

Legal Research and Writing Resources: Recent Publications

Compiled by Barbara Bintliff

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Ruggero J. Aldisert, Stephen Clowney & Jeremy D. Peterson, *Logic for Law Students: How to Think Like a Lawyer*, 69 U. Pitt. L. Rev. 1–22 (2007).

Described as “a primer on the fundamentals of logical thinking,” this article attempts “to explain, in broad strokes, the core principles of logic and how they apply in the law school classroom.” *Id.* at 2. The article explains deductive reasoning, inductive generalizations, and reasoning by analogy and concludes with a discussion of the limits of logic in legal reasoning.

Annotated Legal Bibliography on Gender, 14 Cardozo J.L. & Gender 211–265 (2007).

Annual update on journal articles on a range of topics related to gender. Organized by topics, which include abortion and reproductive rights, gender and violence, fatherhood, parenting, religion, sex industry, and social class. Entries are well annotated.

Daniel L. Barnett, “*Form Ever Follows Function*”: *Using Technology to Improve Feedback on Student Writing in Law School*, 42 Val. U. L. Rev. 755–795 (2008).

“The goal of this Article is to encourage law professors to examine the different critiquing formats available and to consider using some form of electronic critique.” *Id.* at 757. The article provides a brief comparison of different types of critique formats (including handwritten or typed comments, global comments to the class, conferences, and types of electronic critiques), describes considerations in

using various forms of feedback, and provides a guide to help professors master current technology.

Bibliography: Articles from Law Reviews and Copyright Periodicals, 55 J. Copyright Soc’y U.S.A. 111–123 (2007).

An unannotated, extensive bibliography of current articles on copyright issues, divided into “United States” and “Foreign” sections.

Andrea A. Curcio, Gregory Todd Jones & Tanya M. Washington, *Developing an Empirical Model to Test Whether Required Writing Exercises or Other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance*, 57 J. Legal Educ. 195–204 (2007).

The authors “examined whether multiple practice essays, combined with peer and self-assessment using annotated model answers, had any effect on first-year law students’ ability to break a legal rule into its component parts and perform a complex factual analysis on an essay exam.” *Id.* at 197. Many questions were identified that warranted further investigation, but the conclusion was that, “[o]n average, students in the writing exercise class performed better on the essay exam questions, but the most statistically significant benefit inured to students who had above-the-median LSAT scores and above-the-median UGPA scores.” *Id.*

Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 Cal. W. L. Rev. 219–255 (2007).

“This article answers two questions: 1) How can law schools better prepare students to practice law; and 2) Why do law schools not do this already? This article proposes remedies which many thoughtful and concerned observers of legal education say are obvious and long overdue. This article also argues that the bench and bar are in the best position to initiate change in legal education which is necessary for law schools to produce competent new attorneys.” *Id.* at 219.

Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 St. John's L. Rev. 609–674 (2008).

The author asks if there are secrets to success in law school, and if so, what are they? She then investigates the possible answers through a study of six law students, “two of whom were predicted to be marginally successful C students, two of whom were predicted to be moderately successful B students, and two of whom were predicted to be highly successful A students.” *Id.* at 611. Similarities and differences in the approaches of the students to their legal writing classes were identified and described. Somewhat surprisingly, LSAT scores and undergraduate GPAs “had little, if any, predictive value for the six students in the study.” *Id.* at 668. The students’ first-year law school grades and their first-semester legal writing performance were significantly better predictors of their overall level of success in law school.

Michael Evans et al., *Recounting the Courts? Applying Automated Content Analysis to Enhance Empirical Legal Research*, 4 J. Empirical Legal Stud. 1007–1039 (2007).

This article gives an overview and assessment of using text classification to conduct empirical research on legal issues. Text classification, a method of using computers to sort textual information, relies on the application of algorithms to the data to be sorted with a goal of automatically coding and organizing documents without the need for human intervention. The authors report on experiments designed to understand the strengths and weaknesses of the method, using the contents of briefs submitted to the U.S. Supreme Court in the *Bakke* and *Bollinger* affirmative action cases, and make suggestions for technical and infrastructure improvements.

Ward Farnsworth, *The Legal Analyst: A Toolkit for Thinking About the Law*, 2007 [Chicago, IL: University of Chicago Press, 341 p.]

The author presents what he considers some of the most valuable tools for thinking about the law—ideas, theories, and analytic techniques that can assist legal thinking and

clarify substantive law. The book has 31 chapters, organized into five parts: Incentives; Trust, Cooperation and Other Problems for Multiple Players; Jurisprudence; Psychology; and Problems of Proof. Each chapter begins with examples and questions that provide context for the following discussion. Methods covered range from the prisoner’s dilemma to the importance of recognizing hindsight bias to the challenges in avoiding slippery slopes. The writing is clear and readable, and each chapter includes suggestions for further reading.

Ian Gallacher, “*Who Are Those Guys?*”: *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 Cal. W. L. Rev. 151–217 (2007).

Based on a 2006 survey of beginning law students, the author suggests that “incoming law students overestimate their writing and research skills and come to law school inadequately trained in information literacy.” *Id.* The article includes an analysis of the author’s survey in the context of other studies of law students and new lawyers, and offers some suggestions for possible remedies.

Peggy Garvin, *The Government Domain: Rich Resources from the Librarians of the Fed*, LLRX.com, April 4, 2008 (available online at <www.llrx.com/columns/govdomain34.htm>).

Explores the resources and portal developed by the librarians of the Federal Reserve Bank of St. Louis, recognized as the center for research data relating to current economic indicators and related information. The article focuses on the Liber8 portal and its extensive linked resources.

Jane Kent Gionfriddo, *Thinking Like a Lawyer: The Heuristics of Case Synthesis*, 40 Tex. Tech L. Rev. 1–36 (2007).

The article explains the importance of case synthesis in legal problem solving, and offers a methodology that will enable lawyers and law students to properly use the skill to its full potential. Examples illustrating the use of the methodology are offered.

Margi Heinen & Jan Bissett, Learning to Love Those 50 State Surveys, LLRX.com, Jan. 19, 2008 (available online at <www.llrx.com/columns/reference56.htm>).

The authors focus on sources of multistate legal research, in both print and electronic format, and describe many ways to research efficiently the laws of multiple states. Live links are embedded in the article.

Margi Heinen & Jan Bissett, Reference from Coast to Coast: Making a Federal Case Out of It, LLRX.com, April 4, 2008 (available online at <www.llrx.com/columns/reference57.htm>).

Describes briefly seven sources of federal case law available free on the Web: FindLaw®, LexisONE, Cornell's Legal Information Institute, AltLaw, Justia, Public Library of Law, and PreCYdent. Live links to these sources are embedded in the article.

Tamara S. Herrera, Arizona Legal Research, 2008 [Durham, N.C.: Carolina Academic Press, 156 p.]

The author covers the most important resources and techniques for legal research in Arizona. She begins with a description of the research process, describes online and print sources and research methods, and includes a chapter on Arizona tribal law.

Michael H. Hoeflich, *Serendipity in the Stacks, Fortuity in the Archives*, 99 Law Libr. J. 813–827 (2007).

The author, a professor of law and a legal historian, writes of the importance, and pleasures, of serendipity in research. He suggests ways in which libraries and archives can assist researchers in making these chance findings, and warns of the dangers of “over-efficient and economically rational disposal policies” that can impede or prevent fortuitous discovery. *Id.* at 814. The conclusion includes ways in which students can be taught to be open to the “blessings of serendipitous discovery.” *Id.*

Craig Hoffman & Andrea E. Tyler, United States Legal Discourse: Legal English for Foreign LLMs, 2008 [St. Paul, MN: Thomson West, approx. 64 p.]

This work is intended to assist nonnative, English-speaking foreign law students learn to read three types of U.S. legal

documents—cases, academic articles, and legal memoranda—and evaluate their substantive contents and argumentation style. The book must be supplemented by full-text documents on a TWEN® (The West Education Network®) site, other course Web site, the Internet, or in print.

Marci B. Hoffman & Robert C. Berring, *International Legal Research in a Nutshell*, 2008 [St. Paul, MN: Thomson West, approx. 313 p.]

Aimed at the novice international law researcher, the authors' goal is to describe and discuss the best and most important resources, whether electronic or in print. After introducing and describing basic concepts and terms, it then covers international law sources, European Union and United Nations materials, and the resources of other major international organizations. The book concludes with suggestions for a general research strategy and methods for keeping up-to-date on new developments.

David A. Hollander, *Interdisciplinary Legal Scholarship: What Can We Learn from Princeton's Long-Standing Tradition?* 99 Law Libr. J. 771–792 (2007).

Princeton University's long-standing tradition of interdisciplinary legal studies, and the library support required to support this research, can provide law school libraries with guidance and information on how today's growth in interdisciplinary research in law schools may impact law school libraries. The author's descriptions of Princeton's programs and their development provide context for the conversation among law librarians about the “changing nature of legal scholarship and reference.” *Id.* at 773.

Rob Hudson, A Little Grafting of Second Life into a Legal Research Class, LLRX.com, May 9, 2008 (available online at <www.llrx.com/features/secondlife.htm>).

The author discusses some of the benefits and drawbacks he realized in his experiment in using Second Life in a legal research class. The online environment was used to conduct a tour of the virtual offices of international law firms, courts, libraries, and government agencies with Second Life presences; host a

guest lecture from a European Parliament member; and accommodate a student presentation when the student was unable to attend class physically. His conclusion was that using Second Life enhanced and complemented the class, but several factors contributed to its use as an optional part of class only.

J. Paul Lomio & Henrik Spang-Hanssen, *Legal Research Methods in the U.S. and Europe*, 2008 [Copenhagen, Denmark: DJØF Publishers, approx. 329 p.]

This work is a general introduction to legal research in the United States (a common law country) and Europe (civil law countries); it is intended for those who are not native to or educated in the laws of the foreign jurisdiction being researched. The authors suggest that law students involved in the Jessup International Law Moot Court Competition may find its contents especially useful.

Caleb E. Mason, *An Aesthetic Defense of the Nonprecedential Opinion: The Easy Cases Debate in the Wake of the 2007 Amendments to the Federal Rules of Appellate Procedure*, 55 *UCLA L. Rev.* 643–703 (2008).

The author, an assistant U.S. attorney, defends and supports the use of non-precedential opinions (NPOs) issued by the federal courts of appeals in all their forms, including per curiam opinions, memorandum opinions, orders, and summary orders, whether signed or not. He characterizes the NPO as “a valuable decisional form that plays a useful if not vital role in inculcating in practitioners the perceptual faculties required to classify, analyze, and innovate within the cultural tradition of the common law,” and describes features of NPOs that especially aid this purpose. *Id.* at 643.

Deborah J. Merritt, *Legal Education in the Age of Cognitive Science and Advanced Classroom Technology*, 14 *B.U. J. Sci. & Tech. L.* 39–72 (2008).

The author examines recent research by cognitive scientists that have advanced knowledge of the process of learning. She illustrates the developing principles through

an examination of PowerPoint technology, showing their broader implications for the legal classroom. “The article focuses on three fields of cognitive science inquiry: the importance of right brain learning, the limits of working memory, and the role of immediacy in education. Those three areas are fundamental to understanding both the effective use of new classroom technologies and the constraints of more traditional teaching methods.” *Id.* at 40.

Yasmin Morais, *The Caribbean Court of Justice: A Research Guide*, LLRX.com, Feb. 27, 2008 (available online at <www.llrx.com/features/caribbeancourtofjustice.htm>).

The Caribbean Court of Justice is a new regional appellate court created in 2005 and based in Port of Spain, Trinidad and Tobago. The court is expected to serve as a court of last resort for the 12 signatory Caribbean Community (CARICOM) members. The guide traces the court’s history, structure and jurisdiction, and funding, and includes information on its justices and recent judgments. Links are included to the court’s judgments and code of ethics, and to references for more in-depth information on the court and CARICOM.

Shawn G. Nevers, *Candy, Points, and Highlighters: Why Librarians, Not Vendors, Should Teach CALR to First-Year Students*, 99 *Law Libr. J.* 757–769 (2007).

“CALR is such a critical part of legal research today that its instruction cannot be taken lightly. Vendor instruction has been useful in the past and it continues to be useful today in certain situations. First-year students in 2007, however, need the guidance of a librarian to effectively learn CALR. It must be taught in an unbiased way in which its place in legal research as a whole can be clearly stated.” *Id.* at 769.

Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 *Loy. U. Chi. L.J.* 123–185 (2007).

The authors propose a student-centered teaching method that equips students with the knowledge and information to identify the analytical shortcomings of their papers

before the work is graded. In this guided discovery process, errors are used as a teaching tool early in the writing process instead of being identified in the finished product by the writing professor and used to penalize the student with a lower grade.

Sarah E. Ricks, Essay, *A Modest Proposal for Regulating Unpublished, Non-Precedential Federal Appellate Opinions While Courts and Litigants Adapt to Federal Rule of Appellate Procedure 32.1*, 9 J. App. Prac. & Process 17–35 (2007).

Ricks argues that “[c]ircuit courts should expressly confer persuasive value on non-precedential opinions, provide specific criteria to guide the publication decision, and permit anyone—not just parties—to move the court to reissue a non-precedential opinion as a precedential opinion.” *Id.* at 18. She contends that these practices would help provide consistency in non-precedential opinions from the same circuit and mitigate the need to re-litigate cases in the district courts, among other positive outcomes.

Troy Simpson, *The Art of Written Persuasion: The Rise of Written Persuasion*, LLRX.com, May 30, 2008 (available at <www.llrx.com/columns/persuasion1.htm>).

This first in a series of articles covers the history of written advocacy in three jurisdictions—England and Wales, Australia, and America—setting the context for a discussion of the importance of written advocacy skills and suggesting some remedies for the continuing under-development of writing skills in today’s law students and practitioners.

Ken Strutin, *Criminal Law Resources: Criminal Defense Investigation*, LLRX.com, Jan. 21, 2008 (available online at <www.llrx.com/features/criminaldefense.htm>).

“This article aims to highlight select online resources describing defense investigation standards and practices, training and certification options, and to point out some useful guides and educational materials.” Introduction.

Ken Strutin, *Criminal Law Resources: Fingerprint Evidence Challenges*, LLRX.com, April 4, 2008 (available online at <www.llrx.com/features/fingerprintevidence.htm>).

The research guide includes “a collection of select resources published on the web concerning the reliability and admissibility of fingerprint evidence. Links to guides, standards and related materials are listed to provide some background on the processes and application of this identification technique.” Introduction.

Larry L. Teply, *Legal Writing Citation in a Nutshell*, 2008 [St. Paul, MN: Thomson West, approx. 300 p.]

Teply focuses not on the details of citation format, but on “the process of legal citation and knowing what the ‘issues’ are: how to go about citation, recognizing what needs to be looked up, and knowing where differences in citation systems are likely to occur.” *Id.* at v–vi. He defines five steps for the process of legal citation, and explains each thoroughly.

Shane Tintle, Note, *Citing the Elite: The Burden of Authorial Anxiety*, 57 Duke L.J. 487–516 (2007).

This note explores the emphasis on citation in legal writing. It describes the “anxiety of authority,” which prompts extensive citation, and argues that “excessive citation developed as a unique literary device that enhanced the ability of academic authors to play a substantive role in the resolution of issues because of its semiotic force. As a result, heavy citation became, and remains, standard within academic legal writing.” *Id.* at 490.

Ted Tjaden, *Doing Legal Research in Canada*, LLRX.com, April 4, 2008 (available online at <www.llrx.com/features/ca.htm>).

This extensive and comprehensive guide provides information and links to print and online resources for Canadian legal research. It is aimed at researchers outside Canada. The information is divided into six categories: the Canadian legal system; primary legal resources; secondary legal resources; legal organizations; legal publishers; and a brief explanation of and series of resources on 25 topics.

Jeff Todd, *Undead Precedent: The Curse of a Holding “Limited to Its Facts,”* 40 *Tex. Tech L. Rev.* 67–87 (2007).

“This Article argues that [a judicial decision] ‘limited to its facts’ should mean one of two things. First, when the original opinion declares that the holding is limited to its facts, that opinion announces no general rule and should be treated as dictum. Second, when a subsequent case limits the holding of a prior case to its facts, the process of implicitly overruling the prior case begins.” *Id.* at 69. Because both outcomes present significant problems, the author provides recommendations to aid courts in being more direct and specific in their intent when issuing decisions limited to their facts.

Jorge A. Vargas, *Mexico and Its Legal System*, LLRX.com, Feb. 27, 2008 (available online at <www.llrx.com/mexicolegalsystem.htm>).

The increasing necessity for American courts to apply Mexican law compels a greater knowledge of Mexico and its legal system. Professor Vargas’ research guide includes a general description of the major features of the Mexican legal system, including some of its distinct legal institutions. He also gives a brief historical background and basic information about Mexico as a country to give users a better context within which to use legal information.

Vern R. Walker, *Discovering the Logic of Legal Reasoning*, 35 *Hofstra L. Rev.* 1687–1707 (2007).

The author proposes the development of a general methodology for legal reasoning, much like the methodologies found in other academic and professional fields that guide analysis of data and research. His argument is that the rule of law rests on the quality of legal reasoning. “An important means, therefore, of achieving the rule of law is articulating and evaluating the various elements of legal reasoning—the reasoning involved in interpreting constitutions, statutes, and regulations, in balancing fundamental principles and policies, in adopting and modifying legal rules, in applying those rules to cases, in evaluating evidence, and in making ultimate decisions.”

Id. at 1687. His article is intended to lay the groundwork for the empirical research required to actually identify the patterns of good legal reasoning.

Mary Whisner, *The Pajama Way of Research*, 99 *Law Libr. J.* 847–850 (2007).

“While acknowledging the attractions of being able to conduct legal research in the comfort of one’s home—in your pajamas no less—Ms. Whisner notes what a student misses by relying solely on computer-assisted legal research systems. She encourages librarians to engage in outreach efforts that will not only alert patrons to services they might be missing but also persuade them the services would [b]e helpful.” Abstract.

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Another Perspective

“Law reviews are too important to be left to the editorial caprice of callow law students. Law reviews serve a number of useful purposes: they provide outlets for academic thought for faculty; they provide an avenue for the development of the law; they affect legislation and judging; they serve as reference material; they permit the profession and academy to question orthodoxy; they provide student training; they serve as a vital credential for students and law faculty; they are the heritage of legal education and modern legal thought. Because of their presumed and often actual value, most law reviews can profit from professional editing.”

—Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 *Ohio N.U. L. Rev.* 563, 563 (2007).