



CREATING A GOOD SCHOLARLY PAPER*

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Scholarly papers differ from other kinds of legal writing in purpose, audience, scope, stance, and use of technical materials. As you prepare your scholarly paper, you might want to consider the following points.

I. Purpose

A scholarly paper can serve several purposes; you want to decide on the overriding purpose of your paper. For example, a scholarly paper's purpose might be to synthesize existing law in a manner useful to specialists in a field or to criticize a recent opinion and compare it to others. Regardless of the purpose, the author's thinking should be original, creative, innovative, and useful. Keep in mind the constant question, "So what?" as you develop the purpose of your paper. Write the purpose down to refresh your memory as you research, write, revise, and work through footnotes. The following list of suggestions may help you focus your paper's purpose:

1. To synthesize a body of law not yet pulled together.
2. To criticize or support a recent opinion.
3. To expand a field of knowledge by offering a new direction for a specific area of law.
4. To dismiss another article by criticizing a theory or argument made by another scholar.
5. To foreshadow or predict developments in the law.
6. To suggest changes in the *status quo* of the law.
7. To make sense out of a confusing array of issues.
8. To propose a plan of action on a legal issue.
9. To secure tenure or clients.
10. To provide a reference point on this area of the law.

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II. Audience

As scholars, we write for a multiple audience. We need to keep that diverse audience in mind as we create the purpose and synthesize the substance of the paper. Try to imagine each potential reader perusing the paper and create a paper that will satisfy even the most confused or critical reader's needs. Most legal readers read in bad faith by criticizing, doubting, and destroying arguments and theories. They expect creativity and demand excellence. The following readers may be targets of your paper:

1. Scholars and experts who know this topic very well.
2. Practitioners looking for innovative arguments.
3. Judges who need to be brought up-to-date on this topic.
4. Non-lawyers who want to understand this topic better.
5. Editors who want excellence in their publication.
6. Future scholars looking for examples.
7. Faculty committees evaluating for tenure.
8. Employers looking for original analysis and good writing.

III. Scope

Consider the scope of your paper from the outset. Narrow the topic sufficiently so that legal readers will comprehend and appreciate its presentation. Then consider page length, and tie that to the paper's purpose. Can you achieve your stated purpose in this amount of space? If not, do you need to change the purpose? Always keep the reader in mind. Try setting the page limit before you research and write to keep the purpose and thesis statement focused.

IV. Stance

Your stance, or your point of view, communicates your message to your client via voice and tone. To choose your stance, consider your audience and purpose. Decide which stance will accomplish your purpose and reach your reader. Then be sure your stance is consistent throughout your document. Possible stances to consider include: aggressive, cautious, firm, apologetic, kind, cal, conciliatory, candid, determined, indignant, helpful, and patient, among others.

V. Use of Technical Materials

Familiarize yourself with the Bluebook's seventeenth edition. Record full citations for each source as you research to avoid returning to the source for that reason. Think also about the role of footnotes in scholarly writing. Try to avoid using footnotes to write another, independent paper or to argue with yourself. Above all, do not allow the “tail to wag the dog” by making footnotes longer than the text. Instead, consider using them for the following purposes:

1. To give authority for all unoriginal propositions.
2. To expand on authority by offering several other sources.
3. To add detail for the uninitiated reader.
4. To give definitions of terms that might be unusual to some readers.
5. To give the text of a statute being discussed.

VI. Process

Because the purpose of a scholarly paper differs from that of a brief or memo, the process may change. For example, you may not have a topic given to you, as you do with a memo or brief. You may therefore need to do preliminary research in secondary sources that focus on scholarly work, such as the ILP, Infotrac, Dialog, or Nexis. Once you get a feel for a topic, write a sufficiently narrow thesis statement. Your research must then be exhaustive. Begin with a preemption check, and follow that with research in Gulliver for books on the topic, through looseleaves for additional materials on a technical topic, and so on. Your process might follow these steps:

1. Check the Subject Index in a secondary finding source such as the ILP, Infotrac, Dialog, or Nexis. Get a feel for the topic, and jot notes on areas that catch your interest.
2. Choose a narrow topic that fulfills a specific purpose and is timely, useful, and interesting. State it in sentence form by writing a thesis statement.
3. Conduct a preemption check on that specific topic.
4. If the topic has not been preempted, decide on purpose, scope, and deadlines. You might put the following dates on your calendar:
 1. research completed
 2. notes completed
 3. outline drafted
 4. first draft finished, with footnotes
 5. draft to editor
 6. further research completed
 7. penultimate draft completed
 8. footnotes checked
 9. final draft completed
5. Continue your research by conducting an exhaustive search for materials relating to that topic. Original, exhaustive research on a creative and original angle of a topic will

distinguish your paper.

6. Take scrupulously accurate notes, preferably by hand, as you read. Note in particular terms of art, phrases that help develop your proof or criticism, and arguments that need refutation. Keep developing your thesis as you read.
7. Sketch an outline as you take notes. The outline should reflect an accurate picture of your topic and drive your thesis statement. Be sure the outline is logical and wedded to your paper's purpose. You might want to review the outline with your editor or professor.
8. Draft well in advance of the first draft deadline. You might start with the Introduction or Conclusion. Make sure your reader knows the thesis statement, the purpose, and the direction of the paper at the outset. Answer the question, "Why should I read this?"
9. Draft in pieces and concentrate fully on each piece. For example, if you have a historical background section, you might want to draft that in one sitting. Or if you are developing your argument, you might want to draft that without stopping and then insert footnotes, all in one sitting.
10. Complete footnotes with the draft. Adding them as an afterthought may take too much time and keep them too divorced from the paper.
11. Enjoy comments and criticisms on the paper: demand more! Use the criticism you receive to tailor the paper for the greatest audience. Work in criticisms section by section.
12. Plan for several redrafts. Work backwards from the deadline, and redraft as many times as you can to be sure you have explored the topic from every angle.
13. Do a separate read-through just for technical details. Refresh yourself on accurate Bluebook usage, and work backwards through your paper, making sure every citation is accurate and correct.

Enjoy the process, the pace, and the challenge!

For further reference, see the following:

- Mary B. Ray & Jill J. Ramsfield, Legal Writing: Getting It Right and Getting It Written (3d ed. 2000)

- E. Fajans & M. Falk, Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers (2d. ed. 2000)
- Jill J. Ramsfield, The Law as Architecture: Building Legal Documents (2000)