

January 2007

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Recommended Citation

Tom Goldstein, *Jethro Lieberman and The Litigious Society*, 52 N.Y.L. SCH. L. REV. 203 (2007-2008).

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TOM GOLDSTEIN

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Society*

ABOUT THE AUTHOR: Tom Goldstein is a professor and the director of the Mass Communications Program at the University of California at Berkeley. He has been a journalism educator for more than twenty years, first at the University of Florida, then at Berkeley (where he served as a dean from 1988 to 1996), and finally at Columbia (where he served as a dean from 1997 to 2002). Tom Goldstein has worked as a reporter at *Associated Press*, *Newsday*, *The Wall Street Journal*, and *The New York Times*. This essay is adapted from a speech given by the author on February 15, 2007, at a dinner honoring New York Law School Associate Dean Jethro Lieberman and welcoming participants to the symposium on Writing About the Law co-sponsored by the Program in Law & Journalism at New York Law School and the New York Law School *Law Review*.

My purpose here is to celebrate the remarkable career of Jethro Lieberman. In doing so, I will talk about legal writing, I will discuss his award winning book, *The Litigious Society*, and I will close with some personal comments about Jethro.

After graduating from Yale and Harvard Law School, Jethro was in the first wave of those writing about law for national publications—in his case, *Business Week*. In the late 1960s and early 1970s, other pioneers in legal reporting included Jim Simon (who went on to become the dean of New York Law School), Joe Ferrer at *Time Magazine*, Pat Oster at *U.S. News and World Report*, Jerry Footlick at *Newsweek*, and Sidney Zion, Lesley Oelsner, and then me at *The New York Times*. Until the development of a legal reporting specialty, most of us limited our reporting to decisions of the United States Supreme Court and the occasional high profile lawsuit.

It is worth noting that in the late 1960s and 1970s, the number of lawyers rose dramatically. In the early 1970s, approximately two hundred fifty thousand lawyers practiced, which is about one-quarter of the number who do so today. At the same time, the demystification of law began. Ancient barriers to lawyers promoting themselves began to crumble. Lawyers, who had been annoyingly proprietary about even their most basic comings and goings, stopped shunning publicity and actually began to seek it. Moreover, journalists began to view lawyers and law firms as part of business and accountable like businesses.

However, it was not enough to occupy Jethro's amazing energy. While working full-time at the magazine, Jethro wrote several books, including his now classic volume, *The Litigious Society*. The hardcover edition was published in 1981. The paperback appeared in 1983. So, if we split the difference, it is now the twenty-fifth anniversary of its publication, and that surely is enough reason to celebrate. It was a prizewinner at the time, but has probably been underappreciated over the years.

Jethro's argument in the book was that there was little evidence for the claim of a "litigation explosion." It laid to rest as myth the perception that people had suddenly and inexplicably become more litigious, going to court for trivial matters and asking for outrageous sums of money. Instead, Jethro observed that much of the increase in litigation resulted from laws enacted by Congress in the activist 1960s as part of the movement away from the classical liberal notion of *caveat emptor*. This movement profoundly altered the legal system, leading to an increase in both the number and types of lawsuits. Jethro examined each of the areas in which increased litigious activity was most evident: (1) defective products, (2) medical malpractice, (3) environmental damage, and (4) infringement of individual rights by public and private institutions. Jethro concluded that litigation is not a dirty word, as it satisfies essential societal needs that have been inadequately met by other public and private institutions.

Now, let me paint a more personal portrait of Jethro. For more than three decades, our lives have intersected, and what started out as a professional relationship transformed into a close friendship.

In 1970, I was the first editor of a now long defunct magazine called *Juris Doctor*. Its creators had wanted to call it *LLB*. Not very catchy. I told them that few people got that degree any more. They relented and named it *Juris Doctor*. This title was not very catchy either, but at least it accurately reflected the name of the law degree which had recently come into vogue. The juris doctor was still a new enough degree that the name was unfamiliar to many non-recent law school graduates. When I used to tell people the name of the publication that I edited, perhaps mumbling the name, they often thought that I had said, “Jewish Doctor.”

I edited the magazine for one year and Jethro began contributing to the magazine on a freelance basis after I left. In 1975, Jethro was himself the subject of a *Juris Doctor* cover story with three other national law correspondents: Joe Ferrer from *Time* and Jerry Footlick from *Newsweek*, who are both now retired, and Pat Oster from *U.S. News and World Report*, who is now the law editor at *Bloomberg*.

1975 was also the year that I met Jethro. Although we didn’t know it at the time, we had overlapped briefly as Yale undergraduates a decade earlier and had both worked at that marvelous training ground for journalists, the *Yale Daily News*. When we did meet, it was at an unlikely venue—the American Bar Association convention in Montreal. In those days, American Bar Association conventions were the big staple news event for reporters covering the legal beat, which gives you an idea of how far legal journalism has traveled.

Let me return to the *Juris Doctor* cover story. In the article, Jethro’s thoughtfulness comes through as he is quoted:

Legal reporting is feeling its way. We are where science writing was when it first started and there is no coherent feeling for it and maybe there never will be. . . . There is not enough reflection on our legal system or enough debate about what it can be. We don’t discuss the politics of possibilities and we should in the press. But you can’t presume a base of knowledge on the part of the reader and this is going to take possibly a generation to develop and to get the discussion on the courts and the judicial process that we need. I’ve been struck by the fact that many columnists make fortunes writing about Congress or the president but nobody writes about the Supreme Court. In terms of any sustained journalistic criticism of the Court, we are simply nowhere near that.¹

In the article, the author notes that Jethro had written seven books by the time he was thirty-one. “I don’t waste much time,” Jethro deadpanned.

Jethro worked for *Business Week* for ten years before embarking on a highly successful new career as a law professor—first at Fordham University

1. Stephen Singular, *Simplifying the Law for Fifty Million Readers a Week*, *JURIS DOCTOR*, September 1975, 26, 30.

School of Law, and then at New York Law School, where he has held positions of increasing responsibility.

Whether working as a journalist, professor, or dean, one theme has been a constant throughout Jethro's life: his attachment to, and love of, books. He was an early bloomer, with words and ideas flowing in his veins. His father was a journalist and his mother was a copy editor. His mother told the story of Jethro at age two; his parents would spell b-o-o-k and Jethro would run over to the bookshelf and pull out a book.

Jethro lives and breathes books. He reads books, which is evident to anyone who visits his home by the shelves that are lined with books and books and books. He writes books like others write magazine articles. At last count, he is credited with writing twenty-four books, including weighty books like *The Litigious Society*, books on the constitution, and books on legal writing.

But he has a much wider range than that. He is the author of a bestseller, *The Complete CB Handbook*, which he wrote in three weeks during the height of the CB radio craze. And under a pseudonym, he wrote a mystery novel. Deep in his bio on New York Law School's website, you will find that he has also produced a series of children's books that were written, he said, "when I had to send my kids to summer camp and needed to pay for it." These are not typical children's books, but were written for high school students, with topics ranging from free speech to checks and balances. Jethro also edits books for friends, showing an uncommon generosity of spirit.

Jethro Lieberman has had an extraordinary career as a writer, a teacher, and a scholar. Now, as a culmination of all that he has accomplished, he is undertaking the project of running a press to be established by New York Law School. Nothing could be more appropriate.