

By Professor Rick Bales

Writing for Publication

Writing a scholarly article on a legal topic is a wonderful way to become intimately familiar with a particular area of the law. It impresses clients, who are thrilled to know that they are being represented by an attorney with substantive expertise in the field and the analytical ability to contribute something unique to the legal literature. It enhances the writer's reputation among other lawyers, and may lead to referrals. It is an important form of service. I write because I enjoy the creative process of writing, and because I like to see my name in print. This essay explains how to write and publish a scholarly legal article.

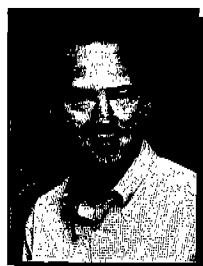
Choosing a Topic and Journal

The first step is to choose a worthy topic and a target journal. Choose a topic that you find interesting. If you don't already have a topic in mind, take a look at the Chase web site listing future law review symposia, at <http://www.nku.edu/~chase/libsymposia.html>. Spend some time in the library to make sure someone else hasn't already written on your topic. Writing on a new area of the law, or an area of the law that seems to be in flux, is ideal. Avoid case notes — focus on the problem raised by the case, not on the case itself. If you find there is a problem with the current law, be sure you can propose a solution.

Next, choose a target journal. Your choice of journal may be dictated by your topic. The *Bench & Bar*, for example, looks for articles on discrete areas of Kentucky law. Articles published by the flagship journals of the three Kentucky law schools tend to be longer than articles published by the *Bench & Bar*, more heavily footnoted, and analytical rather than descriptive. If your topic is of national interest, you can look at law journals outside of Kentucky as well as the Kentucky academic journals. You might also consider specialized journals, such as the *Journal of Law & Education* published at Brandeis or

the *Journal of Natural Resources & Environmental Law* published at U.K. If your topic covers a broad area of Kentucky law, consider targeting the Northern Kentucky Law Review's annual Kentucky survey issue.

Once you have a basic idea of which journal you want to target, leaf through a few recent issues of that journal to get a feel for that journal's stylistic preferences. Many journals have particular editorial conventions. Some prefer endnotes and others footnotes; some prefer WordPerfect® and others Microsoft Word®. It is far easier to start writing your article with these conventions in mind than it is to reformat your article after you have finished writing. A good source of these conventions is the journals' web sites; sites for several Kentucky journals are listed at the end of this essay.



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Putting Pen to Paper

An introduction is like an operatic overture: it introduces the themes that will recur throughout the article.¹ An introduction should accomplish three things. First, it should capture the reader's interest. A reader who is unexcited about your introduction is unlikely to read further. Second, the introduction should give the reader enough basic information about the topic to know what the article is about. Third, the introduction should provide a roadmap describing, in order, the various parts of the article. I like to do this in a paragraph that begins with a thesis statement, followed by a one-sentence description of each part of the article. For example: "This article argues that ... Part I provides background information concerning ... Part II describes ... Part III analyzes ... Part IV proposes"²

Next after the introduction is a background section. If

you are writing about the application of the "extreme and outrageous" element of the tort of intentional infliction of emotional distress to workplace claims, you will want to start by discussing the general contours of the tort. Keep two things in mind. First, make the background section as succinct as possible. Second, avoid a serial discussion of cases, because this is difficult for readers to synthesize. Instead, organize your background section around the pertinent legal doctrines.

The analytical part of an article is the most important part; it makes your article unique. Evaluate the current state of the law (or each approach if the authorities are split). Give your proposal as to what the law should be, together with the advantages, disadvantages, and responses to the disadvantages. Evaluate your proposal at both the doctrinal and policy levels.³ Illustrate how your proposal solves (or helps to solve) the problems raised in the cases you've already discussed in your background section. Be candid about the shortcomings or limitations of your proposal. Keep in mind that your proposal doesn't have to be a panacea — it just has to be an incremental improvement over the status quo.

The conclusion of the article should simply summarize what you've already said. A common mistake is to raise new analytical issues in the conclusion. This inevitably results in truncated analysis. Avoid this temptation — anything new belongs, with extended discussion, in the body of the article.

After writing the article, edit it incessantly. I usually spend at least as much time editing my articles as I do researching and writing combined. Get as many different people to proof it as you can. Ask them to review it not only for spelling and grammar, but also for clarity. One of the most useful comments they can make is that

they don't understand a particular point — this means you need to explain it more carefully. Include nonlawyers among your proofreaders. If educated nonlawyers cannot understand your article, re-write it until they can.

Getting it Published

Most student-edited journals permit an author to submit an article to several journals simultaneously.⁴ Most other journals do not. Start by finding out whether your target journal permits multiple submissions.

Next, draft a one-page cover letter describing your article. The letter should focus on why your article is unique and timely. If you are sending the article to a journal other than a general-interest law journal, describe why your article will be of particular interest to the readers of that particular journal. If you are sending the article to only one journal, say so up front — this will make your article more attractive to a journal that accepts multiple submissions.

Finally, send the article out. You can find a list of law review addresses at <http://andersonpublishing.com>. Sending the article electronically is faster and will save photocopying and postage costs, but not all journals accept electronic submissions. For the links and email addresses of journals that do, see <http://www.nku.edu/~chase/libesubmission.html>.

If you are submitting the article to a student-edited journal, the best time to send your article is late March to early April. This is when the editorial boards change over for the academic year. The new boards begin looking for articles almost immediately; they continue looking (with a summer break while the students are busy clerking) until they fill all their issues. This usually occurs in September or October. For other journals, the timing of your submission is less impor-

tant.

If you receive a publication offer from a single-submission journal, then obviously you accept it. If you receive an offer from a journal that permits multiple submissions, and you have simultaneously submitted your article elsewhere, then you may ask for time to "consider" the offer. Two weeks is about average. Immediately telephone every journal that you've submitted your article to that is higher in prestige than the journal that gave you the offer, tell them that you've received a competing publication offer, and ask them for an expedited review. Take the best offer you get.

If you do not receive a publication offer, don't despair. Read your article carefully and consider how you might improve it and target it to another journal. You'll be amazed at how much you can improve your article after you've put it aside for several months. Then send it out again. If your article is well-written and solid analytically, you will likely get it published.

Basking in Your Glory

If your article is published in an academic journal, you will have the opportunity, prior to publication, to order reprints. These are professional-looking copies of your article. Order several hundred — they are relatively inexpensive to order up front, but considerably more expensive to order after publication. If your article is published in a professional journal such as the *Bench & Bar*, obtain permission from the publisher to photocopy and distribute copies of your article. Either way, send copies of your article to colleagues, clients, prospective clients, former professors, anyone who helped you on the article (hopefully, you thanked them in your author's note), anyone cited in any of your footnotes, any judges anywhere near the jurisdiction in which you

Effective Legal Writing,
continued

practice, and virtually everyone on your Holiday card mailing list.

Finally, relax and congratulate yourself on a job well done. Writing an article for publication is a challenge, but there is tremendous satisfaction in knowing that you have contributed something worthwhile to the legal literature. ■

Appendix:
Web Sites of Kentucky Law
Journals

Bench & Bar:

http://www.kybar.org/b_b_index.html

Brandeis Law Journal:

<http://www.louisville.edu/law/students/blj/index.htm>

Journal of Law & Education:

<http://usclaw.sc.edu/jlawedhp.htm>

Journal of Natural Resources & Environmental Law:

<http://www.uky.edu/Law/JNREL/>

Kentucky Law Journal:

<http://www.uky.edu/Law/KLJ/>

Northern Kentucky Law Review:

<http://www.nku.edu/~chase/lawreview/>

ENDNOTES

1. Pamela Samuelson, *Good Legal Writing: of Orwell and Window Panes*, 46 U. Pitt. L. Rev. 149 (1984).
2. See, i.e., Richard A. Bales, *A Constitutional Defense of Qui Tam*, 2001 Wisconsin L. Rev. 381, 385.
3. Eugene Volokh, *Writing A Student Article*, 48 J. Legal Educ. 247, 255 (1998).
4. Richard A. Bales, *Electronically Submitting Manuscripts to Law Reviews*, 30 Stetson L. Rev. 577, 579-580 (2000).