

SUGGESTIONS AND CRITERIA FOR PAPERS¹

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GENERAL COMMENTS

Choosing a Topic

When choosing or narrowing down the topic of your paper, consider the following:

1. Find a body of material and an intellectual problem that you can stand to live with intimately for months on end.
2. Find an issue that lets you show me how good you are. This usually means selecting a topic for which some cases and law review articles exist, but where significant problems or questions still remain. Ideally, your topic should allow you to show that you can:
 - Find the relevant cases, statutes, constitutional provisions, legislative history, regulations, and commentary in the area.
 - Analyze and explain specific cases and general law succinctly.
 - Think creatively about an area of law.
 - Explore the dimensions and merits of all sides of an issue.
 - Evaluate the legal, social, historical, jurisprudential, and other relevant dimensions of an issue.
 - State a hypothesis or theme; recognize the logical steps necessary to develop it; present each step comprehensively and articulately; and arrive at a defensible and persuasive conclusion.
3. Choose a topic that won't leave you feeling frustrated. Try to avoid these common problems:
 - There are too few sources available.
 - There are too many sources to read and digest in the amount of time available.
 - The sources are too difficult to find in the amount of time available.
 - The topic is so focused on non-legal history, sociology, anthropology, economics, or some similar area that the legal aspects are difficult or impossible to explore. (While these other areas are fascinating, this is supposed to be a law-related paper.)
 - The topic has no "tension." For example, it is too descriptive, or there are no significant problems involved, or the problems have already been analyzed to death.

¹ This is adopted from Susan Mandiberg's original version, a copy of which is on file with this author.

4. Evaluate the risks involved in choosing a topic on which you have a strong political, philosophical, or moral point of view. *I will want you to acknowledge positions contrary to your own and persuade me that the “other” side is wrong.* Doing this will require you to acknowledge and understand the reasoning on the other side and refute that reasoning on the merits. You must assume that your reader *is* the opposition, so merely declaring its point of view to be wrong is not enough. If your views cannot permit you to recognize valid arguments on the other side—if you get angry at hearing another point of view or if your attitude is that there *are* no valid arguments on the other side—you probably will end up writing what I will consider to be a diatribe as opposed to a reasoned analysis of the problem. I won’t be happy with your paper, and you won’t be happy with my reaction to it.

Choosing a Thesis

A thesis is “a statement or theory put forward and supported by arguments.”² Your thesis is your point of view on the issue under discussion. To develop a thesis, adopt a specific approach to the body of material you are examining. What is your purpose in writing the paper? Generally, it will be one of the following³:

- Synthesize a body of law not yet drawn together.
- Criticize or support a recent opinion.
- Offer a new direction for a specific area of law.
- Criticize a theory or argument made by another scholar.
- Foreshadow or predict developments in the law.
- Suggest changes in the law.
- Make recommendations for action on a legal issue.
- Apply an existing area of law to a new problem.

When you have concluded your research and are thinking about the problem, state your conclusion as a proposition that you want your readers to adopt. Your statement of that proposition is your thesis. The following is *not* a thesis: “This paper is about the Supreme Court’s approach to standing at the end of the twentieth century.” This *is* a thesis: “The Supreme court’s approach to standing at the end of the twentieth century should be abandoned in favor of a more flexible approach.”

² OXFORD AMERICAN DICTIONARY 712 (1980).

³ Most of this is taken from JILL J. RAMSFIELD, CREATING A GOOD SCHOLARLY PAPER 1 (1991), as taken “almost verbatim” by Chris Wold, “Writing a Law School Paper” (Oct. 22, 1999) (unpublished manuscript, on file with this author).

The Structure of the Paper

The structure of your paper follows logically from your thesis. Assume that your reader is hostile to your thesis (perhaps holds a view diametrically opposed to yours). Your goal is to convince that hostile reader to have a change of heart and accept your point of view by the end of the paper.

Your paper should consist of four main parts⁴:

- (1) The Introduction. This is where you get the reader's attention and give a *brief* overview of your paper. The Introduction should state:
 - The nature of the problem you will consider and why it is important (this may require some brief highlights of the "report" (see below).
 - Your thesis.
 - The steps you will take to convince the reader to accept your thesis—a "roadmap" or "overview" of the rest of the paper.

Most authors write the Introduction after they have completed writing the rest of the paper.

- (2) The Report. This is where you give the reader the background necessary to understand the problem you are discussing. The report should be as brief as possible to get the job done—it definitely should not be the bulk of your paper. Needless to say, it is important that the report be accurate, comprehensive, and properly attributed. The report may include the following types of information, as required by your thesis:
 - Factual background.
 - The existence and content of relevant statutes, constitutional provisions, legislative history, regulations, or judicial decisions.
 - The existence and content of major commentary in the area.⁵
- (3) The Analysis. This is *your* part of the paper—the place where you do your own independent, creative work and make an original contribution to the field of law. It is the focal part of the paper⁶ and should be the longest section. It is also the hardest to write because you are communicating your own, original work, rather than reporting on the work of others.

⁴ The report and the analysis could, of course, each be broken into subsections if that makes sense for the development of your topic.

⁵ Choose your sources intelligently. Go beyond commercial outlines, hornbooks, law dictionaries, legal encyclopedias, and the like. Read all the law review articles that you can get your hands on that relate to your topic. Read and consider non-legal materials where relevant.

⁶ If you only make a "report," no matter how well it is written, it will not fulfill the writing requirement.

- (4) The Conclusion. This is where you summarize the main points of your argument and tie them together in the final bottom line, which is essentially a re-statement of your thesis. *There should be no new information, arguments, or recommendations in the conclusion.*

In addition, please note that *I require a Table of Contents at the beginning of the paper.*

Organization

There is a logical progression of thoughts in developing any thesis. That logical progression should form the organizational structure of your paper. Some thesis development takes place in the “report” section, but most of it occurs in the “analysis” section. As to the latter, it is often most effective to break the “analysis” portion into subsections, each of which develops a discrete part of your analysis.

Take, for example, the thesis mentioned above: *The Supreme Court’s approach to standing at the end of the twentieth century should be abandoned in favor of a more flexible approach.* Development of this thesis might follow certain logical steps:

1. *Describe the Supreme Court’s approach to standing at the end of the twentieth century.* This step is achieved in the “report” section of the paper.
2. *Persuade the reader that the Court’s approach should be abandoned in favor of a more flexible approach.* This step is achieved in the “analysis” section of the paper. However, there are logical sub-steps in developing the thesis, and each of these steps might effectively be treated as a subsection. For example:
 - a. *The court’s approach is misguided legally.* In this subsection, you would show that the approach is not required by Article III of the Constitution.
 - b. *The Court’s approach frustrates Congress’s ability to check the Executive branch.* In this subsection, you would show that the Court’s approach has negative practical effects.
 - c. *A more flexible approach is more appropriate.* You could break this subsection down into additional subsections:
 - i. *The Constitution supports a more flexible approach.*
 - ii. *A more flexible approach is preferable from a practical governmental perspective, as it provides more benefits than problems.*

Effective writing generally uses the same type of hierarchical structure throughout the paper. For example, each section of the analysis has a “theme,” as noted in the example. You should determine the logical steps necessary to develop or prove that theme. Each step then becomes the “theme,” or topic sentence, of an individual paragraph. The paragraphs are put in order according to the logical progression of the topic sentences. Similarly, each paragraph can be organized hierarchically, with the topic sentence as the paragraph’s “thesis,” the intermediate sentences developing the topic, and the final sentence concluding or providing a transition to the next paragraph.

This approach to organization has many advantages. For one, good organization eases the reader’s ability to understand your argument. However, another advantage is that good organization allows *you* to be sure that there are no holes in your reasoning. You should be able to write out the topic sentences of each paragraph and see that they add up to a logical, complete development of the thesis of that subsection.

Content

In addition to good organization, there are other elements that make for a good analysis:

- Go beyond a simple approach to the problem. For example, assume that your thesis is that the defendant in a criminal homicide case did not have a legal duty to rescue the victim from death. A simple approach would review the existing categories of legal duty, show that this situation does not fit within one of those categories, and conclude. A better approach would examine the jurisprudential and historical reasons for the existence of the accepted categories and use these to consider and reject an argument that the law should adopt a new category.
- Read cases and secondary sources critically. Part of your analysis will involve reacting to what courts and commentators have said on the subject. Don’t accept the analysis of a judge or published author as correct just based on that person’s status. Adopt a skeptical attitude. Make writers convince you of their theses just as you will have to convince me of yours. Where are the holes in the writer’s logic or facts? Include your criticism as part of your own analysis.
- Use examples. “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.”⁷

⁷ See Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247, 256 (1998).

- Be focused. “Focus on your arguments, not the other side’s. Confront all the counter-arguments, but take the offensive. . . . Cite your adversaries and rebut their assertions, but don’t let them play center stage in your discussion.”⁸
- Be logical. Examine your analysis for holes, flaws, overstatements, and similar problems.⁹
- Don’t ignore problems in your position. “Turn the problems in your argument to your advantage. Logical and practical difficulties with your argument should be embraced, not swept under the rug.”¹⁰ If you cannot eliminate problems, acknowledge them and explain why your position, problematic as it is, is still superior to other approaches.

Writing Craft

Writing skills are essential to good lawyering. If the judge can’t understand what you’re saying—or has to work twice as hard to muddle through your brief—you might lose even if your legal position is correct. A paper is judged on the quality as well as the content of your writing.

I will be paying particular attention to the following things¹¹:

- Proper punctuation and spelling. Use a dictionary or your computer’s spell check. Review punctuation rules in standard writing guides. While reasonable minds may differ on some punctuation issues, your usage should not be so idiosyncratic as to detract from the content of your discussion.
- Clarity of writing. You will enhance your writing clarity by using the active voice, not the passive voice, wherever possible. In addition, several short sentences are more effective than one long, run-on sentence. Simplify whenever and wherever possible. An outstanding source to help you learn and practice these skills is: RICHARD C. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (5th ed. 2005). I suggest that you read that book from cover to cover.
- “Reader friendly” devices. Part of a writer’s job is to lead the reader clearly from point to point in the analysis. The reader should never have to wonder why a portion of the paper is important or how it relates to the thesis. The writer must tell the reader where the discussion has been, where it is going, how it is getting there, and why. I do not think that it is possible to be too simplistic and careful here, especially when dealing with difficult analysis.

⁸ *Id.*

⁹ *See id.* at 260-62.

¹⁰ *Id.* (suggesting a variety of effective ways to deal with problems in one’s own position).

¹¹ *See also id.* at 259-60.

Some of the basic tools that a writer can use to accomplish this task are: careful organization; clear introductions, including “roadmaps,” for each major section as well as for the paper as a whole; precise section headings and subheadings; clear topic sentences for every paragraph; transitional words, sentences, and even paragraphs, which explicitly link one idea to the next.

- Citation form. Please cite according to the most recent edition of the “Blue Book.” I will check your cites for style as well as content. Please use complete citation form in your polished draft so that I can give you useful feedback. Pay particular attention to the use of introductory signals and short citation forms.
- Citation style. Follow a “law review” style (cites in footnotes) rather than a “brief” style (cites in the body of the text).
- Paper length. In both the polished draft and the final paper, please double-space the text and single-space the footnotes. I do not require the paper to be a specific length. Quality is more important than quantity. I would rather read a shorter, well-written paper than slog through pages and pages of unnecessary “filler.” Thus, I will evaluate whether the length is appropriate to the topic and the coverage. That being said, I would be surprised if a person could write a complete analysis on a challenging topic in less than twenty-five to thirty pages. On the other hand, if you think that your paper will be more than twice that length, we should talk.

A WORD ABOUT PLAGIARISM

Plagiarism involves using the words or ideas of another without adequate attribution to that other source. Plagiarism includes:

- Using the verbatim, essentially verbatim, or paraphrased words of another without citing the source of the language.
- Using the verbatim words of another without putting quotation marks around the borrowed language, even if an appropriate citation is given.
- Using the original ideas of another, even when expressed in your own words, without citing to the source of those ideas.

Plagiarism is an Honor Code violation.

Sometimes, even well-meaning writers run into plagiarism problems because they are not careful in their note-taking. I think that this risk is particularly acute if you take notes on a computer, which facilitates writing things down in verbatim or essentially verbatim form. If you have neglected to indicate to yourself that you are quoting, you may neglect to use citations, quotation marks, or both when you use your notes to write your paper. The danger increases, of course, if you are writing your paper or draft in a rush. While this or some other benign or unintentional explanation may, in fact, be behind the apparent plagiarism that results, the problem will still be reported to the Dean; the traditional approach is to let the appropriate Law School and/or University Committee sort it all out, not the professor.

EVALUATION

When I review your work, I will take the following into account:

Substance

- Quality of outline.
- Quality of polished draft.
- Responsiveness to comments on polished draft in your final paper.
- Difficulty of topic.
- Sophistication of treatment.
- Accuracy and thoroughness of research.
- Quality of analysis.

Writing Craft

- Quality of polished draft.
- Responsiveness to comments on polished draft in your final paper.
- Grammar, punctuation, spelling, organization, and clarity.
- “Blue Book” form.