

**Legal Writing: The Journal of the Legal Writing Institute**  
2000

Practices and Procedures

IN SEARCH OF THE READ FOOTNOTE: TECHNIQUES FOR WRITING LEGAL SCHOLARSHIP AND  
HAVING IT PUBLISHED

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*The tips found in this article will help scholarly writers to become more productive and fulfilled. The article also offers ideas that will enable deans and promotion and tenure committees to establish reasonable and achievable writing schedules for all faculty.<sup>2</sup> The benchmarks, mentoring support, and other worthwhile suggestions will aid faculty in quest of achievement, scholarship, promotion, and professional satisfaction.*

*Last but not least, student law journal writers and law students engaged in scholarly writing for seminars should find this article useful. Many of these techniques will make writing more pleasant, productive, and efficient.*

“Begin with the end in mind.” Stephen R. Covey<sup>3</sup>

\*230 “God is in the details.” Mies van der Rohe. Also attributed to Anonymous.<sup>4</sup>

“A journey of a thousand miles must begin with a single step.” Lao-Tzu (c. 604—c. 531 B.C.)<sup>5</sup>

“You know what you know.” Anonymous<sup>6</sup>

“Just do it.” Nike commercial

“Throw deep!” Ken “The Snake” Stabler<sup>7</sup>

**I. INTRODUCTION: THE GATHERING OF (LEGAL) EAGLES, TORTOISES, AND HARES**

**Tales of (Legal) Eagles, Tortoises and Hares.** To be an eagle and soar far above the madding crowd may be our common aspiration, but many of us begin with lesser gifts. Some of us are hares as we race through fields of ideas. But hares still must pace themselves to finish the race. Others are more like tortoises, slower and steady. Some are ferrets, unearthing ideas everywhere and being quite industrious. With luck, we are each more ant than grasshopper. Discover what your talents are and understand your work habits. Then build a realistic research, writing, and publication schedule that capitalizes upon your talents and offsets your weaknesses.

This is not an article on writing good prose, legal or otherwise. There are many fine works on writing<sup>8</sup> already available. \*231 No, the piece at hand is much more prosaic. Its goal is to assist fine writers in the efficient production and publication of scholarly articles.<sup>9</sup> It is a “nuts and bolts” compilation of techniques and suggestions that the author<sup>10</sup> and his colleagues have used over the years in bringing their ideas to print. As simple, naive, and inelegant as these ideas seem, they really do work! If you have the will, they can provide you with the way.

This is an odyssey that I (and many colleagues) have traveled. I have made just about every mistake in the book—and I have learned which practices work and which don’t. Since I have been at Syracuse I have worked with junior colleagues who were starting out, and I have also tested my ideas with established faculty members stymied by writer’s block. The more efficient \*232 you are, the more fun writing will be, and the more you will advance your career.<sup>11</sup>

**II. GETTING AN IDEA (GETTING IT WRITE: PART I)**

**Find a Mentor or Ask Your College for a Mentoring System.**<sup>12</sup> If you and your college are serious about legal scholarship and about junior faculty gaining tenure (as well as senior faculty continuing to be productive), mentors and a mentoring system are in order. Law teachers are several giant steps behind other university scholars when we embark on our first scholarly endeavors. Lawyers are independent generalists. In law school we rarely do collaborative writing.<sup>13</sup> Many of us come from practice where much of the writing is solitary (wills, opinion letters, leases, briefs, etc.). Little of this writing is transferable directly to scholarship and publication. The traditional law

college “research program”<sup>14</sup> lacks the structure found everywhere in the hard sciences, engineering, and the liberal arts.

Scholars in the hard sciences have been part of collaborative efforts from their undergraduate days. They learn how to conduct research as part of a team, and, if they were precocious, have published as junior co-authors or been acknowledged as researchers in the credit footnotes. Once these scholars are accepted into a graduate program, they have mentors, review committees composed of related experts, periodic review of progress reports, and grants to support their research. Ph.D. recipients \*233 and holders of masters’ degrees are often in the position to publish their edited theses.

Legal scholarship lacks this disciplined research structure and our junior faculty suffer for it. At a minimum, a committee of senior faculty or a senior professor should be assigned to the junior teacher. She should require the new colleague to create a list of topics of interest and then aid in the selection of one or two.

**The Mentor Should Establish Timetables and Monitor Progress.** This is a “Make or Break” area for both mentors and new writers. Many novice legal writers have been fortunate indeed to have law review and/or clinical experiences while in law school. Those experiences may have imposed editorial deadlines and structure. But sometimes even relatively bright novices don’t get the message of establishing research, writing, and editing schedules. I certainly did not for years. And I think my experience was typical.

I began practice as a litigator in a large law firm. Morgan, Lewis & Bockius had the “luxury” of being able to assign a number of associates (and often partners) to research tasks. Many times the tasks were broken down into small nuggets (“Find me all the law in New Utopia on ‘slip and falls’ in front of ice cream parlors. I need a five page memo for my trial brief for Judge O’Conner by nine tomorrow.” The associate labors for hours and finds two cases or ten and then spends some time writing and perfecting the memo. The memo is punched into a trial brief and the associate is off on many more urgent tasks.). Even longterm projects are often divvied up and edited by senior associates or partners who “indirectly” impose the schedule.

Inexperienced associates, law clerks, in-house counsel, and clinicians normally do not immediately grasp that work schedules delineating research and writing *must* be set, and are critical to completing the task. The mentor must, as part of her duties, establish appropriate schedules and help the novice legal scholar realize that he has covered enough ground and that he must start writing.<sup>15</sup> Partners and senior faculty know this \*234 trick. Unfortunately, they are not the ones trying to become published or make partner. They do know the answer and they should impart this confidence and discipline when they serve as mentor. “You can do it” and “Do it now” are powerful charms that really empower new writers.<sup>16</sup> It is empowering to produce an outline and say, “This is forty pages of manuscript (twenty pages of printed article). I will complete this and it will be published.” The mentor can make this happen when she knows the trick!

**The Mentor Should Assist in the Reading, Editing, and Placement of Articles.** The mentor should help the novice to find grants or obtain load relief (if necessary). She should arrange for brown-bag working paper presentations, and when the article nears competition, urge the colleague to go campus-wide with a presentation or present at law conferences or at other law schools. And last, but not least, she should be a gentle but firm nudge and friend. If the mentor takes her charge seriously and the junior faculty follows the agreed-upon research program, worthy articles will emerge in a timely fashion.

**Start with Something You Know Something About.** It seems like obvious advice to write about something you already know.<sup>17</sup> Yet modesty sometimes blocks junior faculty from seeing \*235 that they are “experts.”

My experiences should suggest how your interests might provide direction. You might use an appellate brief you wrote for your starting point in an article on tort reform. Or, as an appellate lawyer, you may have observed that the Supreme Court of Utopia was nearly always “wrong” on certain issues. As a budding legal scholar, use your knowledge and interests to unearth why the court was “wrong,” show the error of its ways, and assist the profession in law reform. Or while representing clients, you may have observed certain lawyers’ practices that you deemed too sharp or unethical. That observation might lead to a strong article on legal ethics. Consider your interests and experiences—a first source for researchable and publishable ideas.

**Start With Something You Don’t Know But That Interests You. Learn as You Go.** This is the corollary of the

advice above, but it is riskier. If the subject matter interests you, the effort may prove to be worthwhile because your interest will overwhelm the challenges. Some of the major drawbacks of selecting an unfamiliar topic are: 1) it will take you time to become fluent in the area; 2) if you write on what you don't know, you will not know where the bodies are buried; 3) you will not know if you have been pre-empted after a little research. These are very important objections. My advice to the unseasoned is to stick to what you know.

**Write About Ideas That Excite You.** Writing law review articles may be fun, but it is also hard work. If the idea doesn't excite you, it will be hard to sustain interest over the many weeks and months it may take to research and write. If the idea doesn't excite you, what makes you think it will interest readers and law review editors?

**Write Out Ten Ideas Worth Investigating.** You must have ten ideas with which you'd like to spend time. (Isn't the hunger to write about things in depth one of the reasons you joined the faculty?) Write them down and then spend an afternoon doing a preliminary check to see if you've been pre-empted. If you haven't been pre-empted, choose one or two and work with your thoughts to produce a manageable abstract or outline. \*<sup>236</sup> <sup>18</sup> Start with the most interesting idea (again, it will be with you a long while, so you had better like it) and save the others for later investigation, research, and writing. Save file clippings on all the ideas.

**Exploit Serendipity.** All of us have brainstorms and chance encounters with ideas. Many are fertile. But we must give them a chance. Our quirky thoughts on law may be on point if we are smart enough to give them a chance and let the ideas run. We should not dismiss these happy hunches and encounters. If a sensible and unique connection is made, it may prove worth exploiting.<sup>19</sup>

**Write About Important Ideas.**<sup>20</sup> Things that you think about and care about and legal issues that you teach about are undoubtedly important and worth discussing. You probably know about the legal issues or else you won't be teaching them. So trust your judgment and that of the dean. You are an expert. Start writing.

But don't be afraid of writing on big issues. Let's say you have been following the campaign fundraising scandals of the 1990s with great relish and you just happen to teach Constitutional Law. Why not write an essay or short article on the Hatch Act or issues of free speech? This need not be the election law primer nor the great First Amendment treatise. But it will get published if it is well written and timely.

You say you're not a constitutional lawyer. You are a business-type. You followed the Asian stock market debacle and the international banking community bailout of the Republic of Korea. Fine. Draft a nice piece on the brave new world of a global economy and the implications for American banks and the securities markets.

\*<sup>237</sup> The benefits of this type of research and writing are immense. First, you are current on important issues. Second, you maintain your edge. Third, your teaching and research are even better. Finally, you have published an important article.

**Become an Expert in a Relatively Finite Area.** Your Promotion and Tenure Committee, your dean, and your mentor may advise you to avoid the global issues and concentrate on becoming an expert in a well-defined area. If that is their advice, do it and ignore the aforesaid advice until you have gained tenure. For many novice writers, this is very good advice because your mentor and your law school don't want you to take on more than you can manage. They are also concerned that the law review editors will reject your article on repaying the national debt because you are not an *expert*. So listen to your mentors and take their advice to heart.

**Create a Course.** Even though you are new to teaching, the dean may ask you to create a course. (After all, you may have been hired to fill a gap in the curriculum.) Let's say you have been hired from practice where you specialized in health care law. Your charge is to create a course in medical-legal ethics or health care administration law. As you assemble your course materials, jot down interesting and unresolved issues that are certain to prove the subject of excellent short pieces.<sup>21</sup> Generally, when you teach a new course or create a new offering, you will find the adrenaline flowing and so many ideas flowing that you can't harness them all. Snag one or two interesting ones and turn them into articles.

**"Borrow Everything. But Only From Impeccable Sources."**<sup>22</sup> Everything and everyone you come into contact with might prove to be the source of an idea. Keep former students and associates as "clients." Many will call to tell you what they are doing and will seek "free" legal advice from you. Two of my articles on corporate tax planning were inspired by a former student at Wharton who worked for a Fortune 500 company that was doing creative investing to cut tax liability. The student would call from time to time to check out some legal issues. We brainstormed and he

gave me permission to use the ideas \*238 we discussed *without* attribution.<sup>23</sup>

**Amass “Seed Corn” Even if It Is Not Used Until Later.** Your initial writing may be very rough indeed. It has been my experience that the final editing of my work goes slowly through the introduction and maybe the first section. Indeed, these may need to be substantially revised. You may ultimately find that you can’t even use your original opening, as I did an article on Hong Kong and its relationship to the People’s Republic of China when the lease expired.<sup>24</sup> In an article on leveraged buyouts, the seed corn proved to be the section my co-author and I worked on when she was my research assistant. The writing was strong and the research was thorough. Ultimately, her section on bankruptcy and fraudulent conveyance law found itself placed in the middle of the article. Your seed corn will get your projects under way. Don’t underestimate its value.

**Keep Drafts from Earlier Articles. Unused Ideas Found in Excised Sections and Footnotes May Be the Grist of Future Work.** My first writing as a law teacher was an organizational disaster. It was rejected by every law review to which it was submitted (and probably rejected by reviews where it hadn’t even been submitted). I made every mistake possible.<sup>25</sup> Later, my department chair edited it and I resubmitted it. Many of the excised sections and footnotes in my first article were recycled into a later article on land use controls and tax and energy policy. I had done much of the research, but it still needed to be edited, focused, organized, and shaped. The earlier notes and sections proved very valuable, even though they appeared to be wasted the first time around.

### \*239 III. GETTING STARTED WRITING (GETTING IT WRITE: PART II)

**Get a Catchy Title.** This works for some of us. The title resonates in the mind, causes word associations, jogs memory. It may spur some of us to write the article to substantiate the “outrageous” idea encompassed in the title.

**Get a Theme - Explain It.** After you have found a theme you like, draft a positive, succinct explanation of it.<sup>26</sup> Make the theme accessible to the casual, as well as the informed, reader. There is no reason why a sensible, well-read generalist should not be able to parse your ideas. Target that reader. Have your mentor, a colleague, spouse, or significant other read your abstract or introductory remarks. If the reader grasps and likes what you are doing, you are on your way. If she does not, ask her to explain what the problems are. Once you have found your theme and appropriate tone for the explanation to make the topic accessible, stick with it throughout your article.

**Write by Outline.** For some writers, an outline is key. Establish a good working outline. It need not be perfect. It’s a road map. Add and subtract topics as you develop your theme. The outline strategy may not work for all. Some seasoned writers compose an outline *after* generating a rough “free” draft. An ill-constructed outline can be a trap for an unfortunate thesis.

**The Outline Provides a Check for Your Progress.** If the text fails to match the outline, question both. You may have progressed, or you may have lost your way. An outline keeps the article in check and may prevent it from becoming a formless mass. Your outline will provide topic sentences and the germs for ideas. These sub-themes spur relatively speedy sections. Use your outline.

When you are writing from the outline, you may find that you can start at any section effectively. For instance, you might work on the middle of the third section if the spirit moves that day. At the end of the day you will have part of third section done and ready to drop in. Block by block you build confidence, and confidence completes articles.

**Start Someplace. The Article Won’t Get Written Until You Write It Down.**<sup>27</sup> “Rome wasn’t built in a day.” Start laying \*240 bricks.<sup>28</sup> Write from your outline, abstract, or introductory paragraph. You’ll create something that eventually will be an article. Everyone probably has a comfortable jumping off point. Mine vary. My most recent scholarly foray, on the interplay of the market and law in takeover battles had a rocky start. I wrote several thousand words of purple and vitriolic prose. I railed against courts and stakeholder statutes. Most of the language was coarse and ungainly. I salvaged only about five hundred words; the article grew in a modified direction. But the emotional blast got me started, and the article was completed and accepted.

**Make Fear, Guilt, or Honor Be Your Guide.**<sup>29</sup> When I was struggling with my beastly first article, I reached the point where I was so ashamed of what I had done that I felt I was a cipher. I was not sleeping and I was angry with myself. I was a fraud for taking several years of salary from Wharton under the false pretenses that I would write and publish something. I felt wretched and dishonorable.<sup>30</sup> I had reached the point where I had “to fish or cut bait.”

This is a hideous junction to reach when you have a family to support and that family believes in you even though you think you are a cheat and a coward.

Eventually I reached the point that if I were ever to feel good about myself again, I would have to fall back on the fact that I had tried my damnedest. At that stage, I asked my department chair to read the manuscript that had been rejected everywhere. Professor Fred Kempin did. I took his criticism to heart, and my academic career was saved. No one should have to drive himself to such desperation, but a number of us manage to do so. The good news is that these feelings of guilt, fear, and \*241 dishonor can (with appropriate support from your mentor) motivate you to get back to writing and publication.

Become a hero or heroine in your own mind. Relish your effort, cheer yourself on, and congratulate yourself on your steadfast efforts. If you fail to write, use guilt and honor to get you back on the right path.

**Write Fast. Edit in Leisure. But Not Too Leisurely!** Once you have hit stride, keep writing and work at a pace that builds confidence and keeps those pages building. Let your ideas spill out and get them on paper (into the file). Don't worry too much about organization. Get the ideas out and edit them later.<sup>31</sup>

Edit when your themes and approaches are fresh. The text need not be "hot off the press," but it should not be so cold that you have forgotten where you were going. Use your abstract and outline to help in the editing. See if your mentor or colleague can spell you or speed up the process.

**Find the "Justinigin."**<sup>32</sup> A "Justiningin" is an imaginary word which my mentor, John R. McConnell, Esquire, of Morgan, Lewis & Bockius, in Philadelphia, coined to connote the essential matter of a case on trial or appeal. Trial and appellate lawyers must find the essence of the case and understand it completely. They must make it comprehensible to lay people (juries) and to judges (who may not have the intimate familiarity the attorneys have with the law, and certainly not with the facts in dispute). Both judge and jury are competent, capable, and intelligent auditors, and both must be persuaded. So, too, with the law review editor and your reading public.

If the writer does not know what the article is about, no one else will. For example, one might wish to write an article about law and economics and free trade. After having mastered the essence of the material, you must drive to make the message understood. If your kernel of thought does not come through, you have a terrible organization problem. Without the "Justiningin" that provides the theme and essence, you and your readers may \*242 wander. It would be nice to have the "Justiningin" at the beginning of every piece of research and every idea that eventually becomes an article. You will not always be so fortunate. But you must discover it and work with it at critical stages in your writing and production.

**Create an Abstract.** At an early stage, draft a two- or three-paragraph abstract of where you think the article is going. Have someone else read it and give you her reaction. If she can't follow it, ask her why and where she thinks it is headed. Listen, for much criticism is constructive.<sup>33</sup> Follow the constructive criticism, redraft the abstract, and use it as a guide. It is not carved in granite and should be subject to change. With the abstract and/or outline, you have a benchmark to check your progress.

**Stick to Your Schedule. Avoid Paralysis by Analysis. Stop Researching and Start Writing.** Many new writers have come from practice where they were accustomed to researching, finding a definite answer to the problem, and writing it up. When confronted with research in academia, the excitement, fun, and drudgery of extended research that seems to have no end overwhelms them.

Remember that writing and editing may take at least as much time as research (and that time for writing may be hard to schedule due to teaching and service demands). In practice, economics or partners draw the line and move lawyers from one project to another. In academia those constraints simply aren't there. Thus, after you have researched for several months, you must, on your own, organize your findings according to your working outline<sup>34</sup> or thesis. Review your progress with your mentor. Then, stick to your schedule and start writing.<sup>35</sup>

**\*243 Double and Triple Your Time Estimates - They'll Still Be Low But at Least You'll Know Where You Are Heading.** Some of us are chronic underestimates. The good news is that some of my colleagues and my wife remind me of my foibles and force me to be more realistic. A good rule of thumb for me is that everything worthwhile appears to take at least twice as much time as I estimate. You can use your time estimates to construct a timetable. Block out the research hours needed, the writing, the editing, the polishing, and the processing of the transmittal letters, etc. Build from the genesis to the mailing or the mailing back to the beginning. If the timetable method will

give you direction and structure, use it.

**“Money Changes Everything.”**<sup>36</sup> **Get a Grant.** The grant buys time to permit you to write relatively unencumbered. It will free you from summer teaching, a semester’s teaching, or consulting. The grant puts moral pressure on you to complete the project, and usually imposes a deadline (which proved to be so helpful in practice!). The sponsor may even be in a position to help with publishing. So get a grant from your law school, university, or an outside source to enable you to write and get paid for it.

**Attend Conferences.** Legal writers can glean great ideas from attending conferences; law professors can also use continuing education conferences as reality checks. Your brilliant and original ideas might not hold up under the cold cruel scrutiny of practice. Experienced academics and practitioners can vet your ideas and thoughts at these meetings. Writers should consider both academic<sup>37</sup> and practice-oriented conferences.<sup>38</sup>

At large academic programs like the AALS Annual Meeting, young and old teachers exchange interesting and important ideas sometimes from unexpected quarters. There is nothing stopping a civil rights lawyer from attending a session on corporate finance. A partnership expert might profit from exposure to feminist theory. With so many sessions, the smorgasbord available invites intellectual exploration at little risk. These special \*244 interest sessions can help writers gain insight and meet potential co-authors, reviewers, and sources. Authors should also consider attending academic conferences in other disciplines such as history, management, economics, etc. An interdisciplinary perspective can often enrich a legal analysis.

These conferences and programs have helped me considerably with regard to my research and writing,<sup>39</sup> providing me with exciting ideas and face-to-face contact with experts<sup>40</sup> in my fields of interest. My academic and professional colleagues have subjected my ideas to informal criticism at a critical, development stage. This advantageous, early insight has steered my writing and research in the right direction.

**Present Papers at Conferences and Other Schools.** Many of my colleagues have used conferences to try out their ideas by presenting papers. Often, the papers are published in a symposium. My friends and colleagues have gained useful criticism. They have made valuable contacts (sometimes with editors). Their presentations lead to publication. At a minimum, these obligations force us to write to meet deadlines. For a number of my friends, formal presentations at another law school or another department have provided the impetus and focus to produce the papers that give birth to the articles.

#### IV. TIPS FROM THE WORKSHOP AND KITCHEN

**Simplicity.** Simplicity and elegance are related to the “Justinigin.” If your idea can’t be stated simply, you will not be able to state it with complexity. Complex writing and verbiage are often used to disguise weakness. They are an inelegant veil, and they don’t succeed.

Someone (your law review articles editor) will or should see through the maze of confusion. If she finds it dense, awkward, \*245 and confusing, she might not accept it despite the obvious pleasures of trying to find the gold that may be buried.

**Leave Room for Scrutinizing Work (Polishing the Prose If You Prefer).** I like researching and writing articles.<sup>42</sup> Others like researching, and find the writing and polishing are chores. I do not like fine-tuning footnotes. But it must be done. For me, a 40-page article may necessitate one to two weeks of intensive citation checking, etc. after the article is “written.” This estimate may be on the short side. This final editing is necessary work, and it must be done. Final editing of the fifth and penultimate draft may take days because of the need to tighten or expand.<sup>43</sup> Include in your schedule generous time for polishing.<sup>44</sup>

**Schedule in Reverse Order and Plan Your Time Accordingly.** Start with the expected submission date and leave generous time for research, writing, and re-writing.<sup>45</sup> My rule of thumb is that the final editing *always* takes longer than you expect it to, and that it will take you considerably longer to write a complete and polished article until you become expert in your production estimates. Double your time estimates and add ten percent margin for error.<sup>46</sup> You will still be off, but your work \*246 will be completed in a reasonable manner.

**Get a Good Co-author and (Its Corollary) Avoid Bad Co-authors.**<sup>47</sup> *I have been blessed with excellent co-authors.*<sup>48</sup> Co-authors can prod, provide excellent thoughts, share the wealth and the pain, refine the dross, and keep you on a time table. Co-authors may have contacts who will help with criticism and placement.<sup>49</sup> They can

share in the editing. You can play to each other's strengths and mask weaknesses. (For example, a strong researcher might be paired effectively with a strong writer and great articles emerge.) Choose carefully. Choose co-authors for writing skill, dedication, work habits, integrity, and tenacity. All are needed.

All but one of my co-authors were persons with whom I had long relationships before we broached collaboration. We knew each other well, and we entered the relationship from a position of high expectation and trust. We knew where the other lived, and it may have kept us honest.<sup>50</sup> We knew that each other's reputations and integrity were tied up with the writing. Never, never, co-author a piece with someone about whom you entertain doubts.<sup>51</sup> Never give a bad co-author a second chance; life \*247 is too short and you owe him nothing.<sup>52</sup> Good co-authors are double blessings. They make hard work fun and writing a great pleasure. Co-authorship is an approach worth following.<sup>53</sup>

**Dictate Your Notes and Text.** For those coming from practice, dictating is a snap. You are used to the efficiencies of dictating. For those who have not tried it, try it. Many of you will save untold hours that can be better employed editing, reading, researching, teaching and living.

**Get It Right the First Time.** The initial time spent tracking down page citations, correct spelling of sources, etc. will bear huge dividends when you are editing. You will save time, and your efforts will be more marketable and respected for their accuracy.

**Build a Pile of Drafts or Portfolio. It Will Grow on You.** Keep your drafts in a vertical file or loose leaf notebook. Add to the pile or portfolio at the end of the day. You will have physical evidence of your progress, and you will be encouraged to persist. The portfolio or notebook also permits you to return to an earlier draft or treatment to adjust your efforts or find a lost citation.

**Edit from any Point in the Document. Edit Often.** This will save time and time is money. Those using computers have this advantage. You have the liberty to run a spell check at any time. You can jump ahead or go back to the beginning to make changes, additions, and deletions. This type of "editing on the fly" permits polishing the article in the writing stage and makes the final edits more manageable.

**Download Everything from Everywhere - Lexis®, Nexis®, Westlaw®, Articles and Newspaper Clippings.** Create work files for your article from your current electronic research. For research and items not on line, enter the important \*248 data in work files so that the materials can be imported easily into the article you are writing. (Make sure you have installed appropriate anti-virus software to keep your document clean and safe.)

**Use Vertical Files.** Using vertical files seems to contradict the advice above regarding dumping information from your electronic research. But it can be a complementary method or an exclusive method for authors who feel more comfortable and productive using traditional "hard copy." The vertical files, stored in transfer boxes, provide ready access to important materials. Further, once the article has been accepted, you can ship the key articles, etc. to the law review to assist in editing and checking your manuscript. Law review editors are just like us. They appreciate the courtesy of an assembled "library" for accuracy checking, and it makes the jobs easier for all concerned parties.

**Move Long Footnotes into Text.** Many of us write well-organized, explanatory footnotes that are more properly the province of the text. If you are one of these writers, write your notes and then evaluate and edit them into the text.

**Write the Text Proper First and Fill in the Notes Later.** Delaying documentation works for a number of seasoned authors. The method keeps you from breaking up the flow of thought with tangential observations. If it works for you, use it. Or modify the method somewhat by briefly noting the subject or source of the note. Word processing makes brief footnoting easy. If you have the object of the note already in a computer file, you could expedite matters by copying the file and importing the copy into the note to be edited at leisure.

**Better Advice for Some Writers is to Write Text and Solid, Rough Notes at the Same Time.** I am contradicting my advice because I have been reminded that writing the text and filling in the notes later may be a dangerous standard.<sup>54</sup> I had forgotten that I have spent hours hunting down references and footnotes that might have been avoided with more accurate and specific writing at the outset.<sup>55</sup> Your comfort level may be assuaged \*249 by being very specific from the "get go."

**Hire Good Research Assistants.** Many of us have had terrific research assistants. Choose them wisely; monitor their progress. If you have found a good one and have a professional relationship with her, she should be able to find

much of your raw material and provide rough drafts for footnotes and some text. Again, a good research assistant can be an excellent editor, especially if she has had editorial work experiences. At a minimum, your research assistant should be able to keep you on the straight and narrow. If she doesn't understand where you are going or your thought, the law review editors and your desired audience will undoubtedly have the same difficulty.

**Use Nexis®, Lexis®, And Westlaw® to Locate Things Quickly.** The better you and your research assistant can use electronic research, and the better your research logs are, the more expeditiously you can incorporate raw data into your article. Good research logs or notebooks are invaluable for keeping track of where you have been and where you might venture in your research or accuracy editing and checking.

**Don't Rely Foolishly upon Electronic Research Tools.** The temptation among novice research assistants is to dump hundreds of pages of articles, cases, statutes and regulations on the desk of the faculty author. The materials have been located, but they often have not been edited or digested. When this happens for the first time (and it will), politely call your assistant on the carpet and ask him why he believes you should read the several hundred pages he compiled. Gently but firmly explain that an assistant should read and brief the best of the materials with recommendations for action (inclusion, further research, additional avenues to be explored or rejection of the approach). You will find that this gentle persuasion brings forth excellent research with a modest effort on the part of the faculty author. If you don't exercise these suggested controls, you will be doing your researcher's job for him and wasting your time that would be better spent writing and editing.

**Save News Clippings and Articles on Things that Interest You.** Book reviews, editorials, and front page stories can all serve as jumping off points for your outline, abstract, and research. \*250 An idea found in an article and clipped today may be the genesis of an excellent piece later. Save these items in your personal research library and use them to develop future work.<sup>56</sup>

**Read. Read. And Read Some More.** The more you read, the more you will recognize good and bad writing. *The Wall Street Journal*, biographies, memoirs, novels, histories, and *The New Yorker*, for example, will inspire your efforts, expose you to new ideas, and demonstrate good writing techniques.

**Get a “Nudge.”** Have a spouse, colleague, parent, dean be a nudge—*someone* who can make your life uncomfortable. The nudge could be your mentor. (But the dynamics of mentoring might be compromised if the mentor hectors too much. This is a judgment call.) Find the right nudge for you. Have this person politely nag you from inactivity to writing. Have him ask pointed questions about the status of the project. Eventually honor, pride and guilt will motivate you into completing your task.

**Choose Your Nudge Carefully.** A bad nudge, mentor, or unsupportive “friend” can be a disaster for the novice writer. You need direction, gentle shoving, editing and support. You do not need destructive comments, humiliating critiques, and one-upsmanship.

**Tell the World Your Timetable and Stick to It.** An announced schedule will bring honor or guilt into play for those animated by such persistent motivators.

**Distinguish Between Important and Urgent.** Writing and publishing are important for obtaining tenure and building a reputation. But writing and research are often not urgent. Telephone calls, e-mail, students clamoring for attention, even faculty colleagues, can all become urgent distractions when you are under deadline. Time management is crucial. Be ruthless with your time; time is ruthless with you. Block out the time you need for writing and defend it with a vengeance. Don't let “urgent” matters shatter the quietude you need to write. Discipline yourself. Educate the others. They'll respect your time if you do. Complete your writing tasks.

**\*251 If You Have an Opinion, State It.** While your research must be honest, you are permitted to have an opinion. Unless your piece is a purely objective analysis of a statute or regulation, you undoubtedly have an opinion on the subject of your research. Opinions provide zest and direction to your work. Include them.

**“To Thine Own Self Be True.”**<sup>57</sup> Write about something you feel comfortable with, that interests you. Don't write to please your dean, your senior colleagues, your co-authors, or the unknown law review editors. If you don't have the courage of your convictions and writings, why should anyone be interested in reading your work? If you love what you are doing and have passion for the theme, that passion and energy will sustain your efforts. These good qualities will be revealed in your writing and excite interest in your readers.

**Set Aside Blocks of Time to Write.** I seem to write best on days when I am not teaching and when I have no administrative duties. Vacations, weekends, or late evenings are best for me. Some writers need large blocks of time to do substantial writing. On the other hand, notes to files, briefs, short synopses of articles, etc. can be written and edited almost anytime and anywhere. These provide seed corn and building blocks for larger efforts.

**Or Write Every Day.** If you find that you write best when writing two hours a day, five hundred words per day, ten pages per week, etc., stick to what works. I wish I had the psyche that many of my colleagues have that permits them to enjoy orderly work habits. This method is cleaner and clearly the preferred one for avoiding ulcers and a rapid heartbeat. So if you are an every day writer or researcher, count your blessings and capitalize on your method and personality.

**Be Flexible.** Take the problems and tasks head on at times.<sup>58</sup> At other times, approach barriers through indirection. Attack your concerns from another angle. Outfox your writer's block and campaign stalls.<sup>59</sup> Anticipate problems and use flexibility \*252 to complete your articles.

## V. POLISHING THE GEM

**Discuss Your Ideas with Intelligent Lay Persons or Non-expert Lawyers.** Talk about your ideas—articulate them. Then, have these friends and colleagues act as selected readers. Take their criticism to heart. If they don't understand the concept or stumble over some paragraphs, they are probably exposing some weakness. One need not be a Supreme Court Justice or a specialist to understand your ideas and writings. Your lay readers can provide you with the missing transition sentences or conclusions that have eluded you.

**Use the Spell Checker and Grammar Checker Often But Don't Trust These Tools.** Computer tools are not foolproof. English is a tricky language. Even the best programs miss a significant number of corrections.<sup>60</sup>

**Stop Writing. Start Publishing.** If you have polished the gem, start romancing the stone. No article is perfect. (That is why we need editors and critics.) If you have come this far, don't overwrite. Send the article out and get on with the next one.<sup>61</sup>

**Warm Up to Your Editor's Critique.** We all write splendidly. Editors sometimes get in the way and their criticism often stings. One of my first readers was dead on when she told me my article was awful, lacking in focus and tight organization. She was, of course, correct, but I refused to listen and learn. I sulked and lost valuable time.

Recently a dear colleague has advised me that my current article: 1) could be reorganized (that is, section two in place of three and vice versa); and 2) had solipsisms, mixed metaphors, malapropos, rant and cant, and long, distracting footnotes.<sup>62</sup> This was not good news because I had an internal deadline for submission that was approaching. I was simmering for the first minutes of his review. But I cooled down. He is substantially correct on Point 2. I am now coolly and quietly evaluating his \*253 approach<sup>63</sup> and will contrast it with the advice of another colleague reader who suggested beefing up the law and economics points. Then in the quiet of the moment, I will calmly take the best of their considerable advice and build a much stronger article. In my earlier years, hubris would have blunted my writing.

You don't have to wait to be older to be wiser. Just wait until your frustration and ire disappears. Work with your editors. And you will become very productive at an early stage in your career.

**Reward Yourself.** Treat yourself for having completed an article. Celebrate. Take your spouse, beloved other, colleague, or mentor out for drinks or dinner. Buy that book you have been meaning to read but put off to write the article. Savor the moment.

**Start a New Article.** Build on the excitement and momentum of your accomplishments. You have overcome writers' block. Keep it in the corner.

## VI. MARKETING, OR ROMANCING THE STONE<sup>64</sup>

**Use the Abstract as a Sales Tool.** The abstract may prove to be the make or break weapon in your arsenal when you seek publication. A good abstract is certainly advantageous from the article editor's viewpoint. Without an abstract, she may have to plow through the whole article before making a preliminary decision. If the abstract is good and interesting but the introduction is dull, flaccid, flabby, and turgid, the abstract may enable the editor to give you the benefit of the doubt. The law review or publishing house editor may be willing to have you re-draft sections because your ideas were focused in the abstract. Without an abstract, you may rise or fall on the basis of your title and first

several pages. I'd go with the abstract and cover my bets.

Another use of the abstract is to focus advance telephone calls with prospective law reviews. Many authors call reviews to see if they are interested. The abstract will provide a crisp focus \*254 for the important first conversation. You will give the editor the impression of a well-organized and direct writer. This won't hurt your image. You can be certain that if the abstract doesn't elicit interest, the article won't. Even negative criticism can be helpful because it may ultimately improve the final version.

## VII. CONCLUSION

Use what you have found of value in this article. Experiment. Keep track of what works and what fails. Write about what interests you and what is important. Enjoy writing. Publish good work. Enjoy tenure and even better writing.

### Footnotes

- 1 Christian C. Day, Professor of Law, Director, The Center for Law and Business Enterprise, Syracuse University College of Law. J.D., New York University School of Law, 1970, A.B., Cornell University, 1967. Again, I gratefully extend thanks to my steadfast editor and wife, Ann M. Day, M.S., Syracuse University, 1999, Syracuse University, M.B.A., Syracuse University, 1982, B.S., Syracuse University, 1978. I appreciate the support of Syracuse University College of Law for a grant that enabled me to complete this project and others (that may lead to future articles).  
This essay on the writing, production, and editing of legal scholarship is dedicated with great affection to all of my editors and mentors, but most especially to Professor Emeritus Frederick G. Kempin, Jr. of The Wharton School. Fred was my first significant legal writing mentor and editor. He saw an awful problem and did something about it.  
The title for this piece was derived from Tom Clancy's *The Hunt for Red October*. TOM CLANCY, THE HUNT FOR RED OCTOBER (1985). It follows one of my rules, "Borrow Only From Impeccable Sources." See *infra* notes 22 & 23 & accompanying text. In the past, I had sadly noted the painful efforts of junior faculty attempting their first scholarly research. Once I had the zany title to prod me, I began to scribble notes to myself. It has taken me a few years to put fingers to the keyboard — I was interrupted by usual quasi-administrative duties, other articles, new course development, etc.). The time-honored methods I used and describe in the article made writing it fun and easy.
- 2 This article's ideas for writing go hand-in-hand with James Lindgren, *Fifty Ways to Promote Scholarship*, 49 J. LEGAL EDUC. 126 (1999). Deans and Directors of Research should employ Professor Lindgren's strategies to support faculty engaged in writing. Professor Lindgren's piece is essential for all schools seriously interested in promoting scholarship.
- 3 STEPHEN R. COVEY, THE SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE 94 (1989).
- 4 ADA LOUISE HUXTABLE, KICKED A BUILDING LATELY? 185 (1976). But see, BARTLETT'S FAMILIAR QUOTATIONS 783:2 (Justin Kaplan, ed., Little, Brown, 16<sup>th</sup> ed. 1992). This wonderful aphorism has been frequently attributed to the great actor, Humphrey Bogart, who resolutely denied saying it in any play or movie. Regardless of the creator, it's a marvelous piece of modern wisdom and deserves respect.
- 5 BARTLETT'S, *id.* at 57:20.
- 6 These aphorisms apply to the novice as well as the accomplished legal scholar. Every author should strive to say something significant. Attention to detail is important, and design and elegance are often revealed in the smallest points. You know best what your strengths and weaknesses are; you can use this knowledge to create. And every significant undertaking has to start somewhere, including legal scholarship. Start writing, and you overcome writer's block!
- 7 Ken Stabler was a great Oakland Raider quarterback and a poet without knowing it. "Throw deep" was his incisive and direct way of demystifying the babble of coaches and announcers. "Throw deep" was his style of play — the dramatic big play. When you throw deep, you score often and with panache!
- 8 See WILLIAM STRUNK, JR. & E. B. WHITE, THE ELEMENTS OF STYLE (1959); GIRVAN PECK, WRITING PERSUASIVE BRIEFS (1984) AND MYRON MOSKOVITZ, WINNING AN APPEAL (3<sup>rd</sup> ed., Michie Butterworth 1995) (hereinafter MOSKOVITZ). For time management and drafting strategies, see EVIATOR ZERUBAVEL, THE CLOCKWORK MUSE: A

PRACTICAL GUIDE TO WRITING THESES, DISSERTATIONS, AND BOOKS (Harvard 1999) (hereinafter CLOCKWORK MUSE).

For writing law review articles in particular, see ELIZABETH FAJANS & RICHARD A. FALK, SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES, AND LAW REVIEW COMPETITION PAPERS (West 1995). The advice in this book is helpful for developing a thesis, critiquing authority, and writing with a “voice.” For writing with clarity and power, and for techniques for drafting and polishing, see BRYAN A. GARNER, THE WINNING BRIEF: 100 TIPS FOR PERSUASIVE BRIEFING IN TRIAL and APPELLATE COURT (Oxford 1995, 1999) (hereinafter THE WINNING BRIEF).

Many of you reading have not been exposed to legal writing as it is now taught in law schools. There are some terrific materials in print concerning legal writing, and many are directly applicable to your quest. You might wish to consult the following two sources for clear explanations of direct and persuasive legal prose. I recommend these authors without hesitation. RICHARD K. NEUMANN JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE (3<sup>rd</sup> ed. 1998) and Bryan A. Garner, *An Approach to Legal Style: Twenty Tips for the Legal Writer*, THE SCRIBES J. OF LEG. WRITING 1 (1991). For additional advice see Robert H. Abrams, *Sing Muse: Legal Scholarship for New Law Teachers*, 37 J. LEGAL EDUC. 1 (1987); Roger C. Cramton, *Demystifying Legal Scholarship* 75 GEO. L.J. 1 (1986); Richard Delgado, *How to Write a Law Review Article*, 20 U. SAN FRANCISCO L. REV. 445 (1986); Mary Kay Kane, *Some Thoughts on Scholarship for Beginning Teachers*, 37 J. LEGAL EDUC. 14 (1987); Aviam Soifer, *MuSings*, 37 J. LEGAL EDUC. 20 (1987); Symposium, *American Legal Education: Directions and Dilemmas*, 33 J. LEGAL EDUC. 403(1983); and Symposium, *Legal Scholarship: Its Nature and Purpose*, 90 YALE L.J. 955 (1981).

- 9 Academic lawyers must publish or they will surely perish. They have not been trained in academic research and publication, nor do they arrive with a thesis that can be cannibalized to produce articles or a book or two. Actually, the new law instructor has probably not done much scholarly writing since law review. Therefore, efficient writing and time management are at a premium. Even after tenure, faculty must still write if they seek promotion and legitimacy in the scholarly realm.
- 10 I am probably representative of legal writers and researchers. I have been teaching law for twenty-four years at Syracuse University, and before that, The Wharton School of the University of Pennsylvania. I have written or co-authored fifteen articles and created a number of unpublished casebooks for course materials. I have had extensive administrative responsibilities ranging from Moot Court Advisor, to Associate Dean, to Co-Chair of Syracuse’s Building Committee for the \$17 million MacNaughton Hall construction and renovation project. Your author is, therefore, in the mainstream of productivity from the standpoint of quantity, and the path I have trod can be followed easily by any.
- 11 I can’t promise that you will become the next Oliver Wendell Holmes, Jr. or the next Duncan Kennedy. But I can almost promise you that if you have something to say, you *will* publish and not perish.
- 12 This may be the wave of the future. Several years ago, Syracuse established a formal mentorship program, where tenured faculty serve as mentors for junior faculty. To date, the guidance and efforts have worked well.
- 13 This is changing at Syracuse and other schools. For example, in Law Firm (our first-year legal writing, research and lawyering skills course), our students are encouraged to brainstorm, share research strategies, and exchange drafts. Some of our planning seminars and Applied Learning Courses encourage group efforts in such tasks as creating documents for a limited partnership syndication. Some traditional law reviews and journals have research programs where collaborative editing is employed.
- 14 Usually there is no formal research program structure. Faculty are expected to know how to research and write articles. Some colleges and law centers have “centers” and “policy programs” that focus on directed research. For those novices fortunate enough to select such a school or program or those who serendipitously fall upon them, more power to you lucky few. These centers and programs can provide the direction, focus, and support needed by junior and senior faculty. For the vast majority, until a mentoring system is created, they are on their own. God bless’ em.
- 15 After Fred Kempin (now Professor Emeritus at The Wharton School) had brutally slashed and burned two thirds of my first unpublished magnum opus, inductive reasoning forced me to conclude that “enough is enough.” I recognized that if you have researched for months, you can start writing (and probably should have started long before). I “gave myself permission” to write because I believed that I *did* know enough to do a good job. Most new writers just don’t realize that, and it should be brought home to them at an early stage in the process. Mentoring can underscore the messages “You can do it” and “Do it now.”

- 16 An example of the dramatic power of knowing when to put pen to paper and doing it follows. Years ago, a colleague was having difficulty writing, and began to think that academia might not be for him. I told him to make an outline and write paragraphs and pages of text from his outline (not his rough notes that had been hard to organize). He produced a two-page, double-spaced outline. I estimated that he had produced a document that would yield thirty to forty pages of text and notes. He protested that this was impossible because he just couldn't get into the article and it was getting away from him. He did not immediately see that he had already "written" his article.
- Several days later and about ten new pages into the article, he conceded that the outline (and his effort) were churning out usable text. Several pages more and he realized the power of his confidence in his outline. He could see the end of the tunnel, and the funk was lifted. There was a happy ending, and he is now a respected scholar in his area of expertise and actually enjoys writing.
- 17 My first article was on tax reform and landmark preservation. Architecture and cities had always fascinated me. I almost became an architect. (I am certain that the architecture school at Cornell is delighted I declined its acceptance in 1963.) I had practiced corporate real estate law in Philadelphia. At the outset I had a sympathy for and interest in my subject. Further, I enjoyed number-crunching, which is most helpful in tax matters. My second article moved into the realm of energy policy, land use controls, tax and urban planning. Again, I had a personal library at my disposal and a strong interest in the subject.
- Later, at Syracuse, two former research assistants and I wrote an extensive article defending leveraged transactions. As a real estate associate, I cut my teeth on the leveraged restructuring which ultimately became the grand-daddy of all LBO litigation, *United States v. Tabor Court Realty Corp.*, 803 F.2d 1288 (3d Cir. 1986), cert. denied, 483 U.S. 1005 (1987) (disastrous leveraged buyout involving *inter alia* the fabled Blue Coal Company (of "The Shadow" fame)). One of my former research assistants, and co-author, had worked on leveraged transactions as a summer law clerk. Our other co-author was interested in corporate finance—we were a terrific trio.
- 18 For outline writing ideas *see* MOSKOVITZ, *supra* note 8, at 5-11, 13,14; THE WINNING BRIEF *supra* note 8; and RICHARD H. WEISBERG, WHEN LAWYERS WRITE 151, 152, 176-83 (1987).
- 19 Leo Szilard, the brilliant Hungarian nuclear physicist, had such a brainstorm on a London Street when he unlocked secrets of the atom. When Szilard stepped off the curb in Bloomsbury, he "saw a way to the future, death into the world and all our woe, the shape of things to come." *See* RICHARD RHODES, THE MAKING OF THE ATOM BOMB 13-28 (1986). Our serendipitous thoughts probably won't be earth-shattering. But they may lead to interesting articles nevertheless.
- 20 This is contrary to the advice offered in the subsequent section, "*Become an Expert in a Relatively Finite Area.*" Some colleagues have suggested that this section may be unhelpful. Novices can have *big ideas* about small (*i.e.*, manageable) topics. It may be tough for many novice writers to get up to speed on multi-faceted, big issues.
- 21 Keep detailed files in your computer, vertical files, and even raw notes on scraps of paper. You are developing a hopper of ideas.
- 22 Seriously, ideas will come from many sources. Always give appropriate credit. Sometimes, the source will request anonymity. But most times, attribution is honorable and proper.
- 23 He did not want me to identify his company's business plans, and I respected his wishes. Had he desired otherwise, the source(s) would have been disclosed.
- 24 When I began *The Recovery of Hong Kong by the People's Republic of China —A Fifty Year Experiment in Capitalism and Freedom*, 11 SYR. J. INT. LAW & COM. 625 (1984), I had several strong paragraphs that built on Thucydides' observations of great power conduct in the Peloponnesian War. They were good paragraphs with solid thoughts. After about ten pages, they no longer fit in. I continued on. The focus of the article shifted, I wrote a new introduction, and I still haven't used those original cogent thoughts. But they served their purpose because they got me rolling.
- 25 Before submission I had shown it to no one. I had no editorial comment or feedback. After critique and severe editing by my department chair, Professor Emeritus Frederick G. Kempin, Jr., a slender and strong article emerged and was quickly accepted. Good editors are terribly important.

- 26 This ties in nicely with the preparation of the Abstract, *see infra* note 33 & text accompanying note. If your mind works best by starting with a working abstract, so be it. You are on your way to explaining your theme.
- 27 Almost all references to writing and putting pen to paper are clearly meant to encompass composing at the typewriter or, preferably, the computer.
- 28 See NATALIE GOLDBERG, WRITING DOWN THE BONES: FREEING THE WRITER WITHIN (1991); ANNE LAMONT, BIRD BY BIRD: SOME INSTRUCTIONS ON WRITING AND LIFE (1994).
- 29 Dante had his Virgil, and we legal scholars need our muse, even if it's terror. It may seem harsh to begin a section with notes on using fear, contempt, and guilt as tools to energize one's career. But sometimes these powerful feelings are what it takes to get one's attention and to focus productively on the tasks at hand. They did in my case, and I know other successful lawyers and academics who were goaded to success by these friends.
- 30 A nudge can come in here and be your "conscience." He can goad you into action while offering support and showing you how to use tools to speed your effort. At the time the nudge is doing this, he might not be appreciated. But the nudge or mentor must have the courage of his convictions. He must offer tools, support. But sometimes hectoring must be used to create enough discomfort that real writing and progress is the "pleasant" alternative.
- 31 I often edit in the middle of the night with Big Band music on CD and a bourbon neat at hand. I do this long after everyone else is asleep and I enjoy the quiet and progress. If you edit better in the morning when you are refreshed, do it. Use what works for you.
- 32 One of my mentors was John R. McConnell, Esquire, a senior partner and the chair of Morgan, Lewis & Bockius's Litigation Section in Philadelphia during the early 1970s. Mr. McConnell was a superb trial lawyer and writer. He coined the word that had great currency for all who worked with him.
- 33 But not all. Choose carefully your mentors, nudges, and editors.
- 34 Cf. MOSKOVITZ, *supra* note 8, at 5-11. A working outline is created initially to marshall your ideas, resources, themes, and sources. While the Moskowitz suggestion pertains to appellate brief writing, the lucidity of the ideas, especially on building the work, are most useful. One thing you might consider is using loose-leaf binders with dividers (that contain pockets). Place your cases, articles, and rough outline in the binders and use the divider parts to store your scraps of notes, short clippings, etc. Later you may wish to transfer these to three-hole paper and formally include the materials between the dividers. As the article grows, you may need several binders. Having the binders with all the articles and cases in hard copy can be a godsend when you are searching for that page citation as you develop your notes. See also CLOCKWORK MUSE, *supra* note 8 for other successful drafting and time management strategies.
- 35 Don't expect your first or second article to be the seminal legal work of the new century. This is too great an expectation. Make certain you have one or two interesting things to say. Start small, be productive, get published, and build the body of your work.
- 36 Cyndi Lauper, "Money Changes Everything," from "She's So Unusual" (1983). Ms. Lauper was indeed right.
- 37 Many faculty attend the conventions sponsored by the Association of American Law Schools (AALS) and the Society of American Law Teachers (SALT).
- 38 I have found American Law Institute-American Bar Association (ALI-ABA) and New York Law Journal Seminar Press conferences invaluable in gaining up-to-the-minute knowledge of business law practices. There are many other conferences that can give academic authors entree to cutting edge ideas in practice.
- 39 My recent research and writing on takeovers benefited greatly from hearing and meeting with business lawyers, professors,

corporate activists, bankers and CEOs at The Federalist Society’s “Fourth Annual Conference on Corporate Governance Issues,” Sept. 16, 1999, New York City. One month later, I had some stimulating conversations at “Teaching Corporate Law,” University of Georgia School of Law, Oct. 15 & 16, 1999. Both conferences provided me with a give and take that could not be replicated in another setting. The intellectual excitement at such conferences and the ideas encountered have enhanced my research and writing immeasurably.

- 40 Law faculties are by nature limited in size and depth. Often we find ourselves the “expert” on closely held corporations, adoption law, or land use and zoning, for example. Attending a conference where there are one hundred practitioners and ten academics in my field provides me with intellectual support for my ideas and opens me up to new notions. It will for you, too.
- 41 My editor and spouse dislike the use of this word because it does not reflect the value of completing the last editing and production details properly. I like it and use it because I hate the final editing and filling in the blanks in footnotes. I would rather pontificate than edit, and many of you do too, if you are honest. Scut work, the final editing (this could be the name for very bad horror movie), desperately grabbing for citations, filling in the final paragraphs, etc., is essential. If your article is well written and well documented, it will be on its way to being accepted. As a former law review editor and one who has worked all of his teaching life with law reviewers, I know that all editors appreciate clean, well-documented articles, in appropriate Blue Book format. It is only when you are a famous judge, practitioner, or scholar that you can afford to send half-baked manuscripts to publishers and expect them to complete the draft and find the “cites.” They will do it once if their production schedule allows. They will not willingly subject themselves or their successors to this twice if they are smart!
- 42 Actually, I enjoy writing more than some aspects of research. So for the “unpleasant” research (and writing) tasks, I call upon the good offices of my research assistant or co-author. For thoughts on the employment of research assistants, *see infra* “Hire a Good Research Assistant.”
- 43 Until you have written a great deal, expect to be less efficient than you would like. This is natural. Plan for many drafts unless in practice you were fortunate enough to become a very efficient and precise writer.
- 44 Don’t expect the law reviews to do the polishing and editing for you if your piece is very rough. Such expectations are rude and usually prompt rejections. So play it safe and hand the editors a polished draft of the sort you would enjoy reading and editing.
- 45 Cf. MOSKOVITZ, *supra* note 8, at 27. Also, Moskowitz instructs that time is necessary to meld good writing. Let things simmer and mull them over in your mind. *Id.* at 45. Leave sufficient time for you and others to read the piece with fresh eyes.
- 46 Expect the unexpected. Some emergency will always arise. Leave time for it. Regarding the estimate of the writing time and final production time, I know I can write (once I have broken through my writer’s block) four to eight, solid double-spaced pages per day (includes footnotes). I admit that I am manic. Not everyone is. Your life and timetable may be different. My point is that as well as I know myself, I still must cajole myself into planning *reasonable* estimates. And I am always surprised it has taken more time to finish the work than I had anticipated.
- 47 But see Abrams, *supra* note 8 at 5, 6.
- 48 Belated, and much appreciated, thanks to my co-authors: Robert S. Balter, Esquire, Philadelphia, PA; Professor Lisa A. Dolak, Syracuse University College of Law; Michael P. Walls, Esquire, Washington, D.C.; Mark I. Fogel, Esquire, Boston, MA; and Zheng Jingren, Deputy Director General, Ministry of Justice, formerly, Professor at China University of Politics and Law, Beijing, P.R.C. Each was a joy to work with, and all made writing fun and rewarding.
- 49 If “Wrenquist” is a practitioner with an LA firm, she may have corporate partners who will give deep background and professional criticism to your article on subordinated debt. “Mansfield” may have written some articles before and have great contacts at the Halcyon Law Review. “Black” may have chutzphah and be able to talk your article’s way onto the pages of the Utopian Law Review.

- 50 My adventures in co-authorship have often been very demanding. Long distance turnaround time required my co-authors in practice to put in all nighters to meet law review deadlines. If your co-author won't be up to these tasks, don't work with her.
- 51 Why might you do consider co-authoring with someone in the first place? Because "Langdell" is a respected former teacher with a great reputation. (You, however, know "Langdell" to be an intellectual slob.) Because "Marshall" is a superb trial lawyer who has a national reputation (and never meets deadlines). Because "Taney" is your best friend and friendship means a lot (yet "Taney" is a terrible writer or untrustworthy researcher).
- 52 Friends' complaints about bad co-authors have ranged from missing deadlines, to faulty scholarship that lacked integrity, to manuscripts that were so sloppy they could not be salvaged. Colleagues have reported that some co-authors dumped poor drafts on them and that only Herculean efforts salvaged the work. One friend even reported that a co-author "stole" the work and submitted the article as his work. Another reported that the obnoxious personality of the co-author turned off law reviews when the lawyer called and attempted to pre-sell the idea. These horror stories are all true. Choose your co-author with care.
- 53 Co-author unless your college doesn't give appropriate credit to co-authored pieces. If its tenure standards or practices discourage co-authorship, co-author at your own risk until you obtain tenure. If the college is skeptical, document your efforts and have your co-author(s) attest to which sections were written by whom. Be clear in this concern before you waste effort.
- 54 Some of the advice is contradictory. I have no intention of spreading confusion. Many of these techniques work for a number of my colleagues. Some of them were more useful at some stages in their careers than others.
- 55 "Get cite" is virtually useless unless this refers to a page in a relatively short case that can be easily located. On the other hand, "Van Gorkom price calculations" (denoting *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985)) is specific enough for my purposes. This short hand identifies the case and tells me enough about the subject matter to permit my research assistant or me to find the citation. "Holabird article on courthouses and their finance" works for me because I don't have to break my rhythm. To some extent this may prove to be a matter of taste -olives and sardines work for some, for others they are awful!
- 56 Many of you already have a good start on such libraries. For instance, if you are a computer jock or technology maven, your magazine articles and books may prove to be handy when you tackle software copyright issues. Your own research library can assist the editors with their accuracy checks. You may have to ship "rare" or hard-to-find books and photocopies of text, publication pages, etc. to reviews to enable their editors to do their job. At a minimum, this courtesy will give you a leg up with that review for your next article.
- 57 William Shakespeare, *Hamlet*, act I: sc III, line 78 (1603).
- 58 Like U.S. Grant during the Civil War. You can sometimes beat the problems by grinding it out and by attrition.
- 59 Confederate General Nathan Bedford Forrest was one of the world's most innovative and successful fighters. He husbanded his small forces, used surprise, and overwhelmed superior forces. He did not fritter away his strength by banging his head against the wall. Neither should you. Choose your writing battles carefully, and use your tools and skills to best advantage.
- 60 After you have used your electronic checkers for the umpteenth time, read the article and notes aloud. You will pick up some more typos and errors. But your article will be very polished and desirable for law reviews.
- 61 This really does work. While I was putting the finishing touches on this piece, I was revising an essay on the Conrail takeover battle and the foibles of the business judgment rule. Completing a work generates enthusiasm and a sense of accomplishment. Use these emotions to keep up the momentum. This is also a good way of avoiding the depression that some writers feel after they complete a piece.
- 62 What, were there no broken similes?

- 63 I will use my computer to do a quick reorganization. I estimate that the effort will cost me a day or less and I will have an excellent model to consider (in very rough form).
- 64 The title of a popular film, "romancing the stone" has a specific meaning to gemologists. To "romance" the stone is to place it in a provocative, irresistible context. (For example, would you rather sell a lump of carbon, or a large, mysterious rare blue diamond named "Hope"? ) If you are to romance your article, your abstract is a writer's best friend.

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