

**Law 510, Section 003  
Scholarly Writing**

T: 1:50–3:50 PM  
Fall Semester 2023:  
August 21 through November 20

**Robert Leider**

Office Hours: Wednesdays, 3:00 PM  
to 4:00 PM, and by appointment  
E-mail: rleider@gmu.edu  
Paper Due: Mon., January 8

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**Overview:**

The focus in this course is on *academic* writing. In academic writing, the goal is for the writer to make a scholarly contribution to the field of law—that is, to increase knowledge about law, some aspect of law, or legal institutions. Academic writing stands in contrast to brief writing, memo writing, and other forms of writing encountered in legal practice, although many of the skills overlap in some form.

This course will teach you how to write a major scholarly paper for an academic journal. It will help you through the various phases of writing, including topic selection, outlining, drafting, and editing. This course will also teach you about different kinds of legal scholarship.

Your focus will be to take that knowledge and develop a scholarly project. To do this, you will need to have an appropriate topic and thesis. You will also need to conduct proper legal research. The final paper should have a well-defined thesis, extensive argumentation (backed with appropriate citations), and responses to anticipated objections. By the end of the course, you must have drafted a law review note or case comment.

Most weeks, we will read a representative article or two from different types of legal scholarship. Keep in mind that you are reading this to understand how to write a legal paper, not for the substantive content of the paper.

**Learning Outcomes:**

By the end of this course, you should be able to do the following:

- Understand different kinds of legal scholarship
- Read legal scholarship critically
- Have a good writing process (e.g., outlining before writing)
- Select an appropriate topic
- Develop a thesis
- Make cogent arguments
- Raise and respond to objections
- Footnote and cite according to prevailing academic legal norms

**Requirements:**

1. Scholarly paper, meeting the requirements listed below
2. Completion of interim assignments
3. Class participation (discretionary 1/3 letter grade)

**Reading for Class:**

1. No required books, except that you must obtain a Bluebook if you do not already have one
2. Articles listed below are required unless otherwise indicated.

**Grading:** This course is “credit/no credit.” Scalia Law academic regulations provide that, in a credit/no credit course, credit may only be given to work that would merit a C or better grade if the work were graded. Work that would be C- or worse does not qualify for credit. To determine whether a paper gets credit, I will grade the paper as if the course were graded.

Note that a grade of no credit is equivalent to a failure and can have serious academic repercussions, including contributing to loss of matriculation. You are strongly advised not to take this course (or to remain past the add/drop period) if you believe that you will not be able to complete the assignment adequately.

**Paper Requirements:**

To receive credit, your paper must meet the following requirements:

- Between 15,000 and 22,500 words (30–45 pages), unless otherwise approved in advance
- Make a contribution to the field of legal literature
- Have the basic components of a paper, including a title, an affirmative argument, and responses to common objections
- Properly cite all sources using the Bluebook format
- All pages should be numbered at the bottom
- Use footnotes, not end notes
- Submit the paper by the due date, subject to a letter grade penalty for each day late

You **must** send me final papers on or before January 8, 2024. Extensions require the approval of the Assistant Dean of Student Academic Affairs. I am not authorized to grant extensions (AR 4-4.1(b)(ii)). Extension requests related to the anticipated project (i.e., extra time needed to conduct major research) must be sought in advance. Emergency extension requests should be sought as soon as possible after the emergency arises. For late submissions, academic regulations require me to deduct a full letter grade for each day the paper is late. But I will disregard de minimis deadline deviations (e.g., you start uploading at 11:59 PM, but the paper has a 12:01 AM January 9 time stamp because that is when it finished uploading).

All papers should be uploaded to the shared OneDrive folder in both Microsoft Word format and PDF format. I may also require that you upload a version to Blackboard. Please include your name and title in the filename. You have access to OneDrive through your GMU account.

If you have special circumstances that require modifications (e.g., paper intended for a peer-reviewed journal that uses a different citation format or has different page limits), please let me know.

**Office Hours:**

Office hours will be after class on Wednesdays, from 3:00 PM until 4:00 PM. I am also liberally available by appointment. To schedule appointments, please e-mail me. Office hours will be held in person and concurrently on Zoom. I will set up a meeting room and a waiting room. I will monitor the waiting room every few minutes. Please be patient, however. If you are waiting on Zoom, I may have someone with whom I am meeting in person. It also never hurts to send me an e-mail if you plan to attend office hours.

**Attendance:**

Attendance is mandatory. I will take attendance during each class. Those attending class are required to abide by all university policies on in-person attendance, including COVID-19 protocols.

For those who experience symptoms of contagious illness during the semester, I will liberally authorize the use of online/hybrid classes. Please e-mail me if you need such accommodations. I am also trusting that you will act responsibly in both directions—staying home if you may be sick, but not abusing the privilege of taking classes online because you do not want to attend in person that day.

If online classes become necessary, I will take attendance using the attendance report for each class. If your name will not be on the attendance report (e.g., you had to phone in), please e-mail me that you attended and include how you will appear on the attendance report (e.g., the phone number you used).

When holding class online, I encourage individuals to have their cameras on during class. In an online environment, we must all work to build a classroom community. That is easier when you can see your classmates' faces. That said, I do not require that your camera be on, so please feel free to turn off your camera if you have a reason (e.g., children running around in the background). (Should too many students keep their cameras off, I reserve the right to require people to stay on camera.) Please mute your microphone when you are not speaking.

**Electronics Policy:**

When class is in person, I generally prohibit the use of computers or other electronic devices. Studies have shown that students who use computers during class do not learn as well.

Obviously, prohibiting electronics is not possible if class is held online. But I encourage you to simulate a no-computer environment the best you can by taking handwritten notes in a notebook and avoiding online distractions. You will likely learn more through taking handwritten notes and then consolidating those notes into a computer outline.

My ban on electronics will be less strict in this course. You may use your computer or tablet in class when reasonably necessary for specific tasks (e.g., you are presenting to the class or need to refer to a paper that you only have in electronic form).

**Recording Policy:**

I strictly forbid anyone to record (video or audio) any of the lectures. This is both to protect intellectual property and the privacy of class discussion.

My general policy is not to record class lectures, even when students face an occasional absence. I also recognize, however, that students may face special circumstances at this time, which may result in longer term absences or distractions. Given this, I will record a lecture where there is a reasonable necessity for doing so, if arrangements are made with me in advance. I will make that lecture available for a limited time. Lectures will be deleted after the affected student has a reasonable opportunity to view it. Recording, copying, or disseminating the lecture in any way is prohibited.

**Academic Integrity:**

An important part of practicing law is having honor and integrity. Scalia Law School has adopted an honor code, which is available on the Honor Committee's website (<https://sls.gmu.edu/honor/>). Students are prohibited from lying, cheating, or stealing, being an accomplice or accessory to someone else who is cheating, bringing a prohibited material or device to an exam, or failing to report an honor code violation if the person has reasonable cause to believe that a violation has occurred.

In any writing course, plagiarism is a matter of serious concern. Scalia Law's academic regulations define plagiarism as "intentionally, knowingly, or recklessly representing someone else's work or ideas to be one's own for academic advantage." When you borrow someone else's ideas, you must diligently cite the person, even if you are paraphrasing the ideas in your own words. When you use someone else's words directly, you must include quotation marks.

Cheating often occurs as an act of desperation. The best way to prevent the temptation to cheat is to stay up to date on your assignments. If you have personal circumstances putting you under undue pressure, you should speak to me about your situation as soon as possible before the paper is due.

You are also strongly encouraged to ask me (or a member of the Honor Committee) if any questions arise.

I reserve the right to use plagiarism detecting software on all submissions, with or without reason to believe that a paper is plagiarized. By taking this course, you consent to such uploading and use of your paper. I will likely require that all papers be uploaded to Blackboard through the Safe Assign System.

You may use generative artificial intelligence tools (e.g., ChatGPT) to help you with research. The use of such tools is subject to the following limitations, however. First, you may not use such tools to assist in actual drafting. The words in your paper must be *your* writing. Second, you are ultimately responsible for all content, both substantive and citations. Generative artificial intelligence is still in its infancy, and you must appreciate its limitations. If, for example, citations are included in your paper that do not exist or fail to cite the appropriate source, you will be held responsible.

**Disability Accommodations:**

George Mason University's Office of Disability Services provides for the reasonable accommodation of students with disabilities. If you need an accommodation (including modification of any course policy), please coordinate with that office. Please also do so as early as possible; accommodations can take time to process. Please note that I am not authorized to grant accommodations.

**Unexpected Cancellations:**

If the law school has an unexpected closure (e.g., a snow day), **class will still be held on the regular schedule** using Zoom. We will hold class online on an extended basis if the university discontinues in-person classes for any reason.

**Online Classroom (when necessary):**

Unless otherwise noted, all online class sessions (including hybrid sessions) will meet on Zoom.

**Unexpected Server Problems:**

If Zoom becomes unavailable during class, we will use Blackboard Collaborate Ultra. Please make sure you have all your accounts set up and download any necessary plugins. Should both services fail or my Internet goes down, we will reschedule class.

In emergency circumstances, I will send updates by e-mail to your GMU account, so please monitor your e-mail. And if you run into problems, it is helpful to me if you e-mail me right away. If you have significant trouble logging on, there is a good chance other students are, too. The earlier I know of problems, the faster I can correct them with minimal class disruption.

When scheduling activities, please try to leave yourself some buffer after class. If we run into unexpected problems, I would much rather hold class a little later than reschedule entirely.

**Modifications of the Syllabus:**

This syllabus is **tentative**. Please be prepared for me to make adjustments during the semester, particularly as to readings. Please use the syllabus on Blackboard; that syllabus is kept current and will reflect any changes that occur. Please also do not get too far ahead in the reading.

**Online Syllabus.** This is the online syllabus. Please consult the Blackboard syllabus for the latest information and for the Zoom meeting information.

- 8/22 Introduction to Legal Scholarship and Choosing a Topic  
 Homework assignment for the first class: do some background reading in a general area that interests you and come prepared to discuss a general topic on which you may want to write. Your work for this class should also partially prepare you for next week's assignment.  
**Law Journal Deadline:** Topic selection due August 27.
- Martha Minow, [Archetypal Legal Scholarship: A Field Guide](#), 63 J. LEGAL EDUC. 65 (2013) (entire article).  
 Eugene Volokh, [Writing a Student Article](#), 48 J. LEGAL ED. 247, 247–53 (1998) [hereinafter “Volokh”] (Note: we will eventually read this whole article. For this class, read only pp. 247–53.)
- 8/29 Descriptive Legal Scholarship and Topic Selection  
 Homework assignment for the second class: read six to 12 already existing articles on your chosen topic. Come to class prepared to discuss the following: (1) the scholarly conversation in which you propose to contribute (you should be able to define this conversation); (2) explain which scholars are on which end of the debate.
- William Baude, [Is Qualified Immunity Unlawful?](#), 106 CAL. L. REV. 45 (2018).  
 Scott A. Keller, [Qualified and Absolute Immunity at Common Law](#), 73 STAN. L. REV. 1337, 1340–55 (2021) (note page limitations).  
 Volokh, pp. 253–55.
- 9/5 Normative Legal Scholarship and Thesis Selection  
 Homework assignment for the third class: draft a 2–4 page memorandum providing the following: (1) your proposed topic and thesis; (2) a summary of the already existing literature on this topic, noting any academic divisions that exist; and (3) a brief summary of your argument and why this argument is novel, useful, non-obvious, and sound.
- Adam J. Kolber, [How to Fix Legal Scholarmush](#), 95 IND. L.J. 1191 (2020).  
 Cynthia Lee, [Firearms and Initial Aggressors](#), 101 N.C. L. REV. 1 (2022).
- 9/12 Normative/Policy Articles and Drafting an Introduction  
 Homework assignment: submit a draft introduction to me in hard copy (or, if absent, by e-mail)  
**Deadline:** preemption check due to the law journals on September 17.
- Russell Korobkin, [Bounded Rationality, Standard Form Contracts, and Unconscionability](#), 70 U. CHI. L. REV. 1203, 1203–53 (2003).  
 Volokh, pp. 253–55
- 9/19 Recasting Projects and Note Taking/Argument Development  
 Homework: Work on bibliography for next class  
 Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).  
 Volokh, pp. 255–58

9/26 Institutional Analyses and Outlining

Jeffrey Bellin, *The Power of Prosecutors*, 94 N.Y.U. L. REV. 171 (2019).  
Eloise Pasachoff, *The President's Budget as a Source of Agency Policy Control*, 125 YALE L.J. 2182 (2016).

10/3 NO CLASS.

Homework assignment (due by 1:00 PM): submit annotated bibliography listing the sources you consulted and why those sources are relevant for your project (1-2 sentences per source). Include in a separate section sources that you have identified but not yet read.

10/10 NO CLASS. Designated Monday.

10/17 Legal History and Preparing to Compose

Homework assignment: submit detailed outlines with your proposed arguments.

Samuel Murumba, *Good Legal Writing: A Guide for the Perplexed*, 17 MONASH U. L. REV. 93 (1991).  
Christian R. Burset, [Advisory Opinions and the Problem of Legal Authority](#), 74 VAND. L. REV. 621 (2021).

10/24 Theoretical Legal Scholarship and Presentations

Homework assignment: Prepare a 5–10 minute presentation for the class on your topic

Stephen E. Sachs, [Finding Law](#), 107 CAL. L. REV. 527 (2019).  
William Baude, [Rethinking the Federal Eminent Domain Power](#), 122 Yale L.J. 1738, 1741–55 (2013) (note the page limits; read with a view to contrast this paper with Sachs's).

10/31 NO CLASS. Individual Meetings

Homework assignment: Begin drafting full introduction and first part.  
Set up individual half-hour meetings from 1:30 PM until 5:00 PM to go over your outline.

11/5 Law Journal deadline. Submit first draft (includes complete introduction and Part I of your article, plus a detailed outline of Argument section). (Please also upload a copy to me of your submission.)

11/7 Law and Economics; Revising Your Writing

Only the reading below. Continue, also, working on your draft.

Richard Posner, *The Ethical and Political Basis of the Efficiency Norm*, 8 HOFSTRA L. REV. 487 (1980).  
Volokh, pp. 258–72

11/14 Philosophy of Law and Critical Legal Studies

Only the Kennedy article below and working on your draft. No additional assignments. If you want comments on an initial draft, please submit to me a full draft by this date.

Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976).

11/21 Final Class Meeting.

No assigned reading. Come ready to discuss how your projects are going.

12/3 Law Journal Deadline: Second draft due (full first draft, including argument sections

1/8 **FINAL DRAFT DUE.** Please upload to OneDrive. If that does not work, please e-mail the draft to me.