



# Modern Legal Scholarship







# Modern Legal Scholarship

*A Guide to Producing and Publishing  
Scholarly and Professional Writing*

**Christine Coughlin**

**Sandy Patrick**

**Matthew Houston**

**Elizabeth McCurry Johnson**



CAROLINA ACADEMIC PRESS  
Durham, North Carolina





Copyright © 2020  
Carolina Academic Press, LLC  
All Rights Reserved

**Library of Congress Cataloging-in-Publication Data**

Names: Coughlin, Christine Nero, author. | Patrick, Sandy, author.

Houston, Matthew T., author. | Johnson, Elizabeth M., author.

Title: Modern legal scholarship : a guide to producing and publishing  
scholarly and professional writing / by Christine Coughlin, Sandy  
Patrick, Matthew Houston, Elizabeth McCurry Johnson.

Description: Durham, North Carolina : Carolina Academic Press, LLC, 2020.

Identifiers: LCCN 2020012537 (print) | LCCN 2020012538 (ebook) | ISBN  
9781531010270 (paperback) | ISBN 9781531010287 (ebook)

Subjects: LCSH: Legal composition. | Academic writing.

Classification: LCC KF250 .C684 2020 (print) | LCC KF250 (ebook) | DDC  
808.06/634--dc23

LC record available at <https://lcn.loc.gov/2020012537>

LC ebook record available at <https://lcn.loc.gov/2020012538>

Carolina Academic Press  
700 Kent Street  
Durham, NC 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America





*To Caroline, Lynn, Susannah, and Sylvia—  
our laughs are limitless, our memories are countless,  
and our friendship is endless.*

CNC

*To three of my greatest teachers in the law:  
The Honorable David H. Welles and Professor Judy Cornett,  
who taught me how to write as a lawyer and advocate, and  
the extraordinary, indomitable Dean Deborah Leonard Parker,  
who taught me how to teach legal writing.*

SP

*To Brooke, whose support helped make this a reality.*

MH

*To my greatest gifts from God—  
Mom, Dad, Seth, Sarah, and Susanne.*

EMJ







# Contents

<b>Acknowledgments</b>	<b>xiii</b>
<b>Introduction</b>	<b>xvii</b>
<b>Chapter 1 · Exploring Topics and Establishing a System</b>	<b>3</b>
1.1 Finding a place to start	3
1.2 Exploring potential topics	5
1.2.A Legal news	7
1.2.B Circuit splits	7
1.2.C “Outside the scope” of law journal articles	8
1.3 Establishing a workable system	8
1.3.A Creating a timeline	9
1.3.B Setting interim deadlines for smaller tasks	9
1.4 Putting your plan in writing	10
1.5 Controlling interruptions	12
1.6 Holding yourself accountable	13
Notes	13
<b>Chapter 2 · Diving into Research</b>	<b>15</b>
2.1 Planning your research	15
2.2 Managing your sources	18
2.2.A The research log	18
2.2.B Other research management tools	21
2.3 Conducting the preemption check	22
2.4 Conducting further research	27
2.5 Tracking new developments	29
Notes	29
<b>Chapter 3 · Crafting Your Thesis</b>	<b>31</b>
3.1 Originality	31
3.2 Developing your initial thesis	32
3.3 Honing your thesis	38
Notes	39



<b>Chapter 4 · Developing Critical Legal Analysis</b>	<b>41</b>
4.1 Reading to write	41
4.2 Transforming description into analysis	42
4.3 Thinking critically to write analytically	44
4.3.A Asking who, what, where, when, and why	44
4.3.B Questioning what you read	46
4.3.C Assessing the credibility of secondary sources	47
4.4 Identifying types of supporting arguments	48
4.4.A Textual arguments	48
4.4.B Normative arguments	49
4.4.C Institutional arguments	51
4.5 Using empirical data	52
4.5.A Quantitative data	53
4.5.B Qualitative data	55
4.6 Adopting a balanced approach to your scholarship	56
Notes	57
<b>Chapter 5 · Avoiding Plagiarism: Taking Notes Carefully and     Attributing Properly</b>	<b>61</b>
5.1 Taking notes carefully	62
5.2 Strategies for effective note taking	62
5.3 What is plagiarism, and how does it happen?	66
5.4 Intentional versus unintentional plagiarism	67
5.5 Knowing when and how to attribute sources	68
5.5.A Common knowledge exception	69
5.5.B Direct quotes	69
5.5.C Paraphrasing properly	70
5.6 Quick reference chart	72
Notes	74
<b>Chapter 6 · Writing, Revising, and Proofreading</b>	<b>75</b>
6.1 Moving from research to a working outline	76
6.1.A When to start outlining	77
6.1.B Constructing the broad outline	78
6.1.C Crafting a detailed outline	79
6.1.D Breaking through blocks: Using the free write and the reverse outline	82
6.2 Using efficient drafting techniques	85
6.2.A Pace yourself by using time management strategies	85
6.2.B Start with the introduction	86
6.2.C Remember that the writing process is not linear	86
6.2.D Create a process for saving drafts and deleted work	86
6.3 Revising and polishing your draft	87
6.3.A Revising	88
• Overall organization	88



• Paragraph cohesion	89
• Sentence cohesion and clarity	90
• “Wordsmithing” your work	92
• Revising for flow	92
6.3.B Polishing with proofreading	94
6.4 Perfecting citations	95
Notes	97
<b>Chapter 7 · Law Review and Law Journal Articles</b>	<b>99</b>
7.1 Differences between scholarly articles and other types of legal writing	100
7.2 Common elements of scholarly articles	101
7.2.A The introduction: Creating your research space	103
• The opening	103
• Importance of topic and thesis	106
• Roadmap paragraph	107
7.2.B The background: Putting in your oar	107
7.2.C The analysis: The heart of the matter	109
7.2.D The conclusion: Ending on a high note	116
7.3 Crafting a memorable title	117
7.4 Law review and journal membership and write-on competitions	119
Notes	123
<b>Chapter 8 · Seminar Papers and Capstone Projects</b>	<b>127</b>
8.1 Seminar papers generally	127
8.2 Capstones generally	128
8.3 Audience expectations	128
8.4 Traditional seminar papers and capstones	129
8.4.A Components of a traditional seminar paper or capstone	130
8.4.B Introduction	130
8.4.C Background	135
8.4.D Analysis	136
8.4.E Conclusion	141
8.4.F Title	142
8.5 Less traditional forms of seminar papers and capstones	143
8.5.A An annotated brief	144
8.5.B Creating a legal guide or handbook	146
Notes	151
<b>Chapter 9 · Bar Journal Articles</b>	<b>153</b>
9.1 Choosing a topic	154
9.1.A Knowledge of a topic	154
9.1.B Relevance of the topic	155

9.1.C Interest in the topic	156
9.2 Drafting the bar journal article	157
9.2.A General drafting considerations	158
9.2.B Professional drafting considerations	160
9.3 Publishing the bar journal article	162
Notes	163
<b>Chapter 10 · Policy Papers (White Papers)</b>	<b>165</b>
10.1 Focusing on a topic	166
10.1.A Employer's or client's requested topic	166
10.1.B Focusing on a topic without a client request	168
10.2 Experience with the topic	168
10.3 Research on the topic	169
10.4 Different types of policy papers	169
10.4.A Consider the audience	170
10.4.B General drafting considerations	171
10.5 Drafting a positional policy paper	172
10.6 Drafting an analytical policy paper	176
Notes	179
<b>Chapter 11 · Op-Eds</b>	<b>181</b>
11.1 Why write an op-ed?	181
11.2 Trust and discourse: Elements of a successful op-ed	182
11.2.A Topic selection	182
11.2.B Evidence and how to use it	183
• Expert opinion	184
• Statistics	184
• Analogies and examples	185
11.2.C Maintaining a strong, authoritative voice	186
• Emotion	186
• Civility	186
11.3 Drafting the op-ed	188
11.3.A Providing a lead or hook	188
11.3.B Introduction	189
11.3.C Body: Evidence and analysis	189
11.3.D Conclusion	190
Notes	191
<b>Chapter 12 · Social Media and Blogs</b>	<b>193</b>
12.1 Social media	194
12.1.A LinkedIn	194
12.1.B Twitter	195
12.1.C Facebook	197
12.1.D Instagram	197
12.2 Blogs	198

12.2.A Creating a blog	199
• Common platforms	200
• Templates	200
12.2.B Writing a blog post	201
• Topic	203
• Title	203
• Text	205
• Visuals	205
• Citations	206
• Publicizing your blog on social media	207
12.3 Responsible and professional use of social media and blogs	207
12.3.A Client confidentiality	209
12.3.B Attorney advertising	209
12.3.C Duty to be truthful and accurate	210
12.3.D Technology	210
12.3.E Unauthorized practice of law	211
Conclusion	212
Notes	212
<b>Chapter 13 · Creative Works</b>	<b>215</b>
13.1 Conceptualizing a story	215
13.2 Finding your inspiration	216
13.3 Crafting the fictional story	217
13.4 Weaving traditional parts of a story into your outline	218
13.4.A Exposition	218
13.4.B Rising action	218
13.4.C Climax	219
13.4.D Falling action	219
13.4.E Resolution	219
13.5 Other considerations for the creative writer	220
13.5.A Vocabulary	220
13.5.B Show, don't tell: The art of subtlety	221
13.5.C Choosing the narrator	222
• Voice	222
• Gender	223
13.6 Bringing in the law: What makes the piece a creative legal work?	223
13.6.A Citations	224
Notes	225
<b>Chapter 14 · Submitting and Publishing Your Work</b>	<b>227</b>
14.1 Publishing law review and law journal articles	228
14.1.A Where to publish: Considerations for students	229
• Your law school's journals	229

• Other law schools' journals	229
• Specialty journals	230
14.1.B Where to publish: Considerations for practicing lawyers	231
14.1.C Journal standards	231
14.1.D Online law journals	231
14.1.E How to publish: Submission platforms	232
• ExpressO and Scholastica	233
• SSRN and LawArXiv	234
• Other opportunities	234
14.1.F When to publish: Journal publication cycles	235
14.2 Other considerations: Length, abstract, cover letter, keywords, and table of contents	236
14.2.A Length	236
14.2.B Abstract	237
14.2.C Cover letter	239
14.2.D Keywords	240
14.2.E Table of contents	240
14.3 Publishing bar journal and other professional articles	241
14.4 Other options: Bar associations, professional organizations, and writing competitions	242
14.5 Promoting your work	244
14.6 Conclusion	244
Notes	245



# Acknowledgments

So much of what we do in any kind of legal scholarship is to build upon the work of others. In truth, this book could not have been written without the work of so many other authors, colleagues, and students. We wrote this book in large part to help students and new lawyers find inspiration, competency, and fulfillment in different kinds of legal writing. As we wrote, however, we often found that *we* were the ones inspired by the wide range of interesting scholarship kindly shared by authors across the country.

We would like to thank so many professional colleagues and students who shared their work, insights, feedback, and time as we crafted each chapter. First and foremost, we would like to thank Adam Messenlehner, former law student and now gifted public school teacher, for his extraordinary contributions to this book. This book is better because of his ideas and expertise.

The following individuals generously shared their work with us and provided permission to use excerpts from their scholarly contributions to help train future scholars. Thank you to:

Kate Acosta, Anna Baitchenko, Kelsey Benedick, Michael Blumm, Jack Bogdanski, Meghan Boone, Robin Boyle Laisure, Elizabeth Sargeant Buttrick, Kami Chavis, Brandon Chirco, Lawrence Cunningham, Lane Danforth, Danielle Elefritz, Daniel Fan, Miki Felsenburg, Marie-Amélie George, Russell Gold, Laura Graham, Rachel Gurvich, Catherine Hammack, James Huffman, Mark Huffman, Steve Johansen, Stephen Kanter, Aliza Kaplan, Douglas Keith, Robert Klonoff, Anjana Kumar, Brian Larson, Nancy Levit, Douglas Linder, Susan Mandiberg, Ellie Margolis, Cyd Maurer, Andrew McClurg, Ruth Ann McKinney, Adam Messenlehner, Sarah Morath, Anne Mullins, Ellen Murphy, John Parry, Abigail Perdue, Joan Rocklin, Ruth Anne Robbins, Michael Robinson, Jennifer Romig, Allen Rostron, Suzanne Rowe, Rebecca Sandefur, Jessie Schuh, Shaun Spencer, Genevieve Steel, Janet Steverson, Juliet Stumpf, Hadley Van Vactor, Andrew Verstein, Leti Volpp, Daryl Wilson, Ron Wright, Logan Wyont, and Kenji Yoshimo.

We endeavored to acknowledge your work where it appears in each chapter. We have done our best to credit each of you as well as the entity that published your work. To the extent that any errors or omissions exist, we apologize.



Many scholars reviewed various chapters and provided us with gracious critique and thoughtful content and ideas. Again, this book is better because of your feedback and we thank you. These individuals include: Robin Boyle Laisure, Mari Cheney, Christopher Culbert, Marie-Amélie George, Russell Gold, Laura Graham, Rachel Gurvich, Mark Hall, Michael Hyde, Ana Iltis, Adam Kadlac, Nancy M.P. King, Chris Knott, Brian Larson, Lance Long, Mary Susan Lucas, Adam Messenlehner, John Moskop, Ellen Murphy, Richard Robeson, Michael Robinson, Jennifer Romig, and Andrew Verstein.

We would respectively acknowledge the following entities and individuals for their support:

**Coughlin** thanks Wake Forest School of Law for its support, particularly Dean Emerita Suzanne Reynolds, Dean Jane Aiken, Associate Executive Deans for Academic Affairs Jonathan Cardí and Wendy Parker, and Associate Deans for Research and Development, Andrew Verstein, Gregory Parks, and Kami Chavis. Professor Coughlin also thanks her other Wake Forest legal analysis, writing, and research colleagues who inspire her daily with their scholarship and teaching and are always generous in sharing their scholarly ideas and materials: Lance Burke, Tracey Coan, Luellen Curry, Russell Gold, Laura Graham, Heather Gram, Sally Irvin, Catherine Irwin-Smiler, Chris Knott, John Korzen, Hal Lloyd, Mary Susan Lucas, and Abigail Perdue. In addition, Coughlin would like to thank her Administrative Assistant, Ms. Cynthia Ring, for her extraordinary help and patience. Coughlin would also like to thank the many Wake Forest students who assisted with research and provided other related support for this project: Madison Alligood, Jordan Artrip, Hannah Frye Burgin, Meghan Capps, Hailey Cleek, Ashley Collette, Christopher Culbert, Katie Horton, Sarah Orwig, Sara Kathryn Mayson, Emily Stratmeyer, and Hannah Weiss. It certainly takes a village!

**Patrick** thanks Lewis & Clark Law School faculty and staff, particularly Dean Jennifer Johnson, Associate Dean John Parry, Associate Dean Libby Davis, and Assistant Director of Library Research and Instruction Mari Cheney. Special acknowledgement should go to professors who have so kindly shared their guidance on scholarly writing: Michael Blumm, Bill Chin, Susan Mandiberg, Jan Neuman, Janet Steverson, and Chris Wold. Professor Patrick also thanks her other Lewis & Clark colleagues who so freely share their ideas, assignments, and scholarship every day: Lawyering colleagues Steve Johansen, Toni Berres-Paul, Bill Chin, Judith Miller, Aliza Kaplan, Hadley Van Vactor, Robert Doeckel; librarians Mari Cheney and Rob Truman; and Writing Specialists Lora Keenan and Hillary Gell. Finally, thank you to the research assistants, Daniel Fan, Stephanie Keys, Sadie Normoyle, and Alexis Baello, who helped throughout the project.



## ACKNOWLEDGMENTS

xv

**Houston** would offer sincerest gratitude to his co-authors for the opportunity to collaborate on this book and for spearheading the effort.

**McCurry Johnson** would like to give sincere thanks to Christine Nero Coughlin: “My friend; you are a professional and personal inspiration to me and many other women.” Thank you to my other co-authors for all your guidance as I embarked on my first endeavor in book publishing. McCurry Johnson would like to thank the firm of Crosswhite, Crosswhite and Johnson for welcoming her and teaching her so many new things over the last few years. The unconditional support has meant so much.

Together, we all acknowledge the help and support we received from our family and circle of friends. We appreciate your patience with us as we were finishing this manuscript. We know there were far too many late nights and weekends, and your support means the world to each of us.

Special thanks to our publisher, Carolina Academic Press. CAP is a pleasure to have as our publisher. We could not ask for a more patient, caring, and competent group of people to guide us on this journey.

And, finally, special thanks to the students who inspire us daily—we hope these words may likewise inspire you to put your ideas out there.









# Introduction

*“The secret of getting ahead is getting started. The secret of getting started is breaking your complex overwhelming tasks into small manageable tasks, and then starting on the first one.”*

—Mark Twain

In today’s modern world, legal scholarship can take many forms. Traditionally, legal scholarship was relegated to a few main forms—books, treatises, and scholarly articles such as those found in law reviews and law journals. As law study and practice have evolved, so have our methods of communication. Today, legal scholarship appears in many places, from blogs to monthly legal magazines to law review articles. Whether academic or professional in nature, legal scholarship has moved beyond traditional parameters. Lawyers (and, in particular, academics) tend to be people with strong convictions, and many opinions exist on what is or should be included in the diverse world of legal scholarship. Most, however, would agree that the goal of legal scholarship is to contribute to the discourse on topics of law or the general study of the law.

Scholarly writing in any form can be a rewarding form of self-expression in law school and beyond. Researching and writing scholarly works fosters professional development, improves analytic skills, and advances knowledge and understanding of a legal doctrine in a manner far greater than, for example, if you had simply studied the concept for a law school exam.<sup>1</sup> Writers gain “a sense of what it means to be an *expert* in a field—to know its history and literature, its issues and solutions; to synthesize all that is currently known on a subject [and] to see how it fits together.”<sup>2</sup> For these reasons, you should select a topic you care about,<sup>3</sup> especially if that topic encompasses an area of law in which you would like to practice or intend to specialize eventually.

On the other hand, without a plan in place, the process of scholarly writing can feel more overwhelming than rewarding. The purpose of this book is to get you started and guide you through the full scholarly writing process, from topic selection to publishing. This book breaks down that process into understandable and manageable tasks to help you get started and complete the project.





Individuals learn best when they understand the context and purpose of a project. To provide as much context as possible for the tasks ahead, and so that you understand both how and why to complete each task, this book walks you through the process of producing a range of quality scholarship both efficiently and effectively.

## Notes

1. Claire R. Kelly, *An Evolutionary Endeavor: Teaching Scholarly Writing to Law Students*, 12 J.L. WRITING INST. 285, 285 (2006).
2. Elizabeth Fajans & Mary R. Falk, *Comments Worth Making: Supervising Scholarly Writing in Law School*, 46 J.L. EDUC. 342, 344 (1996).
3. See Andrew Yaphe, *Taking Note of Notes: Student Legal Scholarship in Theory and Practice*, 62 J.L. EDUC. 259, 296–97 (2012).

