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### [Joshua Stein — Attorney & Author](#)

If you're involved in New York's commercial real estate market, then you've likely heard of [Joshua Stein](#), a partner in the New York office of Latham & Watkins LLP. And if you practice commercial real estate law, especially in New York, you've probably read some of what he's written — four books on commercial real estate transactions and more than 150 articles on practically every topic in commercial real estate law and practice, plus articles on how to prepare better documents.

Stein's been writing for quite some time, and he's good at it. In high school, he was a reporter for a local newspaper. In college, he was a staff writer for the UC Berkeley *Daily Californian*. Right after college, he worked briefly as a book editor. In law school, he was managing editor of the *Columbia Law Review*. And he won a Burton Award for clarity and simplicity in legal writing.

I asked him for his advice. I asked him how young associates can use their writing skills to help promote their careers. He was kind enough to offer advice on everything from picking topics to write about, to working with editors.

**Let's suppose a young lawyer wants to write an article for a popular business magazine, like the print edition of *Forbes* or the on-line edition of *BusinessWeek*, or some popular journal like the *New York Law Journal*. What makes for a good topic?**

Write about what you know about. Look at the work that crosses your desk every day. What's interesting about it? What new issues are raised? What trends do you see? How will they affect your clients and future clients?

If you write a memo or analysis of something, think about whether you might find a larger audience for an article on a similar topic, with due concern for client sensitivities and confidentiality. Choose topics that business people need to know about. Don't write about "The Law" per se. Write about business problems and risks and opportunities, and how legal principles and developments can affect them.

**How should an attorney decide which magazine to submit the article to?**

Decide on your market. Ideally you want to write for clients, not other lawyers. Figure out what publications your target market reads. Look at some recent issues of those publications.

Many of the best publications don't accept unsolicited articles. Some publications become overloaded with

articles by attorneys, probably because attorneys like writing more than business people do.

Try, if you can, to find a publication that doesn't have that problem. But don't worry about it too much. Most articles written by attorneys talk about "The Law" rather than practical business issues. When you write about business issues, you are writing an article that your potential clients will want to read, and will probably notice among the deluge of articles about "The Law."

### **Are there any dangers they should beware of? What rewards can they expect?**

Yes, there are potential problems, but you can prevent them by using good judgment. It isn't hard to do.

You might offend clients if you take controversial positions or disclose information you shouldn't disclose. And I've had articles I wrote "used against me," either in a negotiation or when I was an expert witness. These instances have been few and far between.

The rewards of writing take the form of intangible benefits – reputation, calls from prospective clients, stature in the marketplace. My publications have materially contributed to my prominence in the commercial real estate bar and, to a lesser degree, the real estate business world. I've gotten calls that I wouldn't have gotten otherwise, including some that resulted in substantial client engagements. Real estate lawyers usually know who I am, and people in the real estate business often do also. This is a great start to any relationship or transaction.

### **Should a young associate clear an article with his/her firm before he submits it for publication? Is there a certain protocol to follow?**

Find out what your firm's rules are, and follow them. The trend out in the world is to require more approvals, more risk management, more second-guessing. So try to avoid stepping in a problem.

If an approval is required, there could be a number of reviewers. Someone from marketing or public relations might look for any "downside" of an article. That's to protect the firm.

The approval process might not catch the real "downside" in publishing: the risk that you will choose a perfectly good topic but then say something wrong or stupid about it.

What you really need, whether or not the firm requires it, is to enlist a more senior lawyer in your practice area to help you develop and focus your article idea, and then critically review your work and make sure you don't say something stupid just because you don't have enough experience to know better.

If that happens, the resulting "shell shock" might set back your writing career by five or ten years. When you ask a more senior lawyer to criticize your work, make sure they take a good hard look at it. And that senior lawyer shouldn't feel too concerned about protecting your fragile ego.

### **What about writing articles *for* the firm – client alerts and such? Would a young associate do well to spend time writing articles and alerts for the firm's Web site?**

A great advantage of this type of work is that it lets you work with more senior lawyers in the firm, in a context that's different from billable work. It lets you get in front of people you might want to be in front of.

Unfortunately, though, this type of work doesn't always result in by-lines. So if you are writing to make a name for yourself in the world, client alerts might not be the best choice.

I also have some concern about how many people actually read these client alerts. They were a great idea five years ago, when not everyone was doing them. Now every time any legislator or bureaucrat sneezes, a dozen law firms send out mass emails with client alerts about it.

I might focus instead on client alerts that step back a bit from the day-to-day minutiae and try to offer broad strategic suggestions or insights. This approach also has the advantage of focusing less on "The Law" and more on the bigger picture and how legal issues affect potential clients.

**What audience should a young associate write for? Should he write technical advisories for corporate counselors (clients and prospective clients), or should he write for a much broader audience – one that includes journalists, bankers, and executives who want to know more about EESA and TARP. Should he write for those who could actually engage the firm, or a much bigger audience?**

I'm not sure you can fine-tune your audience as closely as you imply. The main line I would draw is between an audience of lawyers and an audience of the larger business world. Target the latter, and that will include many of the former.

**You advise lawyers to have "another pair of eyes" review drafts of their documents. But it's not always so easy to find a good reviewer. Do you have any tips on finding good reviewers and working with them?**

In my experience, other attorneys are honored to be asked to review drafts of articles. Only rarely will someone decline such an invitation. It's a great way to get to know people – those in your firm, people you've met through bar activities, or some expert you've never met in your life.

You need to be nice about it. Give your reviewer a reasonable deadline and then remind them. Don't give an overly generous deadline – anything more than about ten days – because your reviewer will just set the draft aside and forget about it.

Above all, make sure the person you're asking knows you singled him or her out; for example, don't send an email to 50 visible recipients asking if anyone would like to review your article

Maybe you shouldn't send out an email at all. Pick up the phone instead.

When you receive comments, involve the reviewer going forward. If you think any comments merit discussion, have that discussion. Ask the reviewer if he or she would like to be acknowledged in the article. I always acknowledge those who made any contribution at all, unless they ask not to be acknowledged (and I always offer that option).

Send the reviewer a copy of the published article, along with a nice handwritten note. It will blow them away.

### **What do you like most about the writing process? What do you like least about it?**

I like thinking about interesting subjects, and figuring out how to make sense of them. Writing about something forces you to understand it and think it through. You capture the end result of that thought process in your article. The end product may seem very simple, succinct, and straightforward, but getting there isn't necessarily simple, succinct, and straightforward.

That thought process is one of the best parts of writing. Another great part is when a new book or article appears. I've published new books and articles a billion times, but there's still a thrill when I see a new publication for the first time.

The worst part is all the mechanics – editing the article again and again, reviewing proofs, looking for typos, finding a lovely photograph of the author if the publication wants it, dealing with license agreements (particularly with for-profit publishers). Most of the work in publishing an article involves everything except writing the article.

### **Do you ever suffer from writer's block? Do you have any suggestions on how to deal with that?**

I really don't have this problem. I pretty much just sit down and figure out where I want to start and then keep going.

Sometimes my first start turns out be rather lame. That's fine. I don't torture myself about it. I just live with the lameness for the time being, and go back and fix it later as part of the ordinary editing process, after I've written the rest of the article and thereby figured out what I really wanted to say from the beginning.

The opening paragraph just amounts to a placeholder until I get around to fixing it. That's a good technique to get past writer's block, the blank computer screen.

### **Do you have any advice for law students? What can they do to hone their legal writing skills? Should they take a course in technical writing? In journalism?**

Read the *New Yorker* magazine and Strunk and White's *Elements of Style*. Try to write like a person, not like a lawyer. Learn and follow a relatively short list of principles, like the seven I listed in my *American Lawyer* article about Plain English. Use the active voice. Keep your sentences short. Favor verbs over nouns when you can. Stuff like that. These principles are not rocket science or particularly new.

### **If you were a 2L right now, would you write a law review article?**

No. It's a lot of work. No one will read it.

Law reviews seem to fill up more and more pages every year to say less and less about a relatively narrow range of topics, generally with very little relevance to the real world. In real estate law, for example, law reviews seem

to publish every law professor's new model for the constitutional law of *Takings* and *Eminent Domain*.

What they don't publish are articles that deal with the substantial legal issues that come up in ground leases or complex, sophisticated, mixed-use development projects or financings.

I don't know who reads the stuff that most law reviews publish, but it's not prospective clients. It's not even other practicing lawyers.

**You've said that much legal writing is needlessly complex, and you've offered advice on how to write simply and succinctly. Why do so many lawyers tend to use lots of big words when a few small ones would do as well, or much better?**

The legal profession and law schools do not prize clarity and simplicity. It's just not important out there.

Of all the various articles I've written, the ones about Plain English seem to get the fewest requests for reprints.

I hate to say this, but some think that using long sentences and fancy words is a way to glorify the legal profession. If normal people can't read the written work that lawyers produce, then it must be very sophisticated and mysterious.

**You've written quite a lot about real estate law, but you've also written articles about creating PDF files and preparing PowerPoint presentations. Why write about topics outside your practice area?**

I just like doing it. I learn things and have insights, and feel like sharing them.

People often make themselves stupid about computers, convincing themselves that computers are frustrating and they'll never be able to do what they want with them. Computers are very easy to use, even intuitive, once you put yourself in the right state of mind.

Sometimes I get requests to write these types of articles, and I'm happy to do it. Plus I recycle my computer-related articles into other articles; they'll be in the second edition of my book on real estate practice.

**You mean you publish some articles more than once?**

Exactly! That's the point. One of my great secret strategies is this: I almost never publish an article only once. I publish it in one place, then publish it somewhere else, then turn it into a chapter of a book, then use it for CLE materials, and so on.

Each time I do this, I revisit the article and update it based on experiences, new things I've learned, and responses I've received to the previous publications.

**Do your publishers mind that?**

Usually, they don't care.

You mustn't submit the same article to two places at once without saying you're doing that.

And you need to reserve all your rights to whatever you write. A lot of publishers try to get you to assign the copyright and all rights to them. They just aren't thinking very hard, and the author isn't thinking very hard either if the author goes along with the request.

Usually you can persuade the publisher to take just a limited license. You keep all the other rights, including the copyright. You might have to agree not to republish elsewhere for a certain amount of time.

The publisher might require you to get approval for reprints or to acknowledge the original publication. You want to avoid either of these requirements if you can, because they will just create trouble if you forget to comply.

When you resubmit an article elsewhere, you need to say if it was previously published. Some publications care. Most don't. For any that do care, you can do more than the usual amount of editing, revising, and updating, so that it effectively becomes a new article. But you still need to tell them about its prior publication.

### **What about working with editors? Can you offer any suggestions or provide any warnings?**

Think of an editor as someone who will help you get your article from idea to publication. They're on your side. They add value. They will help you shape your article, then literally edit its words, and finally shepherd it through the tedium of the publication process.

When they change your sacred prose, don't take it personally. Try to make sure you get one last look at the manuscript before publication. But don't use that opportunity just to undo whatever changes offend you. Instead, accept the proposition that someone else might be able to improve your pearls of prose. And if the editor seems to have definitely made a mistake, don't just undo it. Try to figure out why the editor wanted to change your words. Come up with some other change that will respond to whatever drove the editor's changes.

If an editor chokes on something you wrote, so will your readers. Rewrite it, but don't let the editor become a co-author. Some editors are terrible, some are lousy writers, and some just like to tinker for no good reason. But — if you want your article published — you've got to work with the editor.

Be professional. Thank the editor, even if your experience wasn't great. You want to be able to publish more articles with the same publication or at the next publication where the editor might turn up in a year or two.

### **Is there something that you'd like to write about, but just haven't found the time for it?**

As I live my life and talk to my clients and close my deals, I come up with a nonstop stream of ideas for articles. I have maybe 50 pages of notes about articles I'd like to write.

One thing I'd particularly like to write is a novel about real estate fraud. I am always amazed at the sheer variety and ingenuity of the frauds that brilliant business minds can come up with. And I'm always interested to see how every brilliant fraud finally blows up.

The market correction (or implosion) we are going through right now will expose lots of frauds that otherwise might have remained hidden by good times and ever-increasing valuations.

**Before you went to law school, you were a journalist. Why did you become a journalist, and then why did you become a lawyer?**

I've always liked writing. Somehow I got drawn to write for the local newspapers when I was in high school and even junior high school. I covered local government and the courts, among other things. It always seemed the lawyers were the people who were making things happen, saying interesting things, and making everyone else think. I also liked dealing with legal issues and reading the various lawsuits that I was writing about.

**Did your background in journalism help you in law school and in your legal career? If so, how?**

I am very comfortable writing. I write quickly. This has helped me get my legal work done. And touch typing turned out to be one of the most useful classes I ever took in junior high school. That, plus meeting newspaper deadlines in high school, helped me learn to type very fast, which makes writing even easier.

My writing skills, and my sheer ability to write quickly and comfortably, have been very helpful, both for my legal practice and for this second career I've had as a writer about commercial real estate law.

**Thanks for taking the time to share your insights. Much appreciated.**



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