

## University of Ottawa Faculty of Law (Civil Law Section)

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From the Selected Works of Hon. Gerald Lebovits

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January, 2006

# Academic Legal Writing: How to Write and Publish

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JANUARY 2006  
VOL. 78 | NO. 1

NEW YORK STATE BAR ASSOCIATION

# Journal



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## Academic Legal Writing: How to Write and Publish

Few things are more challenging than writing an academic legal paper — even if you're an academic. For many of us, legal writing was the bane of law school. It's hard to imagine that we'd want to subject ourselves to that kind of punishment again. For others, scholarship is a highlight of their education and profession. For them, it's a way to get MCLE credit,<sup>1</sup> to explore an issue, to let out frustrations, to show the pros and cons of a law, to suggest solutions to debated problems, to learn, to teach, and to enrich their résumé. This column explains what to expect if you embark on academic legal writing, where to find help, and how to publish.

### Finding a Topic— From Passion to Purpose

You can explain or summarize a substantive area of law or procedure (like small claims law) or author a how-to article (like how to sue in Small Claims Court). Or you can write a book review. You can also write about an unresolved problem or a solution to that problem. If you write about problems or solutions, your claim should be reasonable, or at least plausible. Your proposed solution should be concrete enough to offer guidance.<sup>2</sup>

Your interests should be your first place to find a topic. That'll fuel your drive when your project becomes rocky or tiresome. Balance your interests with your topic's usefulness to the profession. Whether your article is practical or theoretical, it must have value to the profession. Your topic should be a novel way to look at an issue or a novel way to solve a problem.<sup>3</sup> Keep in mind the market for your goods. If it's saturated with papers on the topic, your paper is less likely to be

published. The publication to which you submit your paper will have criteria about publishable topics. For example, the New York State Bar Association *Journal* advises prospective writers to avoid "highly specialized" issues or summaries of court decisions that most lawyers will not find helpful.<sup>4</sup>

Other ways to find topics:

- Think back to law school and recall issues that might still be controversial;
- Read casebooks, comments, treatises, or digests to find conflicting case law or splits in authority, or go to Westlaw or LEXIS and enter as a query your legal topic and "split in circuits";
- Search for recent appellate decisions published online on emerging or controversial areas, perhaps with cases that have dissents or concurrences;
- Attend conferences, symposiums, and continuing-legal-education seminars to hear about hot topics in your field;<sup>5</sup>
- Read the journals in which you want to publish to find an article you disagree with or which doesn't explore a topic fully;
- Visit Web sites that describe an area of law and identify interesting topics;<sup>6</sup>
- Consider writing about an area on which you have recently worked;
- Seek advice from your colleagues about what would make an interesting topic; and
- Find mentors with good ideas — and co-author a piece with them.

### Researching

After selecting a topic, determine whether other papers express your

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ideas. If someone has preempted your topic, find another angle or revise your conclusion. You can make your topic more nuanced by delving into complex issues or limiting your topic.<sup>7</sup>

## Keep in mind the market for your goods.

If your topic is unique, find support for your claim. Your research shouldn't lack depth.<sup>8</sup> It should include sufficient primary and secondary authority.<sup>9</sup> Your research should also not lack breadth.<sup>10</sup> It should include sources other than cases and law-review articles.<sup>11</sup> Find authority adverse to your claim. By addressing adverse authority, you build credibility with your reader.

### Choosing a Structure

Three types of law-review articles are case comments, case notes, and competition papers.<sup>12</sup> A case comment examines one aspect of the law and traces its development or controversy. A case note evaluates one judicial opinion's reasoning and result. It doesn't just summarize a holding. A competition paper is similar to a case note, except that it's shorter, has a short deadline and requires less original research.

The standard structure of a law-review article consists of

- An introduction with a scope note, or a precise roadmap of your paper;
- A background or overview section;
- A discussion of statutes and court decisions;

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- An analysis section;
- A discussion of policy arguments; and
- A conclusion.

This structure delays the writer from getting to the point until page 20.<sup>13</sup> You can get to your point quicker by making your background or overview section brief and by adding some analysis and policy information into the body of your argument.<sup>14</sup> The goal is to avoid unnecessary or lengthy diversions.

Other scholarly writings include substantive-law articles and how-to guides. A substantive-law article focuses on a law's development and enforcement with emphasis on dividing the discussion into elements of the law and issues in controversy. A how-to guide explains the step-by-step actions that someone would follow to do something. Both are typically designed for a practitioner who needs quick answers with citeable research.

The structure of a substantive-law article consists of

- An introduction;
- The law, including its development and passage;
- A discussion of the issues and elements of that law, discussing primary and secondary authority and questions in dispute;
- A discussion of practical consequences; and
- A conclusion.

The structure of a how-to guide (for appeals, for example) consists of

- An introduction;
- A description of what appeals are;
- A discussion on why you'd want to appeal;
- A discussion on which court to appeal to and its jurisdiction;
- A description of the necessary papers, forms, or fees;
- A discussion of the service of papers to opposing sides;
- A discussion on how to write the brief and argue orally; and
- A conclusion.

## Drafting

Create an outline, list, diagram, or chart to keep your notes and research organized so that you can find them easily. After completing your initial research and an outline, start writing. This is usually when the dread sets in: you've done all the preparation but now must fill in the blank space on your page or screen. You might believe that the best approach is to begin at the beginning and write a perfect introduction. But your first draft will go smoothly if it's nothing more than a "brain-dump"<sup>15</sup> or a rough outline of the main ideas and how they link with your research. You can also write "zero drafts" in which you write down everything you know about your topic "without regard for order, grammar, or brilliance."<sup>16</sup> Or you can start with a fact section or a point clear in your mind.

Don't finish all your research before you start drafting — or you'll never start your draft. The goal isn't to know everything by the time you start but rather to know everything by the time you're done. If you get writer's block, force yourself to continue. Make a schedule and stick to it. As one writer put it, "honor, pride and guilt will motivate you into completing your task."<sup>17</sup> Writing is tough. But the end justifies the means. Nothing important is easy.

## Writing

Strive for simplicity, clarity, and brevity so that your readers don't work too hard.<sup>18</sup> This isn't because your readers are lazy but because "[y]our industrious and smart readers are busy people . . . ."<sup>19</sup>

Other suggestions<sup>20</sup> for better writing:

- Use meaningful titles to introduce the article and each section;
- Write a strong introduction to get your reader's attention and to set the tone for the rest of the paper;
- Discuss your topic and sub-topics thoroughly yet briefly;
- Transition smoothly between issues to assure logical flow;

- Address respectfully the opposing arguments that others could make against your thesis;
- Don't personalize your arguments or insult those with whom you disagree; and
- Adopt a tone of measured rationality to convey respect for and credibility to your readers.

Some mechanical suggestions:

- Keep quotations short and pointed;
- Place periods and commas before footnote or endnote numbers and quotation marks; and
- Use one space between sentences in articles you want to publish.

## Citing

Most law journals request that you use footnotes. Others, like the *New York Law Journal* and the *New York State Bar Association Journal*, request that you use endnotes. Most journals use Bluebook citation format or a Bluebook variant. Whichever citation style you use, write text and good citations at the same time.<sup>21</sup> That'll mean fewer revisions later.

Footnotes and endnotes provide authority for assertions and attribute borrowed material. They also get your name and paper into the stream of discussion. By quoting others, you'll get noticed by those you quoted. In turn, they'll quote you. Then you and your paper become immortal.

## Editing

Edit after your first draft. Or edit as you go along. Or both. The point is to edit and re-edit. Depending on your deadline, leave time between edits. Many writers, including the greatest, must edit repeatedly. Each time you edit, focus on a different type of correction, including substance, grammar, and citation.

When editing for substance, focus on the quality of your arguments. Ask yourself whether your arguments lead logically to your conclusion and whether you've made each point clearly and persuasively. Watch for circular reasoning or arguments that beg a



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## Always consider suggestions and be grateful for them. Don't let your ego interfere.

point. Avoid legalese. Define terms of art.

Look for common grammatical and stylistic issues like:

- Passive voice. ("The evidence was admitted by the judge." *Becomes:* "The judge admitted the evidence.")
- Introductory phrases, or metadiscourse, especially those that qualify. ("It appears to be the case that the statute . . . ." *Becomes:* "The statute . . . .").
- Word choice. (Use "learn" instead of "ascertain.")
- Abbreviations in your text. (Use "for example" instead of "e.g.")
- Words that confuse. ("The police officer sectioned off a section of the protestors." *Becomes:* "The police officer sectioned off a group of the protestors.")
- Nominalizations, or nouns formed from verbs. ("She made an objection to . . . ." *Becomes:* "She objected to . . . .").
- Sentence length. (Use short sentences with some variety.)
- Paragraph length, which depends on the journal. (Use shorter paragraphs for legal magazines or newspapers and longer ones for scholarly journals.)

When editing citations, focus on whether you cited every source you used to make your arguments and whether you cited them correctly. You don't want to plagiarize. The profession doesn't care whether you plagiarized something inadvertently or intentionally. Then double check your citations and quotations to make certain they're accurate. Doing a full citation and substance (C&S) work-up will save you and your editor grief later. Another way to save your editor grief: Photocopy all your citations, highlight the relevant passages, organize them by footnote or endnote number, and offer to give them to your editor.

After completing your edits, give your paper to a peer or faculty advisor

to review. A neutral opinion is important in any paper you want published. These edits are suggestions you may implement or discard. But always consider suggestions and be grateful for them. Don't let your ego interfere.

### Publishing

Congratulations. You've completed your paper. Now, where to publish? The best — also the hardest — way to guarantee publication is to secure journal approval in advance. That way you won't write something that might not be published. If this isn't possible, expect to spend at least a month sending out your paper and waiting for an offer. You might also spend about \$400 to make copies and buy stamps for paper submissions, if you submit to about 200 law reviews and journals.<sup>22</sup> The following is a discussion of various publications and how to submit your paper to them.

### Law Reviews and Journals

You can submit your paper to all 450 or so American law reviews and journals, including specialty journals like the University of Houston's *Texas Electronic Ethics Reporter*, Pace University's *Pace Interactive Earth Law Journal*, and UCLA's *Ultra Cool Law Review*. You can also submit your paper to your first 25 or 50 choices. If you don't hear from your first choices within two to three weeks, submit to your next 25 or 50 choices. You can find a list of law reviews and their submission guidelines at <http://www.law.suffolk.edu/library/lawrev/submission.cfm>, or you can find a list of all law reviews and their subject areas on FindLaw at <http://stu.findlaw.com/schools/usaschools/index.html>.

You can also use the electronic submission services from The Berkeley Electronic Press Site for Legal Scholars (ExpressO) at <http://law.bepress.com/expresso/>, which charges \$2.00 for electronic submissions to each law review and \$6.50 for each paper sub-

mission. If your law school has an institutional account, the submission service is free, or your school or law firm might reimburse you for service charges. You can additionally use the free electronic submission services from the Social Science Research Network at <http://www.ssrn.com>.

The easiest way to submit electronically is to use the free submission form available on most journals' Web pages. Fill out your contact information, attach your paper, and click "Submit."

The best times to send your paper to law reviews are mid-March through April and mid-August through September, when student editors begin their tenure. The worst is from October through February. Student editors have made their offers by then and are busy publishing that year's volume.

Each law journal lists its submission guidelines on its Web pages. Some common things journals require are

- A cover letter with a brief abstract of the article and your contact information;
- WordPerfect or Word format;
- Times New Roman, 12 point;
- Page or word limits (the more academic the journal, the longer the article); and
- Copy on 3-1/2" floppy disk.

The law journal that wants to publish your paper will contact you with an offer. The editor will give you a deadline to reply, which may be "one week, 5 days, or 6.2 hours."<sup>23</sup> You can then request expedited review from more desirable journals. Doing so tells the more desirable journal's editors that your paper's worth a closer look.

### New York State Bar Association Journal

To publish in the New York State Bar Association *Journal*, submit your paper in Word by e-mail to the Editor-in-Chief, David Wilkes, at [dwilkes@huffwilkes.com](mailto:dwilkes@huffwilkes.com), or to the Managing Editor, Daniel McMahon, at [dmcMahon@nysba.org](mailto:dmcMahon@nysba.org). The *Journal* requests that each writer send an initial proposal to the Editor-in-Chief. Your initial proposal should include topic

ideas or the article's opening paragraphs. To ensure that your paper hasn't strayed from the initial proposal, the *Journal* further requests a preliminary review of your paper's first eight to ten paragraphs before you finish writing. The *Journal* has a 5,000-word limit, including endnotes. Your article may be longer if you get the Editor-in-Chief's approval. It might be granted if the subject matter requires added length and if the text is well-written and to the point. Above all, read the *Journal's* Submission Guidelines first; they can be found at [http://www.nysba.org/Content/NavigationMenu/Attorney\\_Resources/Bar\\_Journal/Article\\_Submission22/Article\\_Submission.htm](http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Bar_Journal/Article_Submission22/Article_Submission.htm).

Keep the format simple and avoid informality. Endnotes should be kept to an absolute minimum and be reasonable in length; include only those most essential to back up your points.

To submit to the New York State Bar Association's 20 section publications, such as the *New York Real Property Law Journal*, the *Trial Lawyers Section Digest*, and the *Government, Law and Policy Journal*, send your article to the section's editor-in-chief on a 3-1/2" floppy disk along with a hard copy and a brief biography. Although all editors-in-chief are professors or lawyers, some section publications are student-edited. You can find a list of all section publications and their editor-in-chief's name at [http://www.nysba.org/Content/NavigationMenu/Sections\\_Committees/Section\\_Publications/Section\\_Publications.htm](http://www.nysba.org/Content/NavigationMenu/Sections_Committees/Section_Publications/Section_Publications.htm). You can also find the submission guidelines for all section publications in the *NYSBA Author Guidelines* at [http://www.nysba.org/Content/ContentGroups/Section\\_Newsletters\\_Journals/author\\_guide/Author.pdf](http://www.nysba.org/Content/ContentGroups/Section_Newsletters_Journals/author_guide/Author.pdf).

### **New York Law Journal**

To publish in the *New York Law Journal's* Outside Counsel column, submit your paper, along with a brief biography, to Steve Homan, the Legal Editor of Outside Counsel Column, at [shoman@alm.com](mailto:shoman@alm.com). The *Law Journal*

accepts submissions on a first-submitted, first-published basis. If accepted, papers are generally published six to eight weeks after submission. All *NYLJ* papers must be under 2,000 words, including endnotes. Avoid "Id." footnotes; they'll disappear in the printed copy.

Write *NYLJ* columns in a formal tone. Avoid contractions. Cut the imperative tense and "you," "I," or "our." Authors should include the first name, middle initials, and suffixes of justices or judges and address individuals with the appropriate prefix, like "Ms. Smith."

No *NYLJ* column may have appeared in another publication. Authors cannot write about cases in which they or their firms are involved, unless the appellate process is over. Even then that discussion may not exceed 10 percent of the column, and the involvement must be disclosed in the author's biography line.

The *NYLJ* will accept submissions only from law firm partners, of counsel attorneys, judges, attorneys in public service, in-house counsel, solo practitioners, or law professors. It accepts submissions from associates only when the associate co-authors the paper with someone who may submit a paper alone. All submissions must include the author's digital or glossy color headshot, which must be either .tif or .jpg, with at least 300 resolution (dpi), or actual photographs.

The *NYLJ* reserves the right to make copy and stylistic changes without notice. It will consult the author about any substantive changes. Its editor will write headlines and subheadings, although the editor will consider the author's suggestions.

### **Post-Acceptance**

After you accept an offer for publication, your journal's editor will edit your paper for citation format and style according to the journal's rules. Be open-minded about the editors' suggestions. But be skeptical because they won't know your topic as well as you do. Ask to see all changes before the article goes to print, even if the

publication has a tight printing schedule. Most publications — the *New York Law Journal* is an exception — will try to accommodate you.

### **Copyright Protection**

After your paper is accepted for publication, retain copyright and grant the journal only nonexclusive copyrights to the paper. By retaining the copyright, you may reuse or distribute your paper. If you give the publication exclusive copyright, you'll have to request permission to reproduce, use, or distribute any portion of your paper. Some journals will ask for exclusive rights. Most of the time, they'll ask only for nonexclusive rights, if you object.<sup>24</sup>

### **Getting Your Paper Read**

Don't be afraid to promote your paper. The journal will give you a small number of copies to give to colleagues, family, and friends. You may also want to send a copy to former professors who teach in the same field, lawyers who work in the same field, legislators or civic groups interested in your topic, and the authors you've cited. Always write a courteous cover letter telling them who you are, your thesis, and why your paper will interest them.

### **Conclusion**

Know what to expect when you choose to write and publish an academic legal paper. Then embark on your journey with joy! ■

1. N.Y. St. CLE Bd. Regs. & Guidelines 3(D)(8) (written materials for CLEs) and (10) (publications), at <http://www.courts.state.ny.us/attorneys/cle/regulationsandguidelines.pdf> (last visited July 21, 2005). Download the application from the Unified Court System's Web site <http://www.courts.state.ny.us/attorneys/cle/applicationforms/shtml>.

2. Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* 24 (2d ed. 2003).

3. *Id.* at 9.

4. N.Y. St. Bar Ass'n, *Bar Journal Article Submission*, [http://www.nysba.org/Content/NavigationMenu/Attorney\\_Resources/Bar\\_Journal/Article\\_Submission22/Article\\_Submission.htm](http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Bar_Journal/Article_Submission22/Article_Submission.htm) (last visited July 21, 2005).

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5. Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 Utah L. Rev. 917, 933 (1996).
  6. See Legal Information Inst., *Wex*, [http://straylight.law.cornell.edu/wex/index.php/Main\\_page](http://straylight.law.cornell.edu/wex/index.php/Main_page) (containing a search engine for legal information by area).
  7. Volokh, *supra* note 2, at 14.
  8. Pamela Samuelson, *Good Legal Writing: Of Orwell and Window Panes*, 46 U. Pitt. L. Rev. 149, 165–66 (1984).
  9. *Id.*
  10. *Id.* at 166.
  11. *Id.*
  12. Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* 5-13 (2d ed. 2000)
  13. Samuelson, *supra* note 8, at 154.
  14. *Id.* at 152.
  15. **Continued From Page 53**  
Continued From Page 53 everything you know on a scrap paper in the first five minutes of a final exam so that you won't lose information you've acquired just hours before taking the exam.
  16. Fajans & Falk, *supra* note 12, at 65.
  17. Christian C. Day, *In Search of the Read Footnote: Techniques for Writing Legal Scholarship and Having it Published*, 6 J. Legal Writ. Inst. 229, 250 (2000).
  18. Volokh, *supra* note 2, at 73.
  19. *Id.*
  20. These suggestions are explained in Samuelson, *supra* note 8, at 155–61.
  21. Day, *supra* note 17, at 248–49.
  22. Kaimipono Wegner, *How to Publish Your Work in Law Reviews*, [http://www.law.columbia.edu/careers/law\\_teaching/Law\\_Rev\\_Publish](http://www.law.columbia.edu/careers/law_teaching/Law_Rev_Publish) (last visited July 21, 2005).
  23. C. Steven Bradford, *As I Lay Writing: How to Write Law Review Articles for Fun and Profit*, 44 J. Legal Educ. 13, 30 (1994).
  24. Volokh, *supra* note 2, at 164–66.