

Independent Studies 7.00

- 7.10 General Statement of Value: Independent studies, with proper planning provide a valuable opportunity for individual study by a student in an area of special interest.
- 7.11 Faculty Participation: Faculty members are encouraged to participate in the supervision of independent studies when they feel they can offer direction and supervision. Faculty members should not agree to supervise an independent study when they possess little or no expertise in the area of law involved or do not feel their schedules will permit proper direction and supervision. Normally, a faculty member will not be supervising more than three independent studies at any time. Only full-time faculty members may supervise independent studies.
- 7.12 Units for Independent Study: Except for projects of exceptional merit which require extraordinary effort and research, all independent studies will be for two units. No student will be allowed to do more than one independent study.
- 7.13 Procedures: Students should petition and obtain approval for the independent study prior to the academic period for which the study is approved and register for the study in the normal manner. Students may first register for an independent study and submit the petition after classes have begun. Petitions will not normally be approved after the late registration period.

The student should discuss the proposed independent study with the proposed faculty supervisor. If the faculty member is agreeable to supervising the study, the student should complete the petition, including a detailed outline of study, and submit it to the faculty member. If approved by the faculty member, the petition should be forwarded to the Associate Dean, Academics' office for approval. If approved by the Associate Dean, Academics, the original of the petition will be sent to the Records Office and copies will be given to the student and to the supervising faculty member.

- 7.14 Paper Requirement: All students enrolled in independent studies are required to produce a paper of substantial merit which is of publishable quality and in a form suitable for law review publication.

Proposed subjects that can be easily completed from secondary sources or existing literature are not appropriate. The subject matter for independent studies, therefore, will be specific rather than general and will require independent thought and analysis by the student. Students are expected to review existing literature in the area of proposed study prior to petitioning for the study and prior to the beginning of the minimum number of hours.

The independent study must not be based on research and study done for other purposes such as law review, moot court, clerking in law offices, clinical law or clinical externship projects, etc. The Honor Code will apply to papers prepared for independent studies. While students may confer with others concerning their study, their work product must be their own.

All independent study projects must be completed and turned in to the supervising faculty member no later than the last regularly scheduled class for the semester in which credit is to be awarded. A copy of the paper shall be submitted simultaneously to the Associate Dean, Academics for filing with the law library.

7.15 Grade: Independent studies are graded on a pass/fail basis.

7.20 Time Commitment: The student shall commit whatever time is required to produce a paper which meets the standard of 7.14 above. A minimum of sixty (60) hours per unit of credit must be committed and devoted to the independent study. The student should keep records of time spent in the study and indicate such to the supervising faculty member during and at the conclusion of the study.

In addition to the student's initial discussions with the supervising faculty member, the student is expected to confer regularly with the faculty member. Before the student begins writing the paper, the faculty member must approve a detailed outline of the proposed paper. Normally, twenty (20) percent of the total time commitment for the study will be utilized prior to the submission of this outline.

7.21 Duration: Independent studies normally will be for one semester or one summer session.

7.22 Student Eligibility: To be eligible to participate in an independent study, a student must have completed two semesters. Absent compelling reasons for an exception, students on academic probation are not eligible to participate in independent studies.

7.23 Residence: Residence hours will not be awarded on the basis of independent study or studies undertaken during a period other than a regular semester or summer semester.

Writing a Student Article

Eugene Volokh

Part of a law teacher's job is advising students who want to write publishable articles. Unfortunately, I've seen little written material that can aid us in this task.

The following article, written for a student audience (originally my own advisees and members of various UCLA law journals), aims to remedy this lack. It describes only one possible approach, and many law teachers may have their own, quite likely better, views on the subject; but unless you've already written something like this for your students, this article might help you help them.

A well-written student article can get you a high grade, a good editorial board position, and a publication credit. These credentials can in turn help get you jobs, clerkships, and—if you're so inclined—teaching posts. The experience will hone your writing, quite likely a lawyer's most important skill. And some student articles actually influence judges, lawyers, and legislators; even the U.S. Supreme Court cites student works several times each year.

Writing a student article, whether as a law review note or as an independent study project, is also one of the hardest things you'll do in law school. Your nonlaw writing experience and your first-year writing class will help prepare you for it, but only partly. Creating an original scholarly work that makes a contribution to our understanding of the law is not easy.

In this article I try to give some advice, based on my own writing experience, for you to mix and match with whatever other advice you get. These ideas have worked for me, and I hope they work for you. If you find this article useful, I suggest you reread it at various stages of your project; as you get further into your piece, you might find yourself profiting from some tip that you missed when you first read it.¹

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This article is part of a book-in-progress by my colleague Daniel Lowenstein and me on legal writing for second- and third-year law students.

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1. For more advice, check out Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers* (St. Paul, 1995); Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. Rev. 445 (1986).

It should go without saying that when you're submitting your work for a grade, you should focus on what your faculty adviser recommends.

I. Choosing a Claim

Good legal scholarship should meet the requirements of patentability: it should make (1) a claim that is (2) novel, (3) nonobvious, and (4) useful.² It should also (5) be *seen by the reader* to be novel, nonobvious, and useful.

A. The Claim

Most good works of original scholarship have a basic thesis—a claim they are making about the world. You should be able to condense that claim into one sentence, for instance:

"Such-and-such a law is unconstitutional."

"The legislature ought to enact the following statute."

"Properly interpreted, this statute means such-and-such."

"My empirical research shows that this law has unexpectedly led to . . ."

"Viewing this law from a [feminist / Asian studies / Catholic / economic] perspective leads us to conclude that the law is flawed, and should be changed in such-and-such a way."

Some articles, for instance some historical pieces, quite properly fall outside this mold, but they are the exception rather than the rule.

How do you find a worthy claim? First, find a *problem* that interests you. Think back on cases you've read for class; did any of them make you think, "This leaves an important question unresolved" or "The reasoning here is really unpersuasive"? Read recent Supreme Court cases and see whether they leave major issues open, or perhaps create new ambiguities or uncertainties. Try to recall class discussions that intrigued you but didn't yield any well-settled answer. Most casebooks include questions after each case, and many of these flag interesting and unsolved problems.

Ask practicing lawyers which important unsettled questions they find themselves facing. Ask faculty members which areas of the law they think are fertile sources for ideas; some (though not all) may even suggest specific problems. Also try the Westlaw WLB, WSB-xxx, and WTH-xxx databases, as well as the Lexis HOTTOP database, HOTLAW file; these services briefly summarize important recent legal developments, many of which might be worth examining and critiquing. If you want more tips, check out Heather Meeker's thorough and useful "Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers."³

Choose a problem that's big enough to be important and interesting but small enough to be manageable. Turn the problem into a five-word title; if you can imagine a book with that title—e.g., *Bankruptcy: A Sociological Perspective*—the problem is too big.

2. I am indebted for this formulation to Stephen L. Carter, *Academic Tenure and "White Male" Standards: Some Lessons from the Patent Law*, 100 Yale L.J. 2065, 2083 (1991).

3. 1996 Utah L. Rev. 917.

Second, run your chosen problem by your faculty adviser. Your adviser will probably know better than you whether the problem has been definitively resolved, or whether there's already been too much written on it, or whether there's less there than meets the eye.

Third, do your research with an open mind. Be willing to make whatever claims your research and your thinking lead you to, and even be willing to change or refine the problem itself. You might, for instance, initially decide to write about restrictions on speech by sitting judges but find, as you do your research, that it's more interesting to write about restrictions on speech by candidates for judicial office.

Fourth, decide what seems to be the best solution to the problem. Depending on the problem, it could be a new piece of legislation, or a new constitutional or common law principle, or a specific application of a general principle to a certain kind of case, or an explanation of why judges behave as they do. This will be your *claim*: "The solution to this problem is" "The law should be" "This law is unconstitutional in these cases, but constitutional in those."

Test your solution against several factual scenarios you've found in the cases, and against several other hypotheticals you can come up with. Does the solution yield the results that you think are right? Does it seem determinate enough to be consistently applied by judges or juries? If the answer to either question is no, try to refine your claim to make the answer yes.

The solution doesn't have to be perfect; it's fine to propose a solution even when you have misgivings about the results it will produce in certain cases. But candidly testing your solution against the factual scenarios will tell you whether even you find the solution plausible. If you don't, chances are your readers won't either.

Your claim—your proposed solution—will probably change as you think further about the subject, as you do more research, and as you write. That's good. Always be open to making your claim more correct or more nuanced or more defensible.

B. Novelty

To be valuable, your article must be novel: it must say something that hasn't been said before. It helps if your claim itself is novel, but at the very least your claim coupled with your basic rationale must be novel.

For instance, say you want to argue that obscenity law is a bad idea. Believe me, it's been done to death; no novelty in the claim. You might want to find something less overwritten.

Still, you're OK if you can come up with a novel *justification* for your claim. For instance, the claim that "obscenity law is a bad idea because recent empirical studies show that it's usually enforced primarily against political or ethnic minorities" may well be novel.

What if you've chosen your topic and your basic rationale, and four weeks into your research you find that someone else has said basically the same thing? No need to abandon ship just yet.

Often you can make your claim novel by making it *more nuanced*. For instance, don't just say, "Obscenity law is a bad idea," but say (perhaps) "Laws banning distribution of obscenity are a bad idea unless the obscenity describes acts that are themselves unconsented and criminal, such as child molestation or rape."⁴ The more complex your claim, the more likely it is that no one has said it before. Of course, you should make sure that the claim is still (a) useful and (b) correct.

Some tips for making your claim more nuanced:

1. Think about what special factors—for instance, government interests or individual rights—are present in some situations covered by your claim but not in others. Could your claim be modified to take these factors into account?
2. Think about your arguments in support of your claim. Do they work well in some cases but badly in others? Perhaps your claim should be limited or softened accordingly.
3. For most legal questions, there's an intuitive yes answer and a no answer; both tend to attract a lot of writing. See if you can come up with a plausible answer that's somewhere in between: yes in some cases, no in another.

C. Nonobviousness

Say Congress passes a law creating a federal cause of action for libel on the Internet. You decide to write about how such a law doesn't violate the First Amendment.

Your thesis would be novel, but pretty obvious. Most people you discuss it with will say, "Yeah, you're right, but I could have told you that myself." Libel law, if properly limited, has repeatedly been held not to violate the First Amendment, and many people have already argued that libel law should be the same in cyberspace as outside it. Unless you can explain how federal cyber-libel law is relevantly different from state libel law applied to cyberspace, your point will seem banal. Articles that just apply settled law—or familiar arguments—to slightly new fact patterns usually look obvious.

You can avoid obviousness by adding some twist that most observers would not have thought of. For example, might federal cyber-libel law be not just constitutional, but also more efficient, because it sets a uniform nationwide standard? Could it be more efficient in some situations but not in others? Could there be some unexpected interaction with some other federal laws? Making your claim more nuanced can make it less obvious as well as more novel.

A good way of checking for obviousness: run your thesis past a faculty member who works in the field (besides your adviser), past an honest classmate, past a lawyer who works in the field (if you don't know one, ask your adviser to refer you to one), and past a smart layperson.

4. All these claims are, of course, just examples. I don't vouch for their correctness, and I don't even recommend that you write about them.

D. Utility

You'll be investing a lot of time in your article. You'll also want readers to invest a bit of time in reading it. It helps if the article is useful—if at least some readers can come away from it with something that will be professionally valuable.

Focus on issues left open. Say you think the U.S. Supreme Court's *Doe v. Roe* decision is flat wrong. You can write a brilliant piece about how the Court erred, and it might be useful to some academics. But *Doe* is the law of the land, and unless the Court revisits the issue, few lawyers will practically benefit from your insight. You should ask yourself: how can I make my article more useful, perhaps useful to lawyers and judges as well as scholars?

One possibility is to identify a point that *Doe* left unresolved, and explain how it should be resolved in light of *Doe's* reasoning, along with the reasoning of several other Supreme Court cases in the field. Now that would be useful to anyone who's litigating a question that involves the unresolved issue.

Apply your argument to other jurisdictions. Say *Doe* holds that a certain kind of police conduct doesn't violate the Fourth Amendment. This makes *Doe* binding precedent with regard the Fourth Amendment, but only persuasive authority as to state constitutions, because state constitutions need not be interpreted the same way as the federal one. The thesis "State courts interpreting their own state constitutional protections should reach a different result" is thus much more useful than just "The Court got it wrong." Judges are more likely to accept the revised thesis, and lawyers are more likely to argue it. Your article will still be valuable to scholars who evaluate the Court's case law, but it'll also be valuable to many others.

Consider making a more politically feasible proposal. Say your claim is quite radical, and you're pretty sure that few people will buy it, no matter how effectively you argue it. For instance, you want to urge courts to apply strict scrutiny to restrictions on economic liberty—a step beyond even *Lochner v. New York*. You may have a great argument for that, but few courts will be willing to adopt your theory.

Think about switching to a more modest claim. You might argue that courts should apply strict scrutiny to restrictions on entry into certain professions or businesses. This would be a less radical change, and you can also support it by using particular arguments that wouldn't work as well for the broader claim.

Maybe courts will still be unlikely to go that far. Can you argue for a lower (but still significant) level of scrutiny? Can you find precedents, perhaps under state constitutions, that support your theory, thus showing your critics that your theory is more palatable to courts than one might at first think?

Or perhaps you could limit your proposals to strict scrutiny for laws that interfere with the obligation of contracts, rather than for all economic restrictions. Here you have a stronger textual argument, a narrower (and thus less radical-seeming) claim, and perhaps even some more support from state cases: it turns out that the contracts clauses of state constitutions are often interpreted much more toothily than the federal clause.

If you really want to make the radical claim, go ahead; you might start a valuable academic debate, and sometimes radical claims carry the day. On the other hand, especially for student articles, practicality is important. By making a more modest claim, you can remain true to your basic moral intuition while producing something that's much more likely to influence people. Many a campaign—and especially many a legal campaign—is most effectively fought through small, incremental steps.

E. Selling This to Your Readers

Not only must your claim be novel, nonobvious, and useful, but you must also show your readers that it is so. More about this later.

F. Things to Avoid

1. *Articles that show there's a problem but don't give a solution.* Giving a solution makes your article more novel, nonobvious, and useful, and generally turns it into a better professional calling card. You want to show people that you have a fine, creative legal mind that can solve problems as well as discover them.

2. *Case notes.* An article that describes a single case and then critiques it is likely to be fairly obvious, even if it's novel and useful; and it doesn't show off your skills at research and at tying together threads from different contexts. If you got your topic from a particular case, keep it; but don't focus on the *case*, focus on the *problem*, and bring to bear all the cases that deal with the problem.

3. *Single-state articles.* Articles focusing on a single state's law are generally useful only to people in that state. They may still be valuable, especially if the state is a big one, but why limit yourself this way? Other states probably have similar laws, or might at least be considering them. Frame your article as a general piece that discusses all the laws in this family. Of course, the various state laws will probably differ subtly from each other, which may require some extra discussion; but while this means some more work, considering these differences may lead to a more sophisticated and nuanced—as well as more useful—article.

4. *Articles that just explain what the law is.* These can be useful, and sometimes even novel, but they tend to be obvious. The reader is likely to say, "True, I didn't know this, but I could have figured it out if I had sat down and done a bit of research." Just fine if your reader is a busy lawyer looking for a good summary of the law; not so good if your audience is a professor, a law review editor, or a judge looking for a law clerk.

5. *Responses to other people's works.* Framing your article as a response to Professor Smith's article will limit your readership to people who've already read Smith's article, and will tend to pigeonhole you (fairly or not) as a reactive thinker rather than a creative one. If your piece was stimulated by your disagreement with Smith, no problem: just come up with your own claim and prove it, while demolishing Smith's arguments in the process. By all means cite Smith in the footnotes; Smith's opposition will help show that your claim is important and nonobvious. But don't let Smith be the main figure in your story.

6. *Excessive mushiness.* Be willing to take a middle path, but beware of proposals that are so middle-of-the-road that they are indeterminate. For instance, if you're arguing that single-sex educational programs should be neither categorically legal nor categorically illegal, it might be a mistake to claim that such programs should therefore be legal if they're "reasonable and fair, and promote the cause of justice." Such a test means only what a judge wants it to mean.

Few legal tests can produce mathematical certainty, but a test should be rigorous enough to give at least some guidance to decision-makers. Three tips for making tests clearer:

- If possible, tie your test to an existing body of doctrine, by using terms of art that have already been elaborated by prior cases.
- Whenever you use terms such as "reasonable" or "fair," ask yourself what you think defines "reasonableness" or "fairness" in this particular context.
- When you want to counsel "balancing," or urge courts to consider the "totality of the circumstances," ask yourself exactly what you mean. What should people look for when they're considering all the circumstances? How should they balance the various factors you identify? Making your recommendation more specific will probably also make it more credible.

Thus, "Single-sex educational programs should be legal if they're narrowly tailored to an educational approach that's been shown effective in controlled studies" is probably a more defensible claim than "Single-sex educational programs should be legal if they're reasonable." The more specific test incorporates the concept of "narrow tailoring" from Equal Protection Clause case law, case law which has given the concept some substance. And instead of an abstract appeal to "reasonableness," the test refers to one particular kind of reasonableness—educational effectiveness—that seems to be particularly apt for decisions about education. Still not a model of predictability, but better than just a "reasonableness" standard.⁵

II. Organizing the Article

A. The Introduction

Readers who aren't excited by your introduction probably won't read the rest of your piece; and those who do read the whole article will be deeply influenced by the tone that the introduction sets.

An introduction must thus do three things.

5. Some people argue that very flexible tests are actually better than seemingly more rigid ones; if you share this view, you might reject my approach here. Remember, though, that many readers will quite properly worry about how your mushy test will actually work out in practice. For your article to work, you must either make the test more determinate or persuade these readers to accept its relative indeterminacy.

1. *Show that there's a problem, and do this concretely.* Your article should make the reader think, "Wow, I need to read this." The best way to do that is to show there's an important, interesting problem that needs to be solved.

And the most compelling problems are *concrete* ones. Don't just say that the law is unjust or oppressive, or ignores transaction costs or the plight of the subordinated. Give a specific example—a real scenario is good, but a plausible hypo is fine too—that shows how the law is failing. Make the reader say, "Gee, it looks like the law is wrong here" or at least "Hmm, I wonder what the right answer is."

This, of course, is related to demonstrating your claim's utility (see below), but it's important in its own right: it's what makes people want to read what you wrote.

2. *Briefly state the claim, and briefly show its novelty, nonobviousness, and utility.* This tells the readers what to expect, and persuades them that your article will solve the problem as well as identify it, and will make a valuable original contribution to boot.

Note the "briefly." The introduction should be short, simple, and clear. It should make the reader want to read further, but it should also simply and memorably communicate your basic point even to those readers who'll never read beyond the introduction. Less is often more. If you're writing about a new statute, or about a topic that most readers will find fairly abstruse, you may not need to say explicitly that your point is novel. Likewise, the best way to show that your point is nonobvious is just to explain it in a way that makes the reader say, "Wow, I'd never have thought of that."

3. *Frame the issue.* Every law has lots of effects on lots of people. In theory, readers' judgments about the law should be the same no matter how the question is presented, because in theory they should consider all the effects. But in practice the frame—the way you present the issue to the readers—is terribly important.

Consider an article about gun control. Thinking seriously about gun control requires thinking about a lot of things. The thousands of people who die each year from gunshot wounds. The plight of people who must defend themselves against criminal attacks when the police aren't around to help. The special concerns of women, who tend to be physically less capable of defending themselves without weapons, and who are victimized in particular ways by crime. The Second Amendment and state constitutional provisions that guarantee a right to keep and bear arms. The uncertainty about how practically useful guns are for self-defense. The uncertainty about how practically effective gun control regulations will be.

Your article will have to confront all these questions, but it matters a lot how you frame the discussion. If you start by stressing that there are 18,000 intentional homicides with firearms each year, and return to this throughout the piece, the reader will be more likely to look at all the evidence through this lens. If you start by stressing that the police are often far away, and that hundreds of thousands or perhaps even millions of people use guns to defend themselves against criminal attacks each year, the reader may approach the

evidence from a very different perspective. The introduction is the place where you construct this basic frame—where you tell a simple story that puts the reader in the right mindset to absorb and agree with your point.

B. Explaining Background Facts and Legal Doctrines

The purpose of your article is to state and prove your claim. That's where the action is, and you should be excited and impatient about getting there.

Before you get there, you'll probably have to describe some relevant background aspects of the law. If you want to write about why certain kinds of zoning laws violate the Takings Clause, you'll have to describe these laws briefly. You might also want to give a broad explanation of Takings Clause jurisprudence.

The key words here, though, are *briefly* and *background*. Too many student articles spend ninety percent of their time summarizing the law and ten percent explaining and proving their claims. Doing this is tempting: summarizing the law is the easier task, and when you've spent many weeks doing research, it's emotionally hard to boil the result down to just a few pages. But boil down you must. Your claim and your proof are what you're adding to the field of knowledge; your achievement will be measured largely by this value added. You can't prove your claim without explaining the background facts and the background doctrine, but do this as tersely as possible.

Things to avoid, besides excessive detail:

1. *Summaries of the various precedents in the doctrinal line.* Your job is to synthesize the precedents, not to describe each one. Briefly state the relevant rule, in whatever detail is needed; cite your authorities in the footnotes. Do not say, "In *A v. B*, such-and-such happened. The Court ruled for A. Then in *C v. D*, the facts were such-and-such. The Court ruled for D. Then in *E v. F*" No one wants to slog through that.

2. *Minitreatises that go beyond what's needed to set the stage for your proof.* All you need to do in this section is to give the reader the necessary legal and factual framework; you don't need to describe all the law and all the facts that you'll later use, only what is helpful to lay out up front. You'll have plenty of time to go into more detail later, as you set out your proof.

C. The Proof of Your Claim

This is where you can shine, by showing that your claim is correct, and that it's the best way of solving the problem you've identified. Some tips:

1. *Prove your point on both the doctrinal and the policy levels.* Don't just show that your proposal fits the case law; also persuade your reader that it's practically and morally sound. Authors often come up with a neat syllogism which supposedly proves that some law is unconstitutional, or that it should be interpreted this way or that—and which leaves many readers unpersuaded. We all know how courts can dance around syllogistically correct claims. To the extent possible, show that your proposal makes practical sense as well as logical sense, that it fits with the policy as well as with the doctrine.

2. *Be concrete.* Illustrate your theoretical arguments with concrete examples, drawn from real cases or from realistic hypotheticals. This will make your point clearer to your reader; it will prove to the reader that you have a point and aren't just playing a theoretical shell game; and it will often make your point clearer to you, or require you to rethink it.

3. *Focus on your arguments, not the other side's.* Confront all the counter-arguments, but take the offensive. Don't write "Some people say that this law fits within the captive audience doctrine, and this might at first seem plausible. Let me quote what they say: But on further reading it turns out that this isn't so, because" Instead, write "The law can't be justified under the captive audience doctrine, because" Cite your adversaries and rebut their assertions, but don't let them play center stage in your discussion.

4. *Turn the problems in your argument to your advantage.* Logical and practical difficulties with your argument should be embraced, not swept under the rug.

To begin with, confronting the difficulties can turn a banal, straightforward argument into one that's more nuanced and interesting. Say the leading precedent in the field doesn't support your claim as squarely as you'd like. Don't just ignore this; explain how some other precedents or policy arguments fill the gap.

For instance, suppose your argument rests partly on the claim that public single-sex schools are unconstitutional. You could just cite *Mississippi University for Women v. Hogan* and *United States v. Virginia* for this proposition, and many people do. But these cases don't actually stand for quite so broad a principle; if you cite them for this principle, the reader will be unpersuaded, and you'll also have lost your chance to show off your reasoning skills.

Rather, explain why the broader policies embodied in the Court's equal protection jurisprudence fill the gap between the precedents and your proposed rule; or explain why, even if there's a gap remaining, your particular case is factually close to the situation in the precedents. You shine by showing how you deal with the tough questions, not by pretending that the tough questions are easy.

Second, the difficulties can lead you to modify your claim to something more moderate and sophisticated. Say your argument proves your claim in most cases, but not in some other cases. For instance, it persuasively shows that single-sex schools are usually unconstitutional, but it doesn't really work for programs specially aimed at students who have been sexually abused or who are mentally disturbed. Maybe you should change your claim from "Single-sex public education is unconstitutional" to "Single-sex public education is generally unconstitutional, but single-sex education of certain classes of hard-to-teach children is constitutional." This may be a sounder claim, and it's also more likely to be novel and nonobvious.

Third, the difficulties can require you to acknowledge some uncertainty, and to prove your argument as best you can in the face of that uncertainty. This can actually make your work look more sensible and worldly. After all, little in our lives and in the law is logically proven. We must often make the best guess we can, given gaps in the evidence. It's no great loss to admit this,

assuming you have enough evidence to make your point plausible, even if not formally proven.

Say the cases hold only that public single-sex education is unconstitutional unless there's strong evidence that such education is valuable; and say people disagree about the evidence. Use the evidence on your side as best you can, acknowledge that there's disagreement, and make the best practical and logical argument you can for your point. (For instance, you might argue that, in the face of the disagreement, courts should err on the side of nondiscrimination and thus coeducation.)

5. *Look for interesting implications and twists.* Sometimes, as you explain your claim, you'll see unexpected applications for it, or interesting interactions with other doctrines or other theories. If they won't distract too much from your main point, mention them. They can add subtlety and complexity to your overall argument, and can better show its significance.

For example, you might find that your substantive point has procedural implications. Say you're arguing that the First Amendment shouldn't protect speech that reveals certain facts about someone's sex life. Can you say something interesting about the related free speech procedural rules? For instance, should punitive damages be restricted in such cases, by analogy to the rule in certain libel cases? Should such speech lead only to damage awards, or should courts also be allowed to enjoin the speech?

Or you might find that in some contexts your thesis works out in unexpected ways. For instance, does your broad point about revealing facts have particular implications for publication of photographs, or of tape recordings? Even if the legal rule is the same, will it affect people's behavior differently in different situations?

Mentioning these kinds of implications can make your point more novel, nonobvious, and useful. More broadly, it can make your article seem richer and more sophisticated—a thorough explanation of many facets of the problem, rather than just one narrow claim. (Of course, at a certain point you'll need to stop working out all the implications, or else your article will become too long.)

6. *Connect to broader academic debates.* Finally, ask yourself whether you can profitably connect your topic to existing academic debates, or to some other, broader, questions. Say you're interpreting one provision of a statute; is there a broader debate going on in the law reviews about the statute's purpose or overall impact? If so, you might on the one hand draw on some arguments from the literature, and on the other hand ask whether your conclusions shed light on what others have written. Perhaps your arguments suggest that one of the positions in the broader debate is unsound, or needs to be revised in light of what you've found.

Say your work discusses whether a particular kind of statement would be admitted as evidence under some exception to the hearsay rule. There are many broad debates in the literature about hearsay—about whether hearsay should even be presumptively excluded in the first place, about whether there should be a single discretionary standard ("allow hearsay evidence if there are

sufficient indicia of trustworthiness") or a relatively detailed rule with many detailed exceptions, and so on. Do some points raised in these debates help you support your arguments? Do they provide counterarguments to which you should respond? Do your observations on the narrow situation that you're discussing support one or another side in these broader debates?

If done right, this will make your piece look deeper and more academic. Better yet, it might in fact make it more useful to at least some readers. Broad legal theories are often accepted or rejected based not on abstract legal arguments, but rather on how well they fit with the rules that seem proper in specific cases. Your little topic may provide powerful practical support or a powerful practical counterexample to some broad theoretical argument.

Even if there isn't yet any broader academic debate on your general subject—for instance, if you're writing about a new statute—your point might have more general implications that would be worth noting. For instance, your argument about one provision of a statute might shed light on the interpretation of other provisions; you don't need to fully analyze those provisions, but it helps if you at least highlight your argument's implications. Perhaps you can start a broader academic discussion yourself.

D. The Conclusion

Restate your claim and a brief summary of your proof, and remind the reader why your claim is useful.

III. Writing

A. Go Through Many Drafts

"Nothing is ever written," my high school journalism teacher told us; "it is rewritten."⁶ Aim to produce your first draft well before the deadline. I know that's hard, but it's critical. Print it, edit it closely (on the printout, *not* on the computer), and enter the changes. Set the draft aside for a day if you have the time, a few hours if you don't have a day. Repeat as often as possible.

Even with my writing experience, I try to go through about ten edits before sending an article out to the law reviews. When I clerked for Judge Kozinski, the norm was about thirty to forty drafts for an opinion, which included at least twenty to twenty-five substantive edits.

Sounds like a pain? It is. But it's absolutely necessary. Your first draft will probably be junk, unless you're a truly gifted writer, in which case it will be merely mediocre. So will the second through the fifth. As you're editing, keep some of your old drafts, and compare the tenth draft against the first. The difference will be night and day.

B. If You See No Red Marks on a Paragraph, Go Back Over It

At least during the first few drafts, every paragraph—quite likely every sentence—can be tightened, made clearer and more forceful. If you're not seeing the flaws in every paragraph, you're not looking hard enough.

6. Giles K. Chesterton, Beverly Hills High School.

C. Read the Draft With "New Eyes"?

Try to read your draft from the perspective of a skeptical reader. We naturally tend to believe everything we write, and give all our own arguments the benefit of the doubt. Readers aren't so charitable. As you read any assertion you make, ask yourself what a skeptical reader would say. The changes you make to satisfy this skeptical reader will greatly enrich your argument.

Of course, this advice is easy to give but hard to follow. A few tips:

1. *Get a classmate to read the draft.* The classmate has to be (a) willing to read the piece carefully, (b) willing to give criticism, even harsh criticism, and (c) smart. Of course, those who like you well enough to satisfy criterion (a) may be less likely to satisfy criterion (b); people who satisfy all three criteria are rare and valuable. Buy them very nice dinners as compensation.

2. *If you have the time, put your latest draft away for a few days before rereading it.*

3. *Conquer your fear.* It's natural to be afraid of reading your work too closely. What if your claims are all wrong? What if you find the killer counterargument? What if you have to go back to square one?

The fear is natural, but almost always unfounded. If your claim is flawed, you can correct it. Most counterarguments are answerable, and if you find one that isn't, you can change your claim without throwing everything out. Your draft represents a lot of research and thinking. Even if you have to revise it dramatically, you'll find that you can continue using the bulk of what you've written.

Most important, if you figure out that your claim is wrong, then your readers—including those who have to grade your work—will too. Better fix it before you turn it in.

D. Finish the First Draft Quickly

Sit down and write that first draft. When you get blocked on one section, go on to the next. If you need to leave big holes, do it. If you're at all like me, once you have the first draft done, no matter how rough it is, revising it will be much easier. This is hard advice to follow—I've taught myself to do this only recently—but I've found it very useful.

Producing a first draft quickly will also give your faculty adviser more time to give you useful feedback, and maybe to read through more drafts. It will also make you look industrious and disciplined. You want the person who's grading your work to see you that way.

E. Things to Look For: Writing

1. *Coherent paragraphs.* Each paragraph should have a topic sentence that expresses what the whole paragraph is about; this should usually be the first sentence. The other sentences should fit with that thought. If they don't, then they belong in a different paragraph.

7. I owe this expression to Judge Kozinski.

2. *Redundancy.* When you see two sentences that express similar thoughts, try to eliminate one, or part of one. If you're intentionally restating a thought to make it clearer, try to make it clear the first time you say it. The phrase "in other words" is a clue that the first words you used aren't particularly good.

3. *Surplusage and platitudes.* "Given the large number of accidental firearms injuries among young people that occur annually in this country, everyone would agree that firearms safety is a matter of great public concern."⁸ On that level of generality, everyone does agree—to the point that the sentence adds nothing substantively and is such a transparent platitude that it adds nothing rhetorically either.

For every sentence, ask yourself: "What specific point does this make that's useful to my argument?" If the answer is "nothing," either delete the sentence or make it more concrete. For instance, if you say that about 200 children under fourteen die each year in firearms accidents in the U.S., you'll be saying something that might be news to many readers, and you'll give people a somewhat better idea of just how great the public concern about this should be.

4. *Legalese.* "Opposition to the bill is needed on the grounds that the means will produce little or no desirable ends." Saying "We should oppose the bill because it won't do any good" or even just "The proposal won't work" would get exactly the same point across—in plain English. "Guns have a far greater utilitarian value than . . ."; how about "Guns are far more useful than . . ."? Instead of "could negatively affect the accessibility of handguns," write "could make handguns less accessible." See the Appendix for some tips on particular words and phrases you should avoid.

5. *Throat-clearing.* "It should be mentioned that knowledgeable gun owners already know that . . ." "In having researched the implications of the act, I would recommend that . . ." The italicized phrases add nothing.

6. *Word choice.* "The 'crime' is not that serious (it is only negligent)." Do we usually talk about "negligent crimes"? "The police already have alternate counts to chase criminals"—not quite right. "Citizens' suspicions of intrusive gun control laws are at a height"; one can see what the author is getting at, but "at a height" is just the wrong phrase.

7. *Proofreading.* Words are the lawyer's stock in trade. If you use the wrong word, or even make a seemingly nonsubstantive error in grammar or spelling or punctuation, you lose a lot of credibility.

For more tips, check out Bruce Ross-Larson's *Edit Yourself*, which focuses mostly on word and sentence edits, and Strunk & White's *The Elements of Style*, the classic general writing guide.

F. Things to Look For: Logic

1. *Categorical assertions.* Never say "never" or "always." Some law, people say, is "completely unenforceable" (or "can never be enforced"). Completely? Never? Really? Modest claims may sometimes seem less effective rhetorically, but they're also more likely to be right.

8. This quotation and those that follow are from student papers I've read—some by very good students.

2. *If not nirvana, then the abyss.* It's always tempting to assume that there are only two options: for instance, either the law is perfect or it's pointless. "The law is targeted at preventing children from accidentally killing themselves or other children with a gun. However, the law itself would not adequately protect against all of the possible accidental handgun deaths." So what? No law can be expected to prevent *all* instances of a certain kind of harm. The question is whether, on balance, the law does more harm than good. You can't avoid this hard question merely by showing that the law doesn't always do the good that it's meant to do.

3. *Missing pieces.* A logically perfect argument should consist of several steps that fit together, for instance: "All As are Bs. X is an A. Therefore, X is a B." Of course, legal arguments are not exercises in formal logic, so they'll never look quite like this, but they still must fit logically, with no unproven connections.

Say your argument looks roughly like this:

- a. Classifications based on sex are subject to the most exacting scrutiny.
- b. Separate classes for boys and girls are classifications based on sex.
- c. Therefore, separate classes for boys and girls are unconstitutional.

The pieces don't quite fit one another: points (a) and (b) prove only that separate classes are subject to the most exacting scrutiny, not that they are unconstitutional.

Once you identify the error, it's pretty obvious, and so is the solution: fill in the missing piece, here by showing that the classification fails the exacting scrutiny. A tip: before writing your proof section, and again after finishing it, summarize each significant assertion in one sentence, much like the list I've given above. Then see if the assertions fit each other. If they don't fit on your list, they probably won't fit in the paper.

4. *Criticisms so general that they could apply to anything.* It's not enough to say that a law has a "chilling effect," or starts us down the "slippery slope," or "imposes the majority's morality on the minority," or "intrudes on people's privacy." Most important laws—murder laws, antidiscrimination laws, bans on cruelty to animals—impose the majority's morality on the minority; sometimes that's good. Many laws have chilling effects or intrude on people's privacy; sometimes that's exactly what we want, and other times we tolerate it because the good effects outweigh the bad. Almost every law starts one down some slippery slope, but that's not reason enough to reject it.

Be specific. Explain why this chilling effect is worse than chilling effects that we're willing to tolerate. Explain why this slope is more slippery than others, or why it's wrong to impose this kind of moral principle on people, or why this intrusion on privacy is unjustified where others are.

Whenever you criticize a law, especially when you do it in terms that sound general or platitudinous, ask yourself whether the criticism could equally apply to laws that you endorse. If it can, refine your criticism to make clear specifically why *this* law is bad when the others are good.

5. *New eyes.* These points reinforce the need to go through many drafts, looking at your arguments with new eyes. The only way you can catch problems like these—or the writing errors I mentioned above—is by rereading your own work closely and carefully. Every day, with every draft, your piece will get better and better.

IV. Converting Practical Work—such as Law Firm Memos—into Student Articles

Writing an article from scratch can be a daunting proposition. Fortunately you can often save time and worry by adapting work you originally wrote for another purpose—for instance, for a summer law firm job or a judicial externship.

Not all such work can be turned into a good article; some is entirely lacking in novelty or nonobviousness, the stress in the real world being largely on utility. But much practical work is indeed written about largely untapped fields, as you might have found if you searched for relevant law review articles before starting to write. And though many memos and motions are shorter and seemingly shallower than the typical law review article, that turns out to be easy to remedy.

The trick is to strip away those things that are unsuitable for law review articles, and to add the material that you never included because it was unsuitable for practical work. I recommend a four-step approach: Extract, Deepen, Broaden, and Connect.

- Practical work often covers issues that were important to the particular case on which you were working, but that aren't really new or academically interesting. *Extract* those portions that would make a valuable addition to the literature.
- Practical work often glosses over counterarguments and omits significant steps in the analysis. *Deepen* it by confronting the hard questions that you originally found it useful to avoid.
- Practical work is generally tied to particular facts, a particular jurisdiction, or a particular procedural posture. Make it more useful by *broadening* your discussion.
- Practical work tends to ignore (for good reason) broader academic debates. Make your article more academically impressive and perhaps even more useful to later scholars by *connecting* what you've written to these debates.

Note: before turning a law firm memo into an article, get permission from the firm. Most firms will want to make sure that you aren't inadvertently including confidential client material, but some might also not want you to share work that they paid for. Few articles are worth ruining your relationship with a prospective employer (or with a possible reference for future employment).

A. Extract

Find the material in your work that's novel and nonobvious. (Don't worry so much about utility; if it was useful in one case, it will probably be useful in others like it.) Many cases involve some issues that have rather simple or at least not very interesting answers, and other issues that are more worthy of academic treatment.

Cut mercilessly. Remove any material in which you think you can't really add any value. Don't worry if the result looks too short; you'll solve that problem in the next three steps. The important point is that your paper should have maximum value added, and minimum repetition of things that others have already done.

Some memos contain several interesting issues that arose in the same case but aren't inherently connected—for instance, a jurisdictional question and a largely unrelated substantive question. Split them up. Better have several short articles that have a coherent internal structure than one long article that contains several essentially unrelated matters.

B. Deepen

Practical work encourages you to take certain shortcuts. Replacing these shortcuts with more thorough analysis will make your article deeper, more valuable, and more respectable.

Question existing law. If the case law in the relevant state or the relevant federal circuit is settled, your law firm memo or judicial externship bench memo isn't supposed to analyze whether the decisions are sound; it's supposed to work within the existing framework. Not so for law review articles. Articles are generally addressed to a national audience, and other states or other circuits may be free to reject the rule in your jurisdiction. State supreme courts and federal circuit en banc panels have likewise been known to change their minds.

Don't just say, "This result is right because *X v. Y* and *Z v. W* have so held." Instead say, "This result is right because it fits with these general principles (whether doctrinal principles or policy principles); and courts have indeed seen it this way (citing *X v. Y* and *Z v. W*)." Or feel entirely free to say, "This result is right because it fits with these general principles; some courts have disagreed, but here's why they're wrong."

Take counterarguments seriously. Motions and briefs often gloss over certain counterarguments, whether because the counterarguments are so weak that they aren't worth discussing given the page limit, because they're so strong that they're best swept under the rug, or because you're pretty sure that this particular judge won't care much about them. Law review articles, on the other hand, are generally strengthened by a full discussion of the counterarguments, including especially the really tough ones (see II.C.4 above).

Go through your work carefully and look for all the fudging. When you say, "Because *X* is true, *Y* is true," is there a missing step? Is there a counterargument that you haven't confronted? Are you entirely persuaded by your own writing?

Resist the temptation to take the easy way out. Your article should aim to impress readers with your depth, thoughtfulness, and fair-mindedness; the best way to do that is to confront the hard counterarguments, not ignore them.

Reflect on your initial goal. Practical work is often constrained by its procedural posture. How should a prudent client behave in order to avoid any chance of liability under a vague rule? What's the best place to file a particular case? Is there enough evidence in this matter to send the case to the jury?

Ask yourself whether, from the legal system's perspective, it's a good thing that lawyers are asking these questions. For instance, maybe the legal rules shouldn't be so vague that they pressure people into taking the most conservative path; you could use the suggestions from your memo as evidence that the rule is too vague. Maybe the legal system should discourage forum-shopping in this context; you could use the discussion from your memo to prove how the choice of forum makes a big difference.

Remember: you're no longer locked into the particular assignment you were given. You should take advantage of the time and effort you've invested in your work, but think beyond the specific problem you were originally trying to solve.

C. Broaden

Practical work usually focuses on a particular fact pattern and a particular jurisdiction. While you want your article to be narrow enough to be practically manageable, you also want to make it useful, and that means making it applicable to as many cases as possible.

You can often generalize your analysis with relatively little extra effort. Say your work dealt with only one state's law; usually the law in many other states will be pretty similar. Turn your article into something that focuses on general U.S. law, or at least the majority (or even minority) rule. You can still use the cases from your state as illustrations and as support for your argument. You'll need to do some more research on just how similar the law in the other states really is, but that tends to be considerably easier than researching a new subject from scratch.

Similarly, see to what extent you can easily generalize your fact pattern. Say your memo was about the remedies for unauthorized publication of the fact that someone is HIV-positive. You can probably fairly easily broaden the work to cover unauthorized publication of the fact that someone has any medical condition that would lead some to shun him. You might have to add a bit more analysis—the issues related to other diseases may be different from the issues raised by HIV-positive status—but this may mean only a bit of extra work. On the other hand, you might find that broadening the subject to "remedies for any unauthorized publication of private facts" would be much harder, because so much of your discussion is tied to the fact that you're focusing on a medical condition.

Once you've done the low-cost changes, ask yourself whether the topic is still so narrow that it'll rarely prove useful. If it is, make the next-lowest-cost changes, and so on until you're satisfied.

D. Connect

Finally, your work—as I discussed above (II.C.6)—may be relevant to some broader academic debates, and may even shed light on their proper outcome. Briefly but cogently discussing such connections can make your piece more useful and more impressive.

V. Publishing

If the journals at your school decide not to publish your work, submit it to other journals at other schools. One student whom I advised circulated her article and got offers from the *Georgetown Immigration Law Journal* and the *Columbia Human Rights Law Review*, both well-respected publications at top-fifteen law schools. A friend of mine had an article published in the *University of Pennsylvania Law Review* before he even started law school. Many journals do indeed look askance at work by students at other schools, but the majority will seriously consider it. And many journals are starving for good material.

Remember, you've invested a lot of effort in your article. If you publish it, you'll get a valuable credential, and you might actually help improve the law a little bit. Don't let the opportunity slip away.

Here's what you do.

1. Write a one-page cover letter that briefly but eloquently shows that your article is novel, nonobvious, and useful.

2. Print a neat, readable copy of your article. Format it to look like an already published law review article: use a proportionally spaced font, nicely formatted footnotes, single spacing, and so on. This makes the piece more readable and more professional-looking.⁹

3. Do not say that you're a student in your cover letter or the article, though of course do not lie or actively mislead people about your position. Many law reviews will still realize you're a law student, but no need to rub their noses in this fact.

4. Get the list of law review addresses from:

<http://www.andersonpublishing.com/lawschool/directory/directory.html>

5. The best time to send out your article is mid- to late March, though April is also good, as are mid- to late August, September, and October. May through early August is not quite so good, and November through February is particularly bad. This is just a rule of thumb, but it's a pretty good one. (The reasons have to do with editorial board schedules.) On the other hand, if the article is especially time-sensitive, send it out as soon as possible. Ask your faculty adviser for guidance on this.

6. Find any specialty journals that focus on your area, and send your article and cover letter to them. If you want advice about which specialty journals are best for you, ask your faculty adviser. Many faculty-edited journals insist that you not submit to anyone else while they're considering your work; include

9. Some law reviews claim that they want submissions in other formats—for instance, double-spaced—but I've never gotten any flak about my method, and I suspect that most editors prefer articles formatted the way I describe.

them only if you have the time to wait for an answer, and ask them how quickly they'll give you an answer.

7. Look up the latest *U.S. News & World Report* list of the top fifty law schools; this list is a poor indicator of schools' *quality*, but it does give a good sense of their *reputations*, which is what matters to you here. Send your article to the main law reviews at all those schools; if you have to save postage and trim your mailing list, send to the bottom thirty of the fifty, since the top twenty are indeed not easy to get into. This whole process may sound tackily class-conscious, but unfortunately there's a pecking order out there, and ignoring it is costly.

8. Wait for an offer.

9. If you get an offer, ask how long you have to decide. The journals usually give you from twenty-four hours to two or more weeks. Don't accept the offer on the spot, unless it sounds like the offer is really a use-it-or-lose-it (to my knowledge, that almost never happens).

10. Listen closely to the offer to see if they're offering you publication as a *student note*, as opposed to as a full-fledged article. Such offers are not as good, though they're still better than nothing. If the offer is just of publication as a student note, see if you can get a better offer, from this journal or from a comparably ranked or even slightly lower-ranked one.

11. Call all the journals that are substantially higher-ranked on your list, and tell them that you have an offer from someone else and that you'd like an expedited review. This can often get you an offer from a more prestigious place. It's considered ethical, it's expected (though of course not relished) by the journals, it's done all the time, and it can get you a better placement than you would otherwise have had. Again, seems a little tacky, but that's life in the jungle.

Unless your original offer was merely for publication as a student note (see point 10 above), call only those schools that are indeed substantially higher-ranked; there's no real difference between school 30 on the list and school 25, so if 30 gives you an offer first, reward their good taste. On the other hand, there probably is a real difference in reputation between 30 and 15. For advice on where to draw the line, talk to a faculty member.

12. It is definitely *not* ethical to renege once you've accepted an offer. "Bust a deal," Auntie Entity tells us, "face the wheel"—all the contract law you need to know.¹⁰ Once you've accepted an offer, call or write to the other journals to withdraw; that's the kind thing to do, because it saves them the substantial effort of considering your article further.

13. If you get no offer, go back over your article and give it a few good editing passes. You'll be amazed how many improvements you can make after a few months away from the piece. Send the revised version to the next twenty or thirty lower-ranked journals. Repeat until you have an offer. There

10. *Mad Max 3: Beyond Thunderdome*. The civil procedure aspects of the Thunderdome judicial system—especially the trial by combat, where the mantra is "Two men enter, one man leaves"—are more controversial.

are lots of journals; if your article is at all worthwhile, you'll get it published somewhere.

VI. Publicizing

Once your piece is published, you want people to read it, or at least to know that it exists. Even people who don't read your article might think more highly of you if they know you've published something.

Order at least 100 reprints, though more is better. Reprints tend to run about 30 to 70 cents for each extra copy beyond a minimum number, so splurge.

Then distribute copies, with a brief descriptive cover letter, to:

1. All teachers at your school whose work is remotely connected to your area.
2. All legal professionals who have helped you. (Did you thank them in your author's note?)
3. All legal professionals whom you cite in your footnotes. Mention in your cover letters where you cite them. We all like to see our names in print.
4. All lawyers you know who work in the field, even those you only met in passing while working as a summer associate.
5. All law teachers who write treatises and casebooks in the field. Their addresses are in the *AALS Directory of Law Teachers*, which you can find in the library.
6. Any judges who are deciding cases to which your article is relevant, any lawyers who are litigating such cases, and any law firms or other organizations that might litigate such cases in the future.
7. The offices of any legislators, lobbyists, or political groups that are interested in any legislation to which your article is relevant.
8. Anyone else whom you want to impress.
9. Anyone else who might be in a position to help you spread your ideas.

It helps *a lot* to personalize the cover letter as much as possible. If you're sending something to a law teacher, try to (if possible) connect it to his scholarship. If you're sending it to a lawyer, stress how your piece can be practically useful to him.

Ideas that get actively promoted are more likely to get adopted. People who actively (but tastefully) promote themselves are more likely to get jobs, either immediately or down the road.

VII. Summary

A. Choosing a Topic

Choose a problem that you find interesting, and that your faculty adviser thinks is a fertile ground for novel, nonobvious, and useful ideas. Do research to learn more about the problem, and to figure out the possible solutions. Be open to switching to another problem if your research leads you to something more interesting or productive.

B. Making a Claim

Figure out what claim you want to make—what you think is the best solution to your problem. Formulate it in one or two sentences. Check it against the factual scenarios that you've seen in your research; refine the claim in light of what you learn from this. Use the pointers in part I to make the claim more novel, nonobvious, and useful.

Do your research. Go back and modify your claim in light of your research—there'll always be some modifications. Try to make your revised claim still more novel, nonobvious, and useful.

C. Writing a First Draft

Write an introduction. If you can't do that, you're probably not ready to write the draft—you're probably not yet sure what you want to say or how you want to say it. Work on it. Look over part II for some pointers.

When you're done with the introduction, write the rest of the article. In this phase, don't stop when you find yourself blocked on one section. Just get a draft out, even if it's rough and incomplete in spots. As you write, be open to revising your claim further.

Go back and rewrite your introduction in light of what you've learned while writing the draft.

D. Edit

Go through as many drafts as you can, polishing each paragraph, each sentence, and each word. Look over part III for some pointers.

Also go back over parts I and II. Can you make the piece more novel, more nonobvious, more useful? Can you tighten up its organization? Can you sell it better in your introduction?

At some point in the editing process—preferably as early in the semester as possible—give a draft to your faculty adviser for comments. Also ask for comments from some friends whose judgment you trust. Don't wait on this until it's too late.

*E. Edit Some More**F. Publish and Publicize*

See parts V and VI.

Writing and publishing can help you become a better writer, and thus a better lawyer. It can help you become a more successful lawyer, by getting you a good grade, a good board position, a publication credit, and the clerkships, lawyer jobs, or teaching jobs that can flow from this. And it can, even if only slightly, influence the law for the good.

Appendix: Clumsy Words and Phrases¹¹

Some common clunkers, and their simpler, more readable replacements. The replacements aren't always perfect synonyms; sometimes, for instance, the clunker has a technical meaning that you need to invoke. Still, ninety percent of the time the replacements are better than the original. (Of course, some of these changes also require some grammatical twiddling of other parts of the sentence.)

a large number of	many
a number of	some or several or many or something more <i>precise</i>
accord respect to	respect
acquire	get
additional	more
additionally	also
adjacent to	next to or near
advert to	mention
afford	give (<i>when used in this sense</i>)
aforementioned	<i>often best omitted</i>
ambit	reach or scope
any and all	all
approximately	about
ascertain	find out
assist	help
at present	now
at the place	where
at the present time	now
at this point in time	now or currently or some such
at this time	now or currently or some such
attempt (<i>verb</i>)	try
because of the fact that	because
cease	stop
cease and desist	stop
circumstances in which	when or where
cognizant of	aware of or knows
commence	start
conceal	hide
concerning the matter of	about
consensus of opinion	consensus
consequence	result
contiguous to	next to
demonstrate	show
desire	want

11. Sources: much e-mail from many people; Joseph Stevens, *Legal Language, Plain and Simple*, Mo. B. Bull., Mar. 1993, at 4. For an even more thorough list, see Bruce Ross-Larson, *Edit Yourself: A Manual for Everyone Who Works with Words* (New York, 1996).

despite the fact that	despite or though
does not operate to	does not
donate	give
due to the fact that	because
during the course of	during
during the time that	while
echelon	level
elucidate	explain or perhaps clarify
endeavor (<i>verb</i>)	try
evinced	show
excessive number of	too many
exclusively	only
exit (<i>verb</i>)	leave
facilitate	help
firstly, secondly,	first, second, ...
for the duration of	during or while
for the purpose of doing	to do
for the reason that	because
forthwith	immediately
frequently	often
fundamental	basic
had occasion to	omit
has a negative impact	hurts or harms
I would argue that	don't say what you'll argue; just argue it
it is arguable that	
it could be argued that	
in a case in which	when or where
in accordance with	by or under
in an X manner	Xly, e.g., "hastily" instead of "in a hasty manner"
in close proximity	near
in light of the fact that	because or given that
in point of fact	in fact (or omit altogether)
in reference to	about
in regard to	about
in the course of	during
in the event that	if
indicate	show or say or mean
individual (<i>noun</i>)	person
inquire	ask
is able to	can
is binding on	binds
is desirous of	wants
is dispositive of	disposes of
is unable to	cannot
it has been determined that	omit
it is apparent that	clearly or omit

it is clear that	clearly or omit
it should be noted that	omit
locate	find
manner	way
methodology	method
negative (<i>verb</i>)	negate
negatively affect	hurt or harm or decrease or some such
notify	tell
notwithstanding	despite
null and void	void
numerous	many
objective (<i>noun</i>)	goal
observe	see or watch
obtain	get
on a number of occasions	often or sometimes
on the part of	by
opine	say or write
owing to the fact that	because or since
period of time	time or period
permit	let or allow
personnel	people
point in time	time or point
portion	part
possess	have
prior to	before
procure	get
provide	give
provided that	if or but
provision of law	law
purchase	buy
rate of speed	speed
referred to as	called
remainder	rest
render assistance	help
request (<i>verb</i>)	ask
require	need
retain	keep
said (<i>adjective</i>)	the or this, e.g., "said contract" can often be changed to "the contract"
state (<i>verb</i>)	often best replaced with say or write
subsequent	later
subsequent to	after
subsequently	after or later
substantiate	prove
sufficient	enough
sufficient number of	enough
termination	end (sometimes)