

Legal Research and Writing Resources: Recent Publications

Compiled by Barbara A. Bintliff

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Annotated Legal Bibliography on Gender, 13 Cardozo J.L. & Gender 467 (2007).

Extensively annotated bibliography of journal articles on a range of topics related to gender, including domestic violence, history and culture, international law and human rights, reproductive rights and technology, and sexual identity, among others.

Paul Axel-Lute, *Selected Bibliography on Same-Sex Marriage*, 59 Rutgers L. Rev. 413 (2007).

An unannotated, selective bibliography of books, articles, and other resources excerpted from a more extensive work available online at <law-library.rutgers.edu/SSM.html>. Works included are from 1997 forward, arranged alphabetically by authors within broad categories.

Daniel L. Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. Tol. L. Rev. 651 (2007).

The article explores “the skills a [legal writing] teacher needs to effectively comment on student-drafted legal assignments.” *Id.* at 653. It then offers extensive discussion and guidance to allow the teacher to hone his or her own critiquing skills.

Susan M. Boland & Therese Clarke Arado, *O Brave New World? Electronic Voting Machines and Internet Voting: An Annotated Bibliography*, 27 N. Ill. U. L. Rev. 313 (2007).

An extensive, but not comprehensive, bibliography on all facets of electronic voting and Internet voting. Includes coverage beginning in 2001 of books, reports, periodical articles, and cases. Does not include popular newspapers or magazines and some very hard-to-locate items.

Veda R. Charrow, Myra K. Erhardt & Robert P. Charrow, *Clear and Effective Legal Writing*, 4th ed., 2007 [Waltham, MA: Aspen Publishers, approx 456 p.]

Offers traditional information to first-year students on legal analysis and synthesis and legal writing, focusing on memos and briefs. Includes numerous examples and exercises to assist in learning legal writing skills and reinforcing important writing techniques. New information in this edition includes an annotated set of Supreme Court briefs and material addressing how the Internet is affecting court filing and formatting.

Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 Seattle U. L. Rev. 603 (2007).

Legal reading is challenging to beginning law students, as legal texts are “largely incomprehensible” to novices. *Id.* This empirical study examines how first-year law students read a judicial opinion and whether specific reading strategies correlated with their law school grades. After presenting evidence supporting a conclusion that there is a correlation, the author offers examples of reading strategies used by the most successful law students and suggests ways to incorporate the strategies into the classroom.

John C. Dernbach, et al., *A Practical Guide to Legal Writing and Legal Method*, 3d ed., 2007 [Waltham, MA: Aspen Publishers, approx. 440 p.]

Textbook focusing on first-year legal writing and analysis instruction. Begins with an introduction to law, legal method, and

the basic concepts of legal writing, then moves to coverage of writing an office memorandum and trial and appellate briefs. New material in this edition includes sections on legal rules, synthesis, and organization of a legal discussion or argument; updated examples; and an improved teacher's manual.

John M. DeStefano III, Note, *On Literature as Legal Authority*, 49 Ariz. L. Rev. 521 (2007).

"This Note is a rejection of the argument that poetry, fiction, and drama cannot and should not inform the law." *Id.* at 523. The author uses classical rhetoric to demonstrate the usefulness of literary themes to judging; narrative to relate the human experience to the judicial enterprise; and Lon Fuller's theory of legal fiction to illustrate how literature can offer a shortcut to understanding the human condition. He then considers the contributions of the law and literature movement and concludes with an examination of literary citation in the larger realm of jurisprudence.

Peggy Garvin, *The Government Domain: State Government Fundamentals*, LLRX.com, May 29, 2007 (available online at <www.llrx.com/columns/govdomain27.htm>).

A guide to free electronic sources providing information on state government "personnel, news, legislation, laws, regulations, policy updates, and statistics." (Introduction.) The listing is extensive, but not comprehensive.

Tom Hardy, Note, *Has Mighty Casey Struck Out?: Societal Reliance and the Supreme Court's Modern Stare Decisis Analysis*, 34 Hastings Const. L.Q. 591 (2007).

The author presents a brief history of the Supreme Court's stare decisis analysis, examines the continuing evolution of the doctrine, and concludes that the emerging theory of "societal reliance" as a special justification gives the Court flexibility in considering constitutional issue and provides an opportunity for better decision making than previous stare decisis analysis.

Margi Heinen & Jan Bissett, *Reference from Coast to Coast: Jury Instructions Update*, LLRX.com, July 27, 2007 (available online at <www.llrx.com/columns/reference53.htm>).

This article, completely updating one from five years ago, lists publicly available sources for state jury instructions.

Jiri Janko, Note, *Linguistically Integrated Contractual Interpretation: Incorporating Semiotic Theory of Meaning-Making into Legal Interpretation*, 38 Rutgers L.J. 601 (2007).

This note argues that the "legal theory of contractual interpretation should be revised in three respects," *id.* at 602, taking into account the linguistic treatment of legal interpretation. The author contends that courts should acknowledge that meaning can be expressed in several languages, that courts should abandon the concept of objective meanings of words, and that contractual interpretation should be accomplished recognizing the language used by parties. The outcome would see the court interpreting contracts prior to constructing them.

H. Kumar Percy Jayasuriya & Melanie Oberlin, *Admiralty and Maritime Articles Published in Non-Maritime Law Journals* (2006), 38 J. Mar. L. & Com. 229 (2007).

"This is the fifth annual collection of hidden maritime legal scholarship. It includes admiralty articles published outside of the four U.S. maritime law journals." *Id.* All articles were published during 2006 in U.S. scholarly or professional legal publications.

Lisa A. Kloppenberg, "Lawyer as Problem Solver:" *Curricular Innovation at Dayton*, 38 U. Tol. L. Rev. 547 (2007).

A description and evaluation of the University of Dayton's revised curriculum "aimed at producing problem-solving graduates well prepared for practice." *Id.* The new curriculum is based on Dayton's existing tradition of experiential learning, and offers students the ability to graduate in two calendar years. Skills are integrated more comprehensively across the curriculum, and practice-related, subject-matter concentrations have been developed.

Terri LeClercq, *Guide to Legal Writing Style*, 4th ed., 2007 [Waltham, MA: Aspen Publishers, approx. 144 p.]

A supplemental text for legal writing classes focusing on nuances of legal writing style. Offers guidance to beginning legal writers on making their writing more precise, readable, and elegant. New to this edition is an updated, interactive CD-ROM with multiple exercises and expanded skills tests, a new chapter that tests common errors in professional writing, and new checklists reinforcing coverage of each chapter.

Legal Information and the Development of American Law: Further Thinking About the Thoughts of Robert C. Berring (Symposium), 99 Law Libr. J. 191–423 (2007).

Richard A. Danner, *Legal Information and the Development of American Law: Writings on the Form and Structure of the Published Law*, 99 Law Libr. J. 193 (2007).

A review of the writings of Bob Berring, whose scholarship on legal research resources and, especially, the impacts of electronic legal research have shaped the discussion of the ways in which published legal information has shaped—and continues to shape—American lawyers’ thinking about the law. Berring’s works continue to influence a new generation of legal research scholars.

Daniel Dabney, *The Universe of Thinkable Thoughts: Literary Warrant and West’s Key Number System*, 99 Law Libr. J. 229 (2007).

The author explores the ways in which the bibliographic structures of legal research sources influence the manner in which researchers think about the law and, ultimately, how the law itself is influenced. He examines the principle of “literary warrant,” using it to explore whether there is conservative bias in the West Key Number System® and, if so, its source.

Barbara Bintliff, *Context and Legal Research*, 99 Law Libr. J. 249 (2007).

An exploration of the changing context of legal research results, as more research moves to the electronic environment. Basic communication theory is used to explain how the change affects the shared context necessary for effective communications.

Virginia J. Wise & Frederick Schauer, *Legal Information as Social Capital*, 99 Law Libr. J. 267 (2007)

The authors explore how legal information can serve as the knowledge base for collective action, and thus be a catalyst for the development of social capital. They offer suggestions on ways in which legal information’s creation and distribution can be improved to enable it to better support the creation of social capital.

Paul D. Callister, *Law and Heidegger’s Question Concerning Technology: Prolegomenon to Future Law Librarianship*, 99 Law Libr. J. 285 (2007).

An explanation of the criticisms of technology and modern life by philosopher Martin Heidegger, and an application of the criticisms to the current legal information environment. The author contrasts current attitudes and practices with earlier Anglo-American traditions.

Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 Law Libr. J. 307 (2007).

Updating an earlier article, the authors posit that computer-assisted legal research has not necessarily speeded law reform, and may have slowed it. Included is a review of claims that have been made in favor of computer-assisted legal research and a discussion of the ways in which electronic research retains many of the constraints of print searching, supporting

a discussion on categorical thinking and how it limits our ability to use electronic resources effectively.

Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 Law Libr. J. 329 (2007).

Despite accepted format-neutral citation conventions and a growing number of state digital case law archives, few states have adopted format-neutral citations for their case law. The article explores why this is the state of affairs, despite the “best practice” of making authoritative information available in multiple formats.

Ethan Katsh & Beth Noveck, *Peer to Peer Meets the World of Legal Information: Encountering a New Paradigm*, 99 Law Libr. J. 365 (2007).

“The authors describe a proposed system for patent application reviews that uses new technologies to access information-community peer reviews. By allowing examiners to ‘mine for data’ in the heads of experts rather than in libraries or databases, the proposal illustrates how new technology could change the boundaries of legally authoritative and relevant information and make it possible to identify legitimate authority from new sources.” Abstract.

Morris L. Cohen, *Researching Legal History in the Digital Age*, 99 Law Libr. J. 377 (2007).

A survey of the effects of increasingly advanced legal research techniques and sources on research in American legal history. Coverage begins with fundamental English sources before moving to coverage of American sources. Includes appendixes listing full-text databases useful for historical legal research.

Roy M. Mersky, *Legal Research Versus Legal Writing Within the Law School Curriculum*, 99 Law Libr. J. 395 (2007).

A history of legal writing and legal research programs forms the backdrop against which curricular and instructional changes are discussed. The goal is to address demands by practitioners and the judiciary for improved legal research skills for new law graduates, as well as to meet the expectations of a new generation of law students.

Steven M. Barkan, *Should Legal Research Be Included on the Bar Exam? An Exploration of the Question*, 99 Law Libr. J. 403 (2007).

The author asserts that legal research should be a part of the bar examination process, allowing jurisdictions to measure competency in a fundamental lawyering skill.

Frank G. Houdek, *From the Reference Desk to River City: A Bibliography of the Writings of Robert C. Berring*, 99 Law Libr. J. 413 (2007).

A brief essay and comprehensive bibliography of “the prolific and eclectic body of work of Robert C. Berring, including the books, chapters, articles, and assorted other materials he has written to date on subjects ranging from law libraries and legal information to legal research instruction and Chinese law and history.” Abstract.

Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 Wash. & Lee L. Rev. 531 (2007).

This essay “focuses primarily upon the ways in which writers utilize the lyrics of popular music artists to help advance a particular theme or argument in legal writing.” *Id.* at 536. “Ultimately, the [e]ssay attempts to illustrate the point that despite the sometimes unimaginative and counterproductive use of music lyrics in legal writing, there remains the potential for the lyrics of popular music to serve a useful role in the art of persuasive writing.” *Id.* at 537.

Buckner F. Melton Jr. & Carol Willcox Melton, *The Supreme Court and The Federalist: A Supplement, 2001–2006*, 95 Ky. L.J. 749 (2006–2007).

Third in a series of articles listing U.S. Supreme Court citations to one or more essays from *The Federalist*. Citations are complete through June 2006, and are arranged by case name (alphabetically), by subject, and by *The Federalist* essay number. Majority and dissenting opinions are included, with the authoring justice's name noted.

Roy M. Mersky & Donald J. Dunn, *Fundamentals of Legal Research*, 9th ed., 2007 [New York, NY: Foundation Press] (forthcoming)

Updated version of authoritative text on legal research. Offers in-depth guidance on all aspects of the research process and includes a new chapter on legal writing and extensive, additional appendix entries.

Numerous illustrations clarify proper use of resources. Teacher's manual available; author's forum available on TWEN® (The West Education Network®).

Companion publications include:

Roy M. Mersky & Donald J. Dunn, *Legal Research Illustrated*, 9th ed., 2007 [New York, NY: Foundation Press] (forthcoming) Abridged version of *Fundamentals of Legal Research*, omitting some specialized materials. Teacher's manual available; author's forum available on TWEN.

Roy M. Mersky & Donald J. Dunn, *Assignments to Fundamentals of Legal Research*, 9th ed., and *Legal Research Illustrated*, 9th ed., 2007. [New York, NY: Foundation Press] (forthcoming). Teacher's manual available.

Laurel Currie Oates & Anne Enquist, *Just Memos*, 2d ed., 2007 [Waltham, MA: Aspen Publishers, 320 p.]

A supplemental text for legal writing classes providing guidance on writing objective memos, opinion letters, and e-mails. The first five chapters present information on the U.S. legal system, including statutes and cases.

Laurel Currie Oates, Anne Enquist & Constance Krantz, *Just Briefs*, 2d ed., 2007 [Waltham, MA: Aspen Publishers, approx 240 p.]

This revised work is offered as a companion text for a first-year legal writing course. It consists of the brief writing chapters of the authors' *Legal Writing Handbook*. Assists students in identifying and applying the features of legal writing that are unique to trial and appellate briefs.

Sabrina I. Pacifici, *Competitive Intelligence—A Selective Resource Guide*, LLRX.com, September 28, 2007 (available online at <www.llrx.com/features/ciguide.htm>).

The guide, completely revised and updated from earlier versions, covers virtually all sources useful in performing competitive intelligence research. Covers identifying information about all aspects of an individual business or an industry.

Austen L. Parrish & Dennis T. Yokoyama, *Effective Lawyering: A Checklist Approach to Legal Writing and Oral Advocacy*, 2007 [Durham, NC: Carolina Academic Press, 180 p.]

Designed as a supplemental text and easy-to-use reference for either first-year or advanced law students, this text provides readers with checklists for guidance in preparing a variety of documents including trial and appellate briefs, memos, letters and e-mail messages, and scholarly articles. Includes a chapter on oral advocacy.

Karen Petroski, *The Rhetoric of Symmetry*, 41 Val. U. L. Rev. 1165 (2007).

An extensive analysis of the use of the concept of "symmetry" in legal writing. The author notes that writers use the word as if it had a self-evident meaning, while in fact the it can be used to refer to a variety of distinct concepts. The author reviews the current usage of the term and offers suggestions "for more self-aware use of the concept of symmetry in legal thought and writing." *Id.* at 1168.

Mark Plotkin, *Gay/Lesbian Law Pathfinder*, LLRX.com, July 27, 2007 (available online at <www.llrx.com/features/gaylesbianlaw.htm>).

The pathfinder organizes selected articles, books, reports, and Web sites by topic, with brief evaluative comments. It includes many sources not generally considered “legal,” such as social science journal articles and items from popular presses.

Robert Timothy Reagan, *A Snapshot of Briefs, Opinions, and Citations in Federal Appeals*, 8 J. App. Prac. & Process 321 (2006).

This article presents data collected for the Federal Judicial Center during its study of citations to unpublished appellate opinions. The information presented includes statistics relating to the number and methods of disposition of cases filed without briefs from counsel, the length of briefs and opinions filed and the corresponding judicial workload, citations to published and unpublished opinions and secondary sources, and disposition times for cases filed. Appendixes present tabular information.

Sarah E. Ricks & Jane L. Istvan, *Effective Brief Writing Despite High Volume Practice: Ten Misconceptions That Result in Bad Briefs*, 38 U. Tol. L. Rev. 1113 (2007).

The authors explain recurring brief writing errors and misconceptions in an effort to assist students in clinical settings (and attorneys) in presenting important information to judges. The content applies, as well, to all other law students and legal writers.

Deborah A. Schmedemann & Christina L. Kunz, *Synthesis: Legal Reading, Reasoning, and Writing*, 3d ed., 2007 [Waltham, MA: Aspen Publishers, approx. 592 p.]

This revised edition continues the step-by-step approach to teaching legal reasoning and writing skills of earlier editions. Covers several types of written work products, including advisory letters, office memos, and appellate briefs, using a single case as an example throughout. New to this edition are an expanded consideration of transaction-

based memos and advice letters, integrated material on demand letters, and additional information on pleadings.

Timothy Schwarz, Comment, *Cases Time Forgot: Why Judges Can Sometimes Ignore Controlling Precedent*, 56 Emory L.J. 1475 (2007).

Traditional theories state that precedent can be followed, distinguished, or overruled, and some courts treat precedent as if it was mistaken. The author posits yet another way courts may treat precedent, by ignoring it, and examines this treatment of otherwise controlling law.

Wendy Scott, *Guide to Sources in International and Comparative Disability Law*, 34 Syracuse J. Int'l L. & Com. 621 (2007).

A research guide that offers a starting point for the location of information on international, regional, and national law relating to disability. The information expands on the Syracuse University College of Law Library's International and Comparative Disability Law Web Resources, found at <www.law.syr.edu/lawlibrary/electronic/humanrights.asp>.

Spencer L. Simons, *Navigating Through the Fog: Teaching Legal Research and Writing Students to Master Indeterminacy Through Structure and Process*, 56 J. Legal Educ. 356 (2006).

Based on years of experience in teaching legal research, the author argues that legal research and writing instructors must frame the research and writing process in terms of indeterminacy. He emphasizes that the goal of law students in their legal research and writing classes should not be to find the answer, but to understand the range of possible outcomes, and then base strategies and predictions on this less concrete but more realistic information.

Ken Strutin, *Criminal Justice Resources—Clemency Law*, LLRX.com, May 29, 2007 (available online at <www.llrx.com/features/clemencylaw.htm>).

“The article surveys select online resources for seeking clemency as well as guides and research materials on the administration of

this important form of relief.” (Introduction.) It is organized in five parts: federal and state sources; clemency research; death penalty; petition sites; and advocacy projects.

2006 *Animal Law-Related Articles*, 13 *Animal L.* 329 (2007).

An unannotated, comprehensive bibliography of animal-law related articles from law reviews and journals published in 2006. Topically organized into categories of companion animals; entertainment; farmed animals; research; wildlife; and miscellaneous.

Using Metaphor in Legal Analysis and Communication (Symposium), 58 *Mercer L. Rev.* 835–1034 (2007).

Articles of particular interest include:

Mark L. Johnson, *Mind, Metaphor, Law*, 58 *Mercer L. Rev.* 845 (2007).

The author suggests that the development of a “cognitive science of law” should allow insight into the nature of legal concepts and legal reasoning, with its potential for helping explain how law can be both stable and capable of change. Employing methods from the cognitive sciences can allow us to deal with the highest levels of abstract concepts and reasoning.

Steven L. Winter, *Re-Embodying Law*, 58 *Mercer L. Rev.* 869 (2007).

A discussion of the importance of legal metaphor in “reintegrating” human processes. Legal reasoning can separate legal imagination and constraint; metaphor can bring these two critical abilities together. “[S]uccessful legal metaphor derives its force from the very discipline of constraint that defines its conditions of possibility.” *Id.* at 872.

Michael R. Smith, *Levels of Metaphor in Persuasive Legal Writing*, 58 *Mercer L. Rev.* 919 (2007).

“[T]his Article attempts to reconcile some of the approaches to the topic of ‘metaphor and the law’ by identifying different ‘levels’ of metaphor operating in

legal analysis and writing. A close reading of the scholarship reveals that there are actually four basic types or levels of metaphor operating in persuasive legal discourse,” doctrinal, legal method, stylistic, and inherent. *Id.* at 920–921. The article analyzes the use of each level in persuasive legal writing and concludes that metaphors are integral to the use of numerous rhetorical strategies.

David T. Ritchie, *Who Is on the Outside Looking In, and What Do They See?: Metaphors of Exclusion in Legal Education*, 58 *Mercer L. Rev.* 991 (2007).

The author analyzes the way in which metaphor affects how we see and live in the world, drawing on the work of George Lakoff and Mark Johnson. He explores the class of metaphors related to the theme of exclusion, noting his “decision to discuss this particular class of metaphors is not happenstance.” *Id.* at 995. He asserts that exclusionary metaphors are used in the legal academy to discuss the status of faculty who teach skills courses such as legal research and writing. He concludes that skills faculty members need “to create new metaphors that better capture our contributions to legal education, and to modern legal practice. . . .” *Id.* at 1018–1019.

Nancy Ver Steegh, *Annual Survey of Periodical Literature*, 40 *Fam. L.Q.* 753 (2007).

The Annual Review, a bibliography with brief annotations, organizes law review articles on family law into multiple subject categories, with articles then listed alphabetically by author. The purpose of the survey is to “highlight the variety and depth of family law scholarship produced during the year and to call attention to currently debated ‘hot topics.’” *Id.*

Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review*, 3d ed., 2007 [New York, NY: Foundation Press, approx. 320 p.]

Revised edition of standard work on all facets of academic legal writing. Provides

detailed instructions for every aspect of the law school writing, research, and publication process. Topics covered include law review articles and student notes, seminar term papers, how to shift from research to writing, cite-checking others' work, publishing, and publicizing written works. Supporting documents are available at volokh.com/writing.

Michael Whiteman, Features—Free and Fee Based Appellate Court Briefs Online, LLRX.com, September 28, 2007 (available online at www.llrx.com/features/briefsonline.htm).

Information is in two parts: sources of no-cost appellate court briefs and fee-based sources. All sources are for online versions of briefs. Links to briefs are sorted by jurisdiction or source (governmental agencies, NGOs, or other organizations).

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