



UNIVERSITY of ST. THOMAS

**School of Law
Schoenecker Law Library**

**Choosing a Research Paper Topic & Considerations for Publication:
Preemption Checking & Citation (Plagiarism) Mistakes to Avoid**

**A Training Session for UST Law Students
April 17, 2009**

I. Topic Selection

A. Identifying a Problem/Choosing a Claim/Creating a Thesis

- Think back to cases you have read for class that left an important question unresolved or that the reasoning is unpersuasive.
- Try to recall a class discussion that intrigued you but did not yield a well-settled answer.
- Read the comments, notes, and questions sections in your casebooks from class (or look at ones available in the library).
- Read recent Supreme Court decisions in fields that interest you, and see whether they leave open major issues or create new ambiguities or uncertainties.
- Check topical highlight databases (see below) for summaries of recent noteworthy cases.
- Read legal blogs that specialize in the field you are interested in writing about – bloggers often post about interesting new cases that pose unresolved problems.
- Cultivate ideas through research – READ articles pertinent to your subject.

B. Topicality/Originality

- Take challenging position on controversial issues.
- Apply intelligent analysis to existing cases and commentary.
- Strive to achieve original conclusion.
- Select a topic that is the result of recent technology or shift in public policy.
- Is it a “hot” topic? – need to move fast.

What to Avoid:

- Writing an article that shows there is a problem but does not give any suggested solution(s).
- If you got your topic from a particular case, don't focus on the case, focus on the problem.
- Single-state articles. Instead, frame your article as a general piece that discusses all the laws in this family/issue.
- Articles that just explain what the law is.
- Responses to other people's works. This will limit your readership. If your piece is stimulated by disagreement with another work, come up with your own claims and prove it. Cite the other work, but don't let it be the main claim.

C. Examples of Topic Types that "Work"

1. Resolving a Jurisdictional Conflict

- Paper that identifies an unresolved area of law, evaluates conflicting lines of authority, and identifies and argues for the better rule.
- Jurisdictional conflicts arise:
 - in the U.S. Courts of Appeal,
 - between state courts of intermediate appeal,
 - between state and federal courts, and
 - between the U.S. Supreme Court and statutory laws of individual states.
- Topics in comparative law – especially good with secondary law reviews (i.e. *Minnesota Journal of International Law*).
- Requires timeliness – paper must be published before the central issue is resolved – check to see if an appeal has been filed or whether the issue is included in pending legislation.
- Topic/Key # searching on Westlaw
 - For jurisdictional splits:
Topic #106 (Courts) – key numbers 90-98

- Helpful Search Queries – finding jurisdictional splits
 - Court Circuit /5 split & da(aft 1/2007)
 - Search on the introductory signal “Compare” in law review database
 - ALLFEDS – sy,di(split conflict /s circuit authority) & da(aft 2007)
 - SCT-PETITION: “employment discrimination” & split /s circuit authority
 - For state law – MN-CS: co(low) & “first impression”
 - Add terms to narrow it down to an area of law (i.e. A.D.A.) or use a topical database

- Petitions for Certiorari
 - Petitions that are denied may be better source
 - U.S. Law Week – search circuit /5 split
 - Can also set up alerts on Westlaw & LexisNexis
 - Topic 170B (Federal Courts) & Key #452 (Certiorari) & HE(conflict)

2. New Facts, Old Laws: Old Facts, New Laws

- Apply an existing law to a new factual backdrop (i.e. technology issues).
- Apply a new law to existing facts for new results.
- TIMELINESS is essential here – race to publish.

- Helpful Search Strategies – new facts/new laws issues
 - Search for phrase “first impression” and limit to current year in case database
 - Federal district courts
 - Administrative agency opinions
 - Issue question matter /s “first impression” novel & da(aft 3/2008)
 - interesting or intriguing or open /s issue or question or topic /p “beyond the scope” or “another day”
 - “beyond the scope” /s note article comment /s court circuit & da(aft 2/2008)

- Take an issue of first impression in one district and apply to it the law of a circuit that has not yet considered the issue.
- Check whether the case presenting the issue has been appealed – briefs may be available.

D. Sources for Researching Topic Selection

- Legal & Nonlegal Newspapers
 - *United States Law Week*
 - Available in print format and online through the [BNA Online Journals](#)
 - Three parts: Case Alert, Legal News, and Supreme Court Today
 - *ABA Journal*
 - Available in print format and online through several databases (search title in [CLICnet](#))
 - *National Law Journal*
 - Online access through several databases (search title in [CLICnet](#))
 - Westlaw & LexisNexis News (and Legal News) databases
 - [Minnesota Legal Periodical Index](#)
- Industry & Trade Newspapers
 - Many included in the BNA databases (see below).
 - Westlaw - Business & Trade News by Industry database
- [BNA's Law School Professional Center](#)
 - Includes many titles which are authoritative sources of hot topics and emerging trends in law.
 - *Current Report Services* – topic areas
 - Scan the highlights.
 - Use the index to look for headings that are of interest to you.
 - Run searches in the BNA publications covering your areas of interest.

- Mealey’s Litigation Reports
 - Available on LexisNexis – Legal>Secondary Legal>Mealey’s Reports
- Andrew’s Litigation Reports
 - Available on Westlaw
- Supreme Court Review
 - Available on LexisNexis
 - Available through multiple databases – search title on [CLICnet](#)
- Law Review Databases – Westlaw, LexisNexis, HeinOnline
 - *Seton Hall Circuit Review* – “Current Circuit Splits” column
- Blogs
 - Justia’s Blawgsearch <http://blawgsearch.justia.com>
 - Split Circuits – blog
 - <http://splitcircuits.blogspot.com>
 - Law Professors Blogs – <http://www.lawprofessorblogs.com>
- American Constitution Society – ACS ResearchLink
 - <http://researchlink.acslaw.org>
- Hot Topics Databases
 - Westlaw Topical Highlights databases
 - Westlaw Bulletin databases
- Foreign & Comparative Law
 - [Index to Foreign Legal Periodicals](#)

II. Preemption Checking

A thorough preemption check assures the originality of your article (and helps you along in your research process). Do this as soon as you have identified a topic – don’t wait until you’ve written your article!

- Check UST Law Journal policies/procedures!

- Start with bibliographic databases that index all law review/law journal articles.
 - [Index to Legal Periodicals](#)
 - [LegalTrac](#) – (back to 1980)
 - Current Index to Legal Periodicals (Westlaw) – use TOPIC field
- Subject indices are important since law journal articles may not be descriptive enough – puns and clever titles abound!
- Anticipate the key words or terms of art central to the topic.
- Use the thesaurus.
- Full Text Searching
 - Westlaw
 - To determine what has already been written on a particular topic, run a Natural Language search such as the following in one of the practice-area databases such as Criminal Justice – Law Reviews, Texts, and Bar Journals: **death penalty for juveniles**
 - LexisNexis
 - [HeinOnline](#)
- Articles not yet printed – faculty articles only
 - [SSRN](#)
 - Westlaw – Law Review Abstracts Clearinghouse (LRAC)
- Set up Westlaw and/or LexisNexis alerts
 - Example – watch for law review articles about the death penalty as applied to juveniles by creating an alert such as **death /5 penalty /p juvenile minor** in a journals/law reviews database

Submitting to Law Reviews:

- See a reference librarian – we have contact information for the law reviews that accept student submissions.
- <http://www.law.ucla.edu/volokh/writing/submitting/>
 - Gives information on submitting your article using ExpressO (Berkeley) and law review contact information.

- <http://law.bepress.com/expresso/>
 - Fee-based service for submitting articles, but can use a free trial to submit one article.
- <http://chaselaw.nku.edu/faculty/ejournals.php>
 - Links to law reviews that allow electronic submissions. Allows submission of your article to several law reviews electronically (in one mass email).
- <http://www.lexisnexis.com/lawschool/prodev/lawreview/>
 - LexisNexis Directory of Law Reviews
- <http://lawlib.wlu.edu/LJ/index.aspx>
 - Washington & Lee University School of Law – Law Journals Submission and Rankings

III. Citation (Plagiarism) Mistakes to Avoid

Plagiarism occurs when students claim or submit as their own original work, the research, ideas, or writings of another without acknowledging and clearly identifying the source, all without regard to the quantity of material used. Examples of plagiarism include copying, summarizing, or paraphrasing another's work without proper attribution. It is not a defense to plagiarism that there was no intent to deceive, to misrepresent, or to gain any unfair advantage.

University of St. Thomas School of Law Academic Policy, Section III-D-1: Academic Misconduct available at <http://www.stthomas.edu/law/academics/PolicyCatalog/III-D-1.html>

See Rule 5.1 in Bluebook – block quotations (50 or more words).

- Giving proper citations to sources and authorities is the most important aspect of avoiding plagiarism in legal writing.
- Take careful notes – keep track of sources!

Suggestions for attribution of sources (as set out by Professors Fajans & Falk)

1. Provide a footnote for borrowed language, facts or ideas whether quoted or paraphrased in your text.
2. When you borrow seven consecutive words or more, use quotation marks (or block quote for more than 50 words).
3. Where wording is distinctive, it is appropriate to use quotation marks for fewer than seven words.
4. In addition to providing an attribution footnote for paraphrases, introduce the borrowed material with some reference to its source.
5. If you find a source through other sources, good research practice requires you to look up the cited source. You should also footnote the citing source as well as the cited source if the citer's use of the cited source is original.
6. Attribution footnotes should always be included in your very first draft. If you wait until the revision stage, paraphrased material may escape attribution altogether, causing inadvertent (but inexcusable) plagiarism.¹

Rules from the Legal Writing Institute:

1. Acknowledge direct use of someone else's words.
2. Acknowledge any paraphrase of someone else's words.
3. Acknowledge direct use of someone else's idea.
4. Acknowledge a source when your own analysis or conclusion builds on that source.
5. Acknowledge a source when your idea about a legal opinion came from a source other than the opinion itself.²

¹ Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students*, Seminar Papers, Law Review Notes and Law Review Competition Papers 90-95 (1995).

² Legal Writing Institute, *Law School Plagiarism v. Proper Attribution*, at p. 4 (2003), available at <http://lwionline.org/publications/plagiarism/policy.pdf>.

Additional Resources/Bibliography:

Elizabeth Fajans, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers*, Thomson/West (2005)
KF250 .F35 2005

Wes Henricksen, *Making Law Review: The Expert's Guide to Mastering the Write-On Competition*, Durham, N.C. : Carolina Academic Press (2008)
KF250 .H46 2008

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

Ruthann Robson, *Law Students as Legal Scholars: An Essay/Review of Scholarly Writing for Law Students and Academic Legal Writing*, 7 New York City L. Rev. 195 (2004)

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

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, and Seminar Papers*, New York, N.Y.: Foundation Press (2003)
KF250 .V65 2003

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Reference Desk Hours:

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Saturday from 10:00 a.m. – 5:00 p.m.

651-962-4902

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