

**INPUT FOR STUDENTS SELECTING
JOURNAL PAPER TOPICS
AND
PLANNING TO DISCUSS JOURNAL TOPICS WITH ME**

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IMPORTANT NOTES:

(i) Revisions to this document may be published from time to time. This current version is ver. 5.1.2005.

(ii) This document is available at:

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I. INTRODUCTION

This document provides information to help students selecting paper topics in two ways. First, there is some general input on the experience. Second, for UHLC students planning to discuss paper topic selection with me, this document describes the process for that.

II. MY INPUT ON TOPIC SELECTION

There are numerous resources about writing legal scholarship and journal articles. My intent is to supplement those resources, which I discuss or mention in Parts II and III. As such, this Part discusses what I most typically say to students when they visit me to discuss topic selection.

A. *Start Early*

My first goal is to have every student begin the topic research process the day that they learn about their journal membership.

The first few weeks of a 2L journal member's fall semester are phenomenally busy. Delay in topic selection does more than make the busyness worse: it produces an inherently poor process to research, contemplate, evaluate and tentatively select a topic.

Even if you are working at a firm between your 1L and 2L years, you have more available time then to research topics than you will when the 2L fall semester starts.

B. *Please . . . Start Early!*

The next most important item after the input in section II.A is to *start early*. Please, start early!

C. *Get the Volokh Book and Use its Recipe for Topic Selection*

My second goal is to have every student purchase the Volokh book¹ the week that they learn about their journal membership. Moreover, please read it the following week. Thus, two weeks after you know you are on a journal, I recommend that you own the book and that you have read it for the first time, paying particular attention to its pages on the topic selection process.

D. *Buy and Read the Volokh Book (I receive no commission if you do so)*

I swear, I have no financial interest in "Volokh Enterprises."

But I am certain the book is worth the investment to you. Every student to whom I have recommended the book finds it very helpful. The feedback below is typical.

"[Y]our recommendation of the Eugene Volokh book proved to be invaluable.
. . . I found myself referring to it several times throughout the writing process to

¹ Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (Foundation Press, 2nd Ed., 2005). See www.volokh.com/writing. This book is a paperback, about 200 pages. Used prices on Amazon.com were in the twenty dollar range at the time of this writing.

help organize my paper. . . . I believe the Volokh book was a great investment!”²

E. Find a Legal Issue in Something You Already Know About

Journal articles typically run from 40 to 70 journal-format pages, roughly 20,000 to 35,000 words, including footnote words. There are often significant background sections to explain some niche area of commerce, society, humanity, or the almost anything else on earth, from which the legal issue springs.

You are in a much better situation if the real-world context framing your article’s issue is from an area about which you have expertise or even mere familiarity. It is surprising how many potential article issues you might find if you dig into an area you know about.

Here is an example. A student came to me who wanted to practice IP, and thus wanted to write about IP for his paper topic. This happens a lot since I teach mostly IP classes. The difficulty in writing about IP is that most of the in-depth IP courses will occur after your journal paper first draft is mostly finished. During conversation with this student I suggested that he tell me his background. He had work experience in chemical plants, with some mundane yet comprehensive responsibilities in plant security. He was a practiced professional in chemical plant security. I encouraged him to explore that area for legal issues, and he found a good vein. In almost all aspects of our non-private lives, there is some system of regulation somewhere impacting our actions. This was true in chemical plant security and the legal issues, in light of the student’s existing knowledge, made a good combination.

Here is what the student had to say in retrospect:

“Chemical Plant Security was and still is a very timely topic. It took me some time to get my arms around the topic, but I have to agree that it was a much better choice than trying to write on an IP topic.”³

If you can find a topic rooted in an area you know, here are the advantages:

Less stress. Of those 20,000 to 35,000 words you have to write, you will know something about approximately 20% to 40% of them before you ever start researching. This helps your confidence both researching and narrowing the topic, and when writing.

More productive narrowing. As the Volokh book discusses (did I mention that you should buy and read the Volokh book?), topic selection is a process of narrowing. You can narrow more effectively when you know the greater context that surrounds the potential legal issue.

Better chances for a publishable paper. A good goal is to have your paper published by your journal. I think the benefits above improve your chances because your writing starts from a place of strength. During one’s fall 2L semester, it is hard to be a complete neophyte in a subject and dig deep and hard enough to both absorb the topic and write a good paper.

² Houston Law Review member, feedback in an email I received in April 2005.

³ Houston Journal of International Law member, feedback in an email I received in April 2005.

F. *I Favor Articles/Comments over Case Notes*

Case notes seem, at first, like a way to make topic selection easier. Just find a case, right? I remain unconvinced, however, that they put you in the best situation to maximize learning from the article writing process. And I don't think the pain and agony of topic selection is that much reduced for a case note. My recommendation for students who have a choice is to go for an article, but this is a subjective view.

The difficult and frustrating part about selecting an article topic is researching and narrowing, then doing it some more, after backing out of blind alleys and repeatedly doubling back. These undulations, once conquered, however, provide much of the satisfaction from the article.

G. *Make it Your Goal to Publish the Article*

If you tell yourself from the start that you will try to publish your paper, I think this helps focus your energy and instincts during the topic selection process. Publication means more work after the article has met the journal's requirements, but it is well worth the extra work for the resume credential of a published paper.

H. *Don't Worry About Falling Short of the Paper Length Requirement*

Sometimes students perceive that they need a broad topic in order to be able to write enough to meet the length requirement. This is almost never true. The topic statement should give both the context and the legal issue, and narrow both substantially.

I will use my student article⁴ as an example. The title embeds the context and the issue:

Is a Personality Test a Pre-Job-Offer Medical Examination under the ADA?

Here is how I narrowed this topic contextually and legally.

I knew I wanted to write about pre-employment job candidate testing. I hired people at my job before law school and I wanted to learn more about the legal issues in testing before hiring. Originally, I wanted to look at all medical testing, but the case volume was enormous. So, I narrowed it to psychological tests, but it was still too much. Then, by narrowing to personality tests, a subset of psychological tests, I had an interesting issue and a manageable number of cases.

The legal side narrowed in a similar fashion. Looking at the issue under all employment law would have been a book, not an article. But, by focusing on one federal statute, the ADA, the article was manageable. In fact, I only had to focus on two words in the statute: "medical examination."

My student article is very "niche" and well-narrowed. Even so, it is 41 law review pages and just over 21,000 words. So, I hope this shows that it is very difficult to over-narrow.

⁴ *Is a Personality Test a Pre-Job-Offer Medical Examination under the ADA?*, 93 NW. U. L. REV. 597 (1999).

A well-narrowed topic allows you to really explore the nuances and arguments for and against your claim(s) about the topic. This is more conducive to an interesting and useful paper than skipping along the hilltops waxing philosophical.

There is another big benefit to a well-narrowed topic: it reduces the preemption risk.

I. Read Abstracts and Introductions for Many Other Articles

Most legal scholars make sure that the introduction conveys the essence of the paper, but with enough texture and detail that the reader has a good feel for the article.

If you read lots of article abstracts and introductions, you will develop an eye for how to write your own abstract, which is the first step after writing a title or topic sentence. One place to find abstracts besides searching Westlaw's TP-ALL or JLR database is to search Westlaw's legal periodical index.

During topic selection, when you are trying to economize your research time, if you are reviewing an article and trying to decide how to read it, I would rather have you read the abstract and introduction very carefully than skim-read the entire article.

Read the introduction closely first, noting the flow of the argument. Then you can sort the article into a holding bin: (i) must-read later; (ii) might read later, depending on my topic; (iii) good general background for the writing process; (iv) etc., etc. . . .

J. Did I Mention That I Would be Very Pleased If You Would . . . Start Early? ☺

Okay, enough said. But please start early.

III. THIRD PARTY RESOURCES ON TOPIC SELECTION AND WRITING

A. *General Topic Selection and Writing Resources*

Beyond the Volokh book, here are some other resources.

- The link below has a nice miscellaneous collection of writing and topic selection resources. In particular, it provides examples of article introductions. Writing an abstract and/or draft introduction is a good way to narrow a paper topic.

http://www.law.uh.edu/faculty/mburke/Prof_Marcilynn_Burke_Files/Examples_of_Scholarship.pdf

- Fajans & Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* (2000).
- Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 UTAH L. REV. 917.
- Mary Beth Beazley & Linda H. Edwards, *The Process and the Product: A Bibliography of Scholarship About Legal Scholarship*, 49 MERCER L. REV. 741 (1998).
- C. Steven Bradford, *As I Lay Writing: How to Write a Law Review Article for Fun and Profit*, 44 J. LEGAL EDUC. 13 (1994).
- Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445 (1986).

B. *SSRN*

At www.ssrn.com, under the Legal Scholarship Network, you can search for examples of draft article abstracts and, sometimes, the articles themselves are available. This helps you find more abstracts to read, both for your topic, and for examples of style and approach as you write your abstract.

Also, legal scholars use SSRN as a place to post early drafts, so a thorough preemption search must make a stop at SSRN.

C. *Legal News*

There are a variety of legal publications that focus on current events. These can be good sources of article ideas. For IP and Computer Law, I rely heavily on two BNA publications for current events:

- Patent Trademark & Copyright Journal
- Electronic Commerce & Law Report

IV. PAPER TOPIC DISCUSSIONS WITH ME

I receive many students each fall who want to write about topics related to IP or Computer Law. These are enjoyable discussions and I appreciate the opportunity to get to know students in this forum.

My observations from these conversations during the falls of 2002 through 2004 resulted in this document. My hope with the previous Parts is to make my input accessible to a wider audience of students.

For students who will discuss topics with me, the previous Parts provide the roadmap for your activities leading up to our discussion.

A. What to Do Before Making an Appointment to Discuss Topics with Me

First, read Part II and apply it to your process as much as possible or appropriate for your context.

Second, however, preconditions for our appointment are that you implement these sections:

- Start Early (II.A)
- Get the Volokh Book and Use its Recipe for Topic Selection (II.C)
- Don't Worry About Falling Short of the Paper Length Requirement (II.H)
- Read Abstracts and Introductions for Many Other Articles (II.I)

Third, research topics sufficiently to write two (or more if you like) preliminary title/abstract pairs. The abstracts can be anywhere from 75 to 150 words.

Then, contact me by email to make an appointment for topic selection. Include in the email the two preliminary titles. Once you have two, you can list other related topics you would like to discuss, even if they are not developed like the two title/abstract topics. We will have some preliminary communication to schedule our meeting and to establish that the title/abstract pairs are ripe enough for a productive conversation.

B. Submitting Your Draft Abstracts for the Appointment

A few days before our meeting, submit the two abstracts to me via email, and any revisions to the titles since your original request. Also submit any revisions to the "extra" related topics.

Equally important, include with the email a copy of your resume. If the resume does not list your personal interests and/or hobbies, include those in the email. Finally, affirmatively state in the email that you own the Volokh book and that you have read its pages on topic selection.

C. The Topic Discussion Appointment

There is no formal agenda for the topic discussion. The focus is first on the submitted title/abstract pairs. But, the conversation can be wide-ranging. It is a troubleshooting session for the submitted title/abstract pairs, and an idea generation session for leaping from the title/abstract pairs into other areas.

Beyond that, we will discuss narrowing, and whether the submitted topics, if they seem sturdy enough in other ways, are sufficiently narrow for you to feasibly write on the topic.

D. Do I Keep a List of “Vetted” Paper Topics?

Students sometimes ask whether I keep a list of student paper topics. I don't, at least not in the way that professors who teach a seminar keep topic lists. I don't teach a seminar class.

I do have scholarship idea lists I keep, mostly for my own scholarly idea generation. Sometimes I review those for student paper possibilities, but this is only an ad hoc process. I don't have a systemic method that harvests student paper topics from my own brainstorming lists.

For students interested in writing about patent law, even while knowing that the patent law class isn't until the spring semester, I keep a website publishing summaries of Federal Circuit precedential patent law cases. I estimate that one out of five Federal Circuit cases posted on my website are appropriate starter material for a student article. I don't mean a case note. Most Federal Circuit cases are just another point on the jurisprudence of some long-standing doctrine. This is the fodder of articles: commenting on how the latest case influences the doctrine, and then exploring the doctrine and/or its policy implications in more depth than merely noting the nuances of the most recent case.

E. Ongoing Topic Selection Activity

After the initial appointment, I am happy to continue to provide input until you commit to the topic. Please note that once the writing process starts I am not in a position to review paper drafts, etc. My sincere hope is that through the process outlined above, and discussed throughout this document, you will be able to escape the frustrated rush that I see too often in the fall. Rather, I hope that by starting early you will experience an enjoyable, contemplative, and successful topic selection process. A good topic is the foundation of a good paper, and a poor selection process won't generate a productive topic. So, please, . . . start as early as you can!