. L. Reform (1968).

95 John P. Dawson, Book review of *Living the Law*, by Frank E. Cooper (1958), 58 Mich. L. Rev. 615, 618 (1960).

96 Book review of *Living the Law*, by Frank E. Cooper (1958), 13 Vand. L. Rev. 432, 432 (1959).

97 Guberman, *supra* note 84, at xxxi.

of color. Of the seven non-white lawyers that *Point Made* introduces to the dataset, none are women. Justice Sonia Sotomayor, the most obvious non-white female expert because she has been a justice on the Supreme Court for a decade, appears in the dataset just once: *The Lawyer's Guide to Writing Well* uses one of her sentences as a model of memorable writing.[98]

That women of color are missing from these books means that legal style is one more space where "the idea of women of color as authority figures, as people with expertise and knowledge gained from study" is "foreign."[99] Recently, the Rutgers Law Review organized a symposium around Professor Meera Deo's groundbreaking work on this topic, *Unequal Profession: Race and Gender in Legal Academia*.[100] This book drew on Professor Deo's national empirical study of law faculty using an intersectional framework, the first of its kind.[101] The essays that emerged from this symposium illustrated Professor Deo's findings that legal culture throws up many barriers to women of color being viewed as experts.

However, in those essays I also saw another kind of fraternity of legal style emerging—one in which women of color drew on each other's words, calling attention to each other's eloquence. For example, Professor Kimberly Mutcherson (a Black woman) wrote an essay for the colloquium about the work of Meera Deo (a South Asian woman) and quoted the words of Professor Khiara M. Bridges (a Black woman) to make the dispiriting observation that the dearth of women of color in the legal academy means that many lawyers "have never had the chance to bear witness to a nonwhite woman's unparalleled expertise."[102] And now, as a legal writing professor writing about legal style, I (an Asian American woman) can spotlight these three women's words.

Conclusion

To be blunt, I think the results of my study suck. In the world of writing books for lawyers, more women should be recognized as experts. As should more people of color and people who live outside the gender binary. As should more writers who are not federal judges or tenured law

98 Goldstein & Lieberman, *supra* note 58, at 203.

99 Kimberly Mutcherson, *Taking Our Space: Women of Color and Antiracism in Legal Academia*, 73 Rutgers L. Rev. 869, 872 (2021).

100 Meera E. Deo, Unequal Profession: Race and Gender in Legal Academia (2019).

101 Swethaa S. Ballakrishnen & Sarah B. Lawsky, *Law, Legal Socializations, and Epistemic Injustice*, 47 Law & Soc. Inquiry 1026, 1029 (2022) ("[Deo's] book is the first formal mixed-method study of the law faculty experience that focuses on women of color and includes professors from all stages of their careers.").

102 Mutcherson, *supra* note 99, at 872 (quoting Khiara M. Bridges, *The Nerve: Women of Color in the Legal Academy*, in Women & Law 65, 68–69 (2020) (joint publication of the top sixteen law reviews), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1004&context=womenandlaw).

professors or graduates of so-called elite law schools. Great legal writing is everywhere, not just in elite spaces or streaming from the fingers of elite lawyers. Moreover, everyone who writes legal words can be a great legal writer. Writing is a skill, learned like any other, not a magical attribute that some people are born with.

The books in my study, particularly the most popular ones, create a reality of legal writing expertise. Just as the words in a contract create obligations for real people to carry out in the real world, the words in legal style books create experts from the real people who are presented as advisors, heroes, and models. That legal style books overwhelmingly elevate men to expert status contributes to the discursive gender disparity in law both by sharing more male discourse within their pages and by suggesting that readers replicate male discourse in their own writing.

My suggestion for changing the situation is obvious: people who write about legal style should research harder. For example, when looking for models of good legal writing, follow Ross Guberman's lead and look beyond federal judges, federal prosecutors, and solicitors general. Given the abundance of great legal writing there in the world, I feel confident that there are plenty of new models to discover. And as for finding writing advice from women and non-binary writers, I suggest looking beyond "classic" style books that were published when only men got to publish style books. There are books about writing by women[103] of course, even some classic ones,[104] but we can also find writing advice in other genres that are easier to publish. For example, legal writing professor Margaret Hannon recently published a bibliography of legal style,[105] which includes many articles by women. And online sources such as blogs[106] and tweets[107] and interviews[108] offer instant access to advice by a huge variety of writers.

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[103] *See, e.g.*, Anne M. Enquist, Laurel Currie Oates & Jeremy Francis, Just Writing: Grammar, Punctuation, and Style for the Legal Writer (6th ed. 2021); Helen Sword, Writing with Pleasure (2023).

[104] *See, e.g.*, Anne Lamott, Bird by Bird: Some Instructions on Writing and Life (1994); Natalie Goldberg, Writing Down the Bones: Freeing the Writer Within (1986).

[105] Margaret C. Hannon, *Legal Writing Mechanics: A Bibliography*, 19 Legal Comm. & Rhetoric 185, 186 (2022) (gathering scholarship on legal writing mechanics and best practices to "serve as a resource for any legal writer, whether practitioner, academic, law student or judge").

[106] For example, "Friends don't let friends go unedited." Marie Buckley, *Step Three of Deep Editing: Synthesize*, A Lawyer's Guide to Writing: Marie Buckley's Blog (June 20, 2012), https://mariebuckley.com/step-three-deep-editing-synthesize/.

[107] For example, this tweet nicely summarizes a core challenge of writing compelling legal arguments: "ANYONE CAN WRITE A SEEMINGLY WINNING LEGAL BRIEF IF THEY CAN MAKE UP CONTROLLING AUTHORITY THAT PROVIDES AN UNARGUABLE ANSWER, but this is not actually useful in a world that lacks that controlling authority." Courtney Milan, Twitter (Mar. 1, 2023), https://twitter.com/courtneymilan/status/1631066612567801856. Courtney Milan is the pen name of Heidi Bond, a bestselling author who also clerked for judges on the Ninth Circuit and U.S. Supreme Court.

[108] For example, in an interview with Nicole Chung, Amy Tan described an excellent editor "[w]ho would look for me in the writing and not say 'This is a crappy sentence,' but instead say, 'You're not in the sentence, I don't hear you.'" Nicole Chung, *Amy Tan on Writing and the Secrets of Her Past*, Shondaland (Oct. 16, 2017), https://www.shondaland.com/inspire/books/a12919749/amy-tan-interview/.

My suggestion is unradical, and if executed it will just nibble around the edges of the discursive gender disparity I've described in this paper. Yet at the same time, it's not very hard. It's easier, for example, than elevating more women to real positions of authority.