

Legal Research & Writing for Scholarly Publication

by Vicenç Feliú, JD, LL.M., MLIS, & Helen Frazer, JD, LL.M., MLS

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I. Finding a Topic

A. How do you find a topic?

Topics may arise from your current studies or interests, from colleagues' suggestions, or from legal news publications. You can also find topics by looking at splits in opinions among appellate courts, topics flagged by legal professionals in law blogs, calls for papers and law review symposia, etc. Resources for finding topics are listed *infra*.

B. Secondary sources for finding a topic and writing a law review article.

1. Articles

Read articles online in pdf format (identical to printed law review pages) in HeinOnline.

Richard Delgado, *How to Write a Law Review Article*, 20 U. San Francisco L. Rev. 445 (1986), available on HeinOnline (password).

Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 Utah L. Rev. 917 (1996)

Eugene Volokh, *Writing a Student Article*, 48 J. Legal Educ. 247 (1998)

2. Books

Jessica L. Clark & Kristen E. Murray, *Scholarly Writing: Ideas, Examples and Execution* (2010), KF250. C528

Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* (2011), Reserve KF250. F35

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (2010), Reserve KF250. V65

3. Law-related databases and websites

BNA databases on the Law Library electronic databases web page (password) include publications on a large number of legal topics which provide news and analysis of cases, statutes, regulations, etc. *U.S. Law Week's Circuit Splits* posts current split in decisions among the U.S. Circuit Courts of Appeal.

[LexisNexis](https://law.lexisnexis.com/practiceareas/Emerging-Issues-Podcast-Special/Emerging-Issues/) Emerging Issues Law Center, <https://law.lexisnexis.com/practiceareas/Emerging-Issues-Podcast-Special/Emerging-Issues/>; & Legal Communities, www.lexisnexis.com/community/portal/

American Constitution Society for Law and Public Policy blog, <http://www.acslaw.org/acsblog>

Seton Hall Circuit Review, <http://law.shu.edu/Students/academics/journals/circuit-review/>. Available in HeinOnline on the Law Library electronic databases web page (password)

Westlaw directory, for news, "current awareness and political news, and legal news.

Blogs that feature recent developments in the law:

ABA Journal Blawg Directory, <http://www.abajournal.com/blawgs/>

The Adjunct Law Prof Blog,

http://lawprofessors.typepad.com/adjunctprofs/law_review_ideas/

Alltop, <http://law.alltop.com/>, headlines from law blogs

American Constitution Society for Law and Public Policy blog,

<http://www.acslaw.org/acsblog>

How Appealing Blog (appellate litigation), <http://howappealing.law.com/>

Justia's Blawgsearch, <http://blawgsearch.justia.com/blogs>, by topic

Legal Scholarship Blog, <http://legalscholarshipblog.com/>, symposia, calls for papers

Split Circuits, <http://splitcircuits.blogspot.com/>

Volokh Conspiracy, <http://volokh.com/>

Zief Brief, http://ziefbrief.typepad.com/ziefbrief/studying_law/

II. Research: The Pre-emption Check, Literature Review, and More

A. Has the topic been pre-empted?

The pre-emption check is the first step in reviewing the legal literature before writing your paper. If someone has published a thorough coverage of your topic and you have nothing new (*e.g.*, an insight, a new idea, a new way of looking at an aspect of law) or significant enough to warrant another publication, you are likely pre-empted. Legal publications on point probably pre-empt you, but articles in other fields may not. If they do not discuss legal ramifications of the topic, these articles may become a starting point for your paper.¹

B. How to do a pre-emption check.

1. Use a research log.

¹Richard Delgado, *How to Write a Law Review Article*, 20 U. SAN FRANCISCO L. REV. 445, 448 (1986), available on HeinOnline (password).

If you are not pre-empted, this log will be support the review of the literature for writing your paper.

2. **Write a preliminary abstract** or thesis statement to clarify your topic in your own mind.

The abstract clarifies how and what to look for, and you will need to write an abstract anyway, for your cover letter and other purposes.

3. **List search terms and phrases.**

4. **Search broadly for pre-emption.**

5. **Write your citations in *Bluebook* form.** Include the date you found it, your comments as to how or why the topic is pre-empted or not, and, if not, how the resource will be useful for your paper.

C. Sources to search for pre-emption (and for writing the paper)

Legal encyclopedias

American Law Reports (A.L.R.)

Treatises, hornbooks, and practice manuals

Law review articles – use the periodicals indexes (*e.g.*, LegalTrac online, *Current Law Index*, Wilson Index online, *Index to Periodicals and Books*)

Casebooks. Check the Notes sections.

Working papers and articles in related academic fields

Blogs and topical websites

Cases and statutes in the relevant jurisdictions

Restatements and model codes, if any

Government websites and publications

The Deep Web (*e.g.*, issue briefs, position papers, articles in pdf format, etc.)

D. Where to Search.

Books: Mason Law Library Catalog, www.catalog.law.udc.edu

WorldCat (librariesworldwide); click WorldCat icon, www.catalog.law.udc.edu

UDC ALADIN Catalog's Journals & Electronic Books,
<http://lrdudc.wrlc.org/>

Lexis, several databases, secondary sources

Westlaw database Texts & Periodicals-ALL (TP-ALL)

Periodicals: *Current Law Index* (LegalTrac, library electronic database)

Index to Legal Periodicals and Books (Wilson index, library database)

HeinOnline (library database that provides pdf copies)

SSRN, <http://ssrn.com>

UDC Learning Resources Division, ALADIN Catalog and Journals & Electronic Books database, *e.g.*, JSTOR, <http://lrdudc.wrlc.org/>

Lexis database, US Law Reviews and Journals

Westlaw texts and periodicals database, TP-ALL

The Deep Web: Online resources that drill deep into the world wide web.

SSRN, Social Science Research Network, especially the Legal Scholarship Network, <http://ssrn.com/>

Academic and Scholar Search Engines and Sources,
<http://whitepapers.VirtualPrivateLibrary.net/Scholar.pdf>

Research guides - *e.g.*, LLRX, <http://www.llrx.com/> and law school library guides. Go to the law library websites and look for research guides.

Marcus P. Zillman, *Deep Web Research 2011*, <http://www.llrx.com/node/2284/>

99 Resources to Research & Mine the Invisible Web, 2008, <http://www.collegedegree.com/Library/college-life/99-resources-to/>

E. Research resources - what next?

1. **Analyze your research log** for the useful and necessary resources for your paper.
2. **Collect the resources.**
 - a. Check out the books you from your library, and
 - b. Place interlibrary loan requests with the library for others.
 - c. Print documents from the databases and on the web.
 - d. Consult with a law librarian regarding difficult to find materials.
 - e. Go to specialized libraries for some documents, *e.g.*, Library of Congress.
3. **Organize your research resources.** Filing them in a box or file drawer works well.

The law review may want you to send copies of some of the resources when they verify your citations and statements in the text of your article as part of their edit.

III. General Advice for Writing for Publication in Law Reviews

A. Get an overview of your topic before you start writing.

1. For an overview, read the encyclopedia, treatise and other documents.
2. You may incorporate this overview into the "background" section of your paper.

B. Find a topic you really are interested in. This interest will help you finish the work.

C. Article type or genre: Choose the kind of article you want to write.²

- a. Case analysis in one area that needs interpretation or modification.

² Delgado, *supra* note 1, at 446-48.

- a. Legislative analysis.
- b. Law reform - advocating change in some rule of law or approach to law.
- c. Essay
- d. Interdisciplinary article.
- e. Theory article, either analysis of existing theories, and/or presentation of a new theory to solve problems or explain law in some area.
- f. Some aspect of the legal profession - language, education, professionalism, pedagogy, etc.
- h. Legal history

D. Use a typical law review article format, such as the following:

- 1. Introduction that explains what you plan to do in the article
- 2. Background information about the topic and presentation of the issue or thesis of your paper. Often includes a literature review.
- 3. Objective analysis of the problem or topic.
- 4. Presentation of a solution, comparison, etc., and a conclusion reiterating the problem, analysis and solution.
- 5. Very brief, summary conclusion - one or two paragraphs.

E. Write plainly and clearly. See, e.g., Richard Wydick, *Plain English for Lawyers* (1998), KF250.W9.

F. Follow style and format conventions.

- 1. 8.5 x 11 inch white paper.
- 2. One inch margins.
- 3. Double spaced.
- 4. Footnotes (no endnotes).
- 5. Use headings and subheadings; number your headings.
- 6. Correct all errors of spelling and grammar.

G. Follow citation conventions. Use *The Bluebook* white pages.

- 1. Footnote all statements of law and most statements of fact.
- 2. Credit all your sources for ideas, analyses, theories, facts, *et al.* in the footnotes.
- 3. Bluebook your text and citations.

H. Draft and redraft your article.

I. Edit carefully. Use style manual as a guide. Several are available in the Mason Law Library.

IV. Advice for new scholars

Legal Scholarship Blog, <http://legalscholarshipblog.com>
Teaching, <http://legalscholarshipblog.com/law-teaching/resources/>

Columbia Law School Careers in Law Teaching,
http://www.law.columbia.edu/careers/law_teaching/Agenda

Mary Kay Kane, *Some Thoughts on Scholarship for Beginning Teachers*, 37 J. Legal Educ. 14 (1987)

Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 Widener L.J. 947 (2007)

Donald J. Weidner, *A Dean's Letter to New Law Faculty About Scholarship*, 44 J. Legal Educ. 440 (1994)

V. Share the article for prepublication comment

Submit the article to calls for papers.

Make presentations to anyone who will listen.

Ask friends and mentors to read it.

SSRN (online community), <http://ssrn.com/>

Digital Commons (online community), Berkeley Electronic Press, <http://www.bepress.com/ir/>

Et al.

Note: Credit these folks in a footnote on the first page of your article.

VI. Write an abstract for the article

Mary A. Dudziak, *How (Not to) Write and Abstract* (<http://legalhistoryblog.blogspot.com/2007/10/how-not-to-write-abstract.html>)

Eugene Volokh, *Writing an Abstract for a Law Review Article*, <http://volokh.com/2010/02/08/writing-an-abstract-for-a-law-review-article/>

VII. Submitting the article to law reviews for publication

A. The ins and outs of the process.

Leah M. Christensen, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with all the Power – Student Editors*, 59 South Carolina Law Review 175 (2007)

Jessica L. Clark & Kristen E. Murray, *Finishing: Publishing Your Paper*, in *Scholarly Writing: Ideas, Examples and Execution* 131 (2010), KF250. C528

Elizabeth Fajans & Mary R. Falk, *Getting Mileage: Winning Awards and Publishing Your Work*, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* 172 (2005), Reserve KF250. F35

Jason P. Nance & Dylan J. Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 Albany Law Review 565 (2008)

Eugene Volokh, *Publishing and Publicizing*, in *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* 260 (2010), Reserve KF250. V65

B. Submitting the paper for publication.

1. Look for symposia and calls for papers:

The Legal Scholarship Blog, <http://legalscholarshipblog.com>

Law School Symposia, <http://chaselaw.nku.edu/faculty/symposia.php>

BePress, *Law Review Symposia*, http://works.bepress.com/lawreview_symposia/subject_areas.html

2. Choose where to submit your paper.

Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 Fla. St. U.L. Rev. 813 (1999).

Gregory Scott Crespi, *Ranking Specialized Law Reviews: A Methodological Critique*, 26 Fla. St. U. L. Rev. 837 (1999)

Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews: An Empirical Analysis Based on Author Prominence*, 39 Ariz. L. Rev. 15 (1997)

Russell Korobkin, *Ranking Journals: Some Thoughts on Theory and Methodology*, 26 Fla. St. U. L. Rev. 851 (1999)

Most Cited Journals and Journal Articles on HeinOnline, <http://home.heinonline.org/blog/2009/05/most-cited-journals-and-journal-articles-in-heinonline-updated/>

Most-Cited Legal Periodicals: U.S. and Selected Non-U.S., <http://lawlib.wlu.edu/LJ/index.aspx>

3. Times of year to submit articles - Spring, March to April, Summer-Fall, September to October

The spring time period is when the new board of editors begins to take over and make their own Article selections. The late summer time period is when most authors finish their articles and submit them.

4. Write a cover letter.

Jessica L. Clark & Kristen E. Murray, *Scholarly Writing: Ideas, Examples and Execution* 147 (2010), KF250. C528

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* 262, 368 (2010), Reserve KF250. V65

5. Submit your article electronically or by mail.

The electronic submission services do not include all law review journals. You must apply separately to some journals, *e.g.*, *The Journal of Legal Education*, and you may submit your papers to other law reviews that accept submissions from individuals as well as submission services. You can submit the articles by mail and electronically.

Jessica L. Clark & Kristen E. Murray, *Finishing: Publishing Your Paper*, in *Scholarly Writing: Ideas, Examples and Execution* 150 (2010), KF250. C528 (discussing the pros and cons of the various types of Submission and submission services).

Allen K. Rostron & Nancy Levit, *Information for Submitting Articles to Law Reviews & Journals* (March 1, 2010), <http://ssrn.com/abstract=1019029>

ExpressO, <http://law.bepress.com/expresso>

Law Review Electronic Submissions, <http://chaselaw.nku.edu/faculty/ejournals.php>

Lexis, *On-line Directory of Law Reviews and Scholarly Legal Periodicals* has contact information, www.lexisnexis.com/lawschool/prodev/lawreview/default.asp

SSRN, <http://ssrn.com>

C. Evaluating publication offers and working with law review editors

When you have an offer of publication you can try to negotiate the terms of the contract, see *Model Publication Agreement*, www.aals.org/deansmemos/98-24.html. You may also ask other law reviews to give your paper an expedited review because you have a short time period to tell the review whether you will accept the offer.

SPARC *Resources for Authors*, <http://www.arl.org/sparc/author/>

Jessica L. Clark & Kristen E. Murray, *Scholarly Writing: Ideas, Examples and Execution* 155 (2010), KF250. C528

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* 279 (2010), Reserve KF250. V65