

THE JOY OF SPRING BREAK WITH ACADEMIC LEGAL WRITING

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- I. Expectations all around
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- IV. A word from our sponsor
- V. Revising
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I. EXPECTATIONS & ASSUMPTIONS ALL AROUND

- A. Mine, today
- B. Yours, about the process of writing
- C. Your professor's, about your paper

A. MY ASSUMPTIONS

1. You have some idea of what legal academic writing is.

You can distinguish *academic* writing (e.g., law review articles) from *law-practice* documents (e.g., what you drafted in LARAW & Advocacy).

2. You've already thought about a paper topic.

3. You've done some research on it.

A. MY ASSUMPTIONS

4. Maybe you wonder how much longer you can put off writing.

5. You're good at asking questions. Feel free to use that skill.

6. SOME EXTRA BACKGROUND INFORMATION (TO SUPPLEMENT THE ASSUMPTIONS ABOVE)

- a. On academic writing
- b. On topic selection
- c. On research

a. A BIG-PICTURE LOOK AT
ACADEMIC LEGAL WRITING

ACADEMIC LEGAL WRITING: BIG PICTURE

Academic writing is scholarly discussion about the Law:

- ▶ how it got this way
- ▶ how it should be understood
- ▶ what it should become

BIG PICTURE & NEW IDEAS

▶ Beyond what the law is & how it applies to the facts of one case

▶ Secondary sources get a promotion
Original scholarship: L. Revs. & books, etc.

NEW IDEAS

In academic writing,

- ▶ You need a new idea. Academic papers do not simply state what the law is and how it should be applied to a particular set of facts.
- ▶ Secondary sources are highly valued: Law review articles always cite to other law review articles. It's a scholarly discussion.

b. TOPIC SELECTION

A POPULAR METAPHOR: PATENTABILITY

Posited by Prof. Stephen L. Carter

1. New
2. Not obvious
3. Useful

PREEMPTED = NOT NEW

Has your idea already been done?

Can you modify your idea so that it offers something new?

Can you bring some new understanding (e.g., statistical analysis) to a well-established topic?

YOUR TOPIC

What is your paper going to be about?

a compelling situation (existing or anticipated)
that needs to be addressed;

a conflict among cases, of which ____ is right;

a bad idea that needs to be blocked;

a proposal for legislative or regulatory change;

[more]

YOUR TOPIC

What is your paper going to be about?

[cont'd]

- a new way to understand an issue;
- a new perspective on a problem;
- information from other disciplines, to make the law better-informed;
- new empirical data about new or old issues . . .

JUST THE RIGHT SIZE

Is the topic too little to matter?

Is your idea too big for you to finish doing the research before the paper is due? Can you narrow the topic so it's manageable?

YOU'RE ALREADY BORED WITH YOUR TOPIC?!

Adjust the focus, or bail out.
This needs to be a long-term relationship.

TAKE A STAND.

“Answers” might be how to:

- ▶ look at a problem
- ▶ incorporate new data into an analysis
- ▶ communicate with other fields about the issue
- ▶ formulate an argument more persuasively

TAKE A STAND.

OR, a very popular approach to the Answer:

- ▶ how to cure the problem in whole or part.

TAKE A STAND: THE ANSWER IS . . .

Consider alternatives, and make clear which answer you have concluded is best.

Reform the law, or repeal it outright?

Strengthen regulation, or rely on the market?

Is litigation, legislation, or persuasion the best route?

TAKE A STAND.

Don't be afraid.

Read enough to know what's out there already.

Pretend you're confident.

WHAT DOESN'T WORK AS A TOPIC:

Here is a problem. "How awful!" QED.

WHAT DOESN'T WORK AS A TOPIC:

There have been a lot of cases. I'll tell you about them. Ta-da!

c. DOING THOROUGH RESEARCH

Get to know the Law Librarians.

They are experts at finding information.

Think about your questions,
then ask nicely for help.

Leave time to get answers.

YOUR THOROUGH RESEARCH

- A. You & your research log
- B. How many sources should you cite?
- C. How to know you are not done

A. YOU & YOUR RESEARCH LOG

Friends for the life of your paper.

(Is researching so much fun the first time that
you want to have to RE-DO it?)

B. HOW MANY SOURCES SHOULD YOU CITE?

Lots. Even more than you think should be necessary.

No more than you actually use, though.

No one believes you read that entire wall of books.

IT GOES WITHOUT SAYING?!

“It goes without saying that you must read everything that bears on your subject. Your footnotes and argument should reflect that you have taken into account every significant idea, book, or article that is out there.”¹

¹ Delgado, “*How to Write a Law Review Article*,” 20 U.S.F. L. Rev. 445, 450 n.1 (1986).

C. How to Know You AREN'T DONE RESEARCHING

☞ You have a couple of newspaper articles that describe an important case, but you haven't looked at the court's docket sheet.

☞ You looked at secondary sources, but not at the key cases or statutes they discuss.

How to Know You AREN'T DONE RESEARCHING

- ☞ SCU's main library has some useful materials, but they're somewhere in the reserves, so you don't want to bother.
- ☞ Automated reserves arrive within ten minutes of your request. It's amazing!

How to Know You AREN'T DONE RESEARCHING

☞ You found references to an important book, but it isn't available at SCU, so you're just going to skip it.

Inter-Library Loan is “a very nearly magical way”² to get materials delivered to you.

How to Know You AREN'T DONE RESEARCHING

☞ You googled the topic and looked at some online sources.

Did you try Google Scholar?

Did you use the Law Library's databases?

Did you try the Main Library's databases?

<http://www.scu.edu/library/resources/index.cfm?ulrfsrc=qcklnks>

How to Know You AREN'T DONE RESEARCHING

☞ You read the Wikipedia article.

Seriously, can you picture your prof being happy about a citation to Wikipedia to prove anything other than the existence of Wikipedia?

How to Know You AREN'T DONE RESEARCHING

Unless your research is so cutting-edge that nobody has published yet, then here's a **tip**:

If you have not been in the library, holding a book in your hands, then you are NOT DONE YET.

CONTRAST RESEARCH FOR LEGAL PRACTICE

Litigation research typically depends upon a small set of published appellate decisions about a small set of legislative enactments, for the benefit of a client with one set of facts.

Academic writing is not limited to “How did this jurisdiction rule on this issue given an analogous set of facts?” The research therefore needs to go further.

B. WHAT DO YOU ANTICIPATE ABOUT THE PAPER PROCESS?

1. Learning
2. Interacting with faculty
3. Suffering?
4. Graduating
5. Building skills/connections/resumes

C. YOUR PROFESSOR'S IDEALIZED ASSUMPTIONS & EXPECTATIONS

1. Academic writing is as fascinating for law students as it is for the prof.
2. You actually care about your chosen topic.
3. You will diligently research the existing law & theory, and accurately state the results.
4. You will attribute everything to its source.
5. You will contribute to knowledge in the world, by offering a new idea or understanding.
6. You will welcome faculty input and use it to improve your paper.

READER'S PERSPECTIVE, IN A BIT MORE DETAIL

Won't somebody
think of the reader?!

ENGAGE THE READER'S INTEREST

Your title & introduction could make a reader:

- (a) excited to learn more, or
- (b) want to cry at the prospect of continuing.

Which is better for you, the writer?

DO NOT ENRAGE THE READER

Your writing and citing could make a reader:

- (a) glad to be part of a scholarly discussion, or
- (b) want to yell at the author.

Which is better for you?

THE READER'S EXPECTATIONS: IT'S YOUR WORK.

Your job is to:

- ▶ Develop the ideas
- ▶ Communicate them
- ▶ Produce a readable paper

THE READER'S EXPECTATIONS: IT'S YOUR WORK.

If it wasn't worth your time, why should it be worth the reader's time?

THE READER'S EXPECTATIONS: IT'S YOUR WORK.

There must be no ideas “borrowed” without attribution.

THE READER'S EXPECTATIONS

YOUR WORK BUILDS UPON OTHERS' WORK.

You must be familiar with the shoulders you stand upon.^{fn}

THE READER'S EXPECTATIONS

YOUR WORK BUILDS UPON OTHERS' WORK.

Everything must be supported with cites.

Accurate citations are integral to
academic integrity.

Bluebook rules are an aspect of accurate citations.
**You will be judged on this--the substantive
cites and the formatting details.**

II. SOURCES OF GUIDANCE

- A. Your professor
- B. Books and articles about Academic Legal Writing
- C. Articles that are themselves academic legal writing

A. GUIDANCE FROM YOUR PROFESSOR

What approaches does this reader like best?
Read articles s/he's written or been thanked in.
Ask people from last year's class.
Are there good sample papers?

👉 Make an appointment to talk with the prof.
about your work and the prof's standards.

B. BOOKS AND ARTICLES ABOUT ACADEMIC LEGAL WRITING*

✓ ELIZABETH FAJANS & MARY FALK, SCHOLARLY
WRITING FOR LAW STUDENTS, 3D ED. (2005)

(Multiple editions av. in the Heafey stacks)

✓ EUGENE VOLOKH, ACADEMIC LEGAL WRITING,

4TH ED. (Multiple editions, some av. in

Heafey); *see also* Eugene Volokh, *Writing a*

Student Article, 48 J. Legal Educ. 247 (1998).

C. ARTICLES THAT ARE THEMSELVES ACADEMIC LEGAL WRITING

How convenient! You were reading them anyway as part of your research.

Look at them in a new way--as a guide to the language and style of academia.

III. DRAFTING

- A. Outline first?
- B. Introduction first?
- C. Pick one, but then dive in and write.
- D. Your skills from LARAW & Advocacy will come in handy.

A. WRITE AN OUTLINE FIRST?

I'm in favor of outlining.

There are various ways to do it, with greater or lesser formality.

But if it's not your thing, OK.

POST SCRIPT: AN OUTLINE IS REQUIRED FOR SAWRs

Please refer to the sequence on the SAWR form, and consult your supervising professor.

LOOK FOR STANDARD STRUCTURES AND VARIATIONS WHEN YOU READ LAW REVIEW ARTICLES

Legal academic writing has its own structural expectations

No need to abandon logic!

A. WRITE THE OUTLINE FIRST?

A STANDARD APPROACH

Intro: What's the big deal, quick background,
narrow to thesis; announce organization.

Background of the problem/issue

Analysis -- The heart of the paper

Major issues

Sub-issues

Conclusion & summary

See FAJANS & FALK, supra, at 67.

A MALIGNED BUT COMMON FEATURE OF THE INTRODUCTION: THE OVERT ROADMAP

In Part I, I review . . . In Part II, I explain . . .

Here is a review of everything ever written.

Here is my idea, with anticipated objections.

Here is my proposal for next steps.

III. DRAFTING

B. Prof. Volokh suggests writing an introduction first (rather than starting with an outline).

Benefits: It's more interesting to write, and drafting it will help you see if you understand your topic & goals.

B. DRAFT THE INTRO FIRST?

- ✓ State the problem
- ✓ State your claim about it
- ✓ Set up the reader's expectations about scope and perspective
- ✓ Be specific
- ✓ Consider letting the structure of the intro convey the structure of the paper.

We've delayed enough now.

C. DIVE IN AND WRITE

1. Now is not the time for perfection
2. It's OK to proceed out of sequence
3. Notice gaps, write reminders to yourself.
Tip: Use searchable characters***

IN WHATEVER ORDER, YOU'LL NEED TO WRITE:

- ✓ An intro (including your claim)
- ✓ The facts & the law--whether theoretical or authority-based
- ✓ **Proof** for your claim, in the context of other writings, **anticipating objections** 📱
- ✓ A solid conclusion.

D. THE USEFULNESS OF SKILLS FROM LARAW & ADVOCACY

You already have these skills:

1. thorough researching
2. careful reading
3. synthesizing ideas
4. applying authority
5. outlining
6. using appropriate headings
7. taking a position

[more]

YOU ALREADY HAVE THESE SKILLS

(continued)

8. accurately stating law and fact
9. accurately citing to sources
10. drafting, editing, revising
11. proof-reading
12. using appropriate tone
13. communicating clearly
14. thinking of the reader

USE THOSE SKILLS

For example, do you remember synthesizing authorities? Keep doing it.

DO NOT summarize case after case and hope that the reader will draw some conclusion about what you're talking about or why to care.

MODIFY THOSE SKILLS: CITATION FORM

- ▶ No more bluepages for now.
- ▶ You use the scholarly side of the Bluebook, rather than the practitioner side.

YAY! SMALL CAPS!

MODIFY THOSE SKILLS: CITATION FORM

- ▶ All cites appear in footnotes.

Yay! You don't have to break up the flow of your writing with citations.

- ▶ Remember to use Bbk *signals* correctly.

MODIFY THOSE SKILLS: MORE WORDS

In academic papers, you may be expected to write at least a certain amount.

☞ This does not mean you should just blather. Your idea should warrant being explored at length.

IV. AND NOW, A WORD FROM OUR SPONSORS

~ An important interlude ~

THE WORD IS “PLAGIARISM.”

It's easy to fall into.

- We have all been tempted to be quick by:
- ✗ cutting-and-pasting from online sources
 - ✗ omitting sources in a research log
 - ✗ taking slap-dash notes

ANOTHER WORD FROM OUR SPONSOR

👉 DON'T.

Why not?

WHY NOT PLAGIARIZE?

1. It's stealing somebody else's work.

“Information wants to be free” is a lovely philosophy. Perhaps you'd like to write a paper about it. Just don't try to argue it as a reason you should be allowed to cut-and-paste your paper.

WHY NOT PLAGIARIZE?

2. It deceives the reader.

Somebody is investing time in supervising your work and giving you guidance and commentary about it.

Why should s/he advise the person who didn't really write the piece?

WHY NOT PLAGIARIZE?

3. It tempts fate.

Your supervising professor is likely to be an **expert** on the field of your paper. S/he will notice little things that seem familiar from past work in the field.

WHY NOT PLAGIARIZE?

Apart from integrity or similar motivations, here's a bottom-line reason:

4. It can thwart your entire investment in legal education.

WHY NOT PLAGIARIZE?

The consequences can be dire, including:

- ⚡ A failing grade or no credit for a course;
- ⚡ Extra work, when you don't have time to do it;
- ⚡ Delayed graduation, with all attendant costs;
- ⚡ No positive reference from someone who has worked closely with you;
- ⚡ A negative reference from the school to the State Bar.

👉 Way to short-circuit your options!

PLAGIARISM IS ALSO EASY TO AVOID!

- ✓ You are allowed to quote.
- ✓ You are expected to paraphrase.
- ✓ You are supposed to use others' writings.

YOU HAVE TO CITE YOUR SOURCES PROPERLY.

A FURTHER CAUTION:

Yes, you're supposed to quote and paraphrase and cite. But that alone is NOT ENOUGH.

Finding someone else's idea and just **MASSAGING** it to look different enough to be “yours” is **plagiarism**.

PLUS, IT'S NOT GOOD ENOUGH
FOR SEMINAR CREDIT OR A
SIGNATURE ON YOUR SAWR FORM

You have to do your own analysis.

Tracking someone else's analysis
is a book report.

--It's not a piece of academic writing.

RECAP: NO ACADEMIC CREDIT FOR NICE REPORTAGE.

Finding materials on your topic is good.
That's called “research.”

Academic writing isn't just giving a report on
what other people have written.

PLAGIARISM & PARANOIA

Let's not focus on the hypothetical, “What if I use three words that someone else said before, but I came up with them on my own?”

Instead:

✓ Become familiar with the literature in the area, so you know the unique vs. common phrases. Quote or paraphrase and cite as needed.

PLAGIARISM & PARANOIA

✓ Demonstrate good research, writing, and citation skills.

The better you establish your good-faith efforts to research, quote, cite, and think, the less likely you are to **IRRITATE** the reader enough to prompt a search for evidence of wrongdoing.

PLAGIARISM & PARANOIA

✓ And if you've made a mistake, it's easier to overcome when it's surrounded by tons of evidence of proper attribution.

WHAT DOES IT MEAN TO CITE YOUR SOURCES PROPERLY?

- ✓ Each idea -- a sentence, a clause, sometimes even a word -- that came from somewhere else needs a cite to its source.

WHAT DOES IT MEAN TO CITE YOUR SOURCES PROPERLY?

- ✗ Do **not** just put a cite at the end of a paragraph cobbled together from other sources.
→ This is a very important shift for students used to other fields' citation styles.
- ✗ Do **not** just summarize someone else's work and put a series of *id.s* in the footnotes.
→ It's supposed to be your paper, your ideas.

NOTE THE TENDENCY TO PROVE EVERYTHING WITH A CITE, NO MATTER HOW OBVIOUS YOU THINK IT IS.

Apples that come detached from a tree will tend to fall downward to the ground.³

³ *See* Sir Isaac Newton, OUCH: PRELIMINARY THOUGHTS ABOUT FALLING OBJECTS (Royal Soc'y 1685), *cf.* NASA, Reduced Gravity Research Program (GPO 2009) (implying that objects float in the absence of gravity).

OK, MAYBE NOT THINGS THAT ARE THAT OBVIOUS

If you are not including a cite to a source for any fact, law, or idea, you'd better have a good reason for the lack of a cite.

👉 In fact, **why not just include a cite?**

It's easier to put it in from the start than to hunt for the source later.

LOOK AT THE BLUEBOOK

EARLY AND OFTEN

“A grasp of the conventions and uses of footnoting shapes your approach when you are researching issues and taking notes.”⁴

⁴ Delgado, *supra* n.1, at 450.

WHEN DON'T YOU NEED A CITE?

In general,

your topic sentences ⁵

your own idea or argument ⁶

your conclusions ⁷

--*i.e.*, things that shouldn't come from
somewhere else.

⁵ *Id.* at 451.

⁶ *Id.*

⁷ *Id.*

CITING YOUR SOURCES

Contrariwise,¹ as long as² you show where your³ info⁴ came from,⁵ don't get too hung up on sub-dividing⁶ **every** sentence⁷ with citations.⁸

OTHER BAD IDEAS: DOUBLE-DIPPING

Are you actually saying
that I might “plagiarize”
myself?

Double-dipping is a related violation of the Honor Code. It can elicit similar passion among faculty. *See* SCU Law’s Academic Integrity Policy, Section 2.

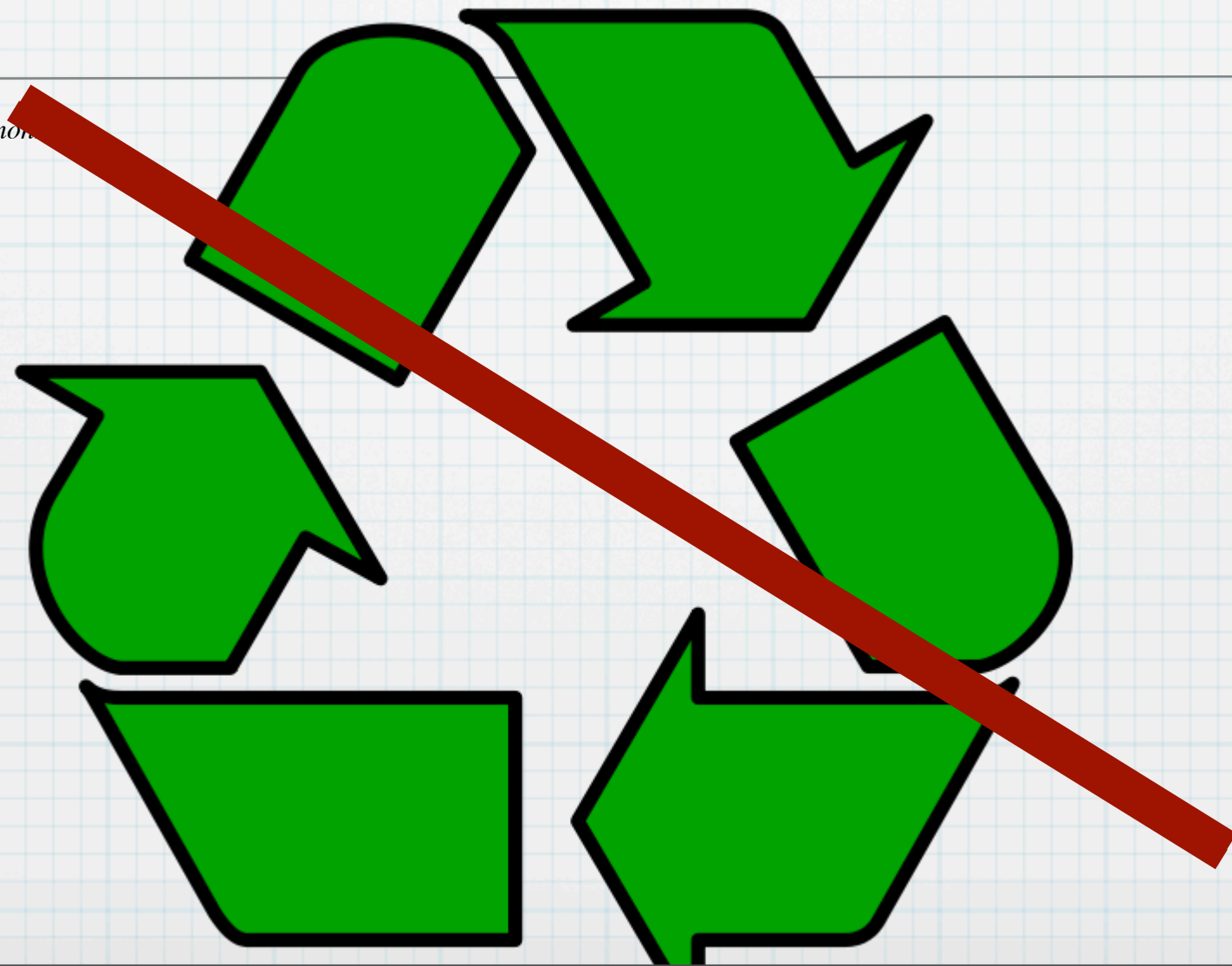
OTHER BAD IDEAS: DOUBLE-DIPPING

✗ Don't just resubmit something you wrote (or are writing) for another project; build upon it if you want more credit for it.

👉 **Disclose** your other paper to your prof., and get **approval** for work on the same/related subject. Be clear about the prof's requirements from the start.

JUST IN THIS CONTEXT,
NO RECYCLING.

Cbuckley, Wikipedia Commons



OTHER BAD IDEAS

It should go without saying, but:

- ✗ Don't buy or borrow other people's writing.
- ✗ Don't write someone else's paper.

IF TEMPTED, REMEMBER:

There is no pressure so dire that it can't be made WORSE by plagiarism.

WELL, THAT WAS BLEAK.

THE LAW SCHOOL & ITS FACULTY
DO RESPECT YOU.

WITH THIS KNOWLEDGE,
YOU AVOID NEEDLESS PERIL.

And Now,
We Return to Our Regular Program

V. REVISING

- A. Nothing is done before it is revised.

- B. Revising is different than proofreading.
Consider structural improvements,
significant additions or deletions, elimination
of ambiguity.
- C. You should take a break between drafting
and revising, so you look at the writing with
fresh eyes.

V. REVISING

Tip: Do not give your professor an unrevised OR unproofread draft, no matter how willing the prof. is to see an “early draft.”

VI. WHAT'S ON YOUR HORIZON

Draft, edit, draft, edit, . . .

Fill in blanks in research.

Revise.

Check your cites.

Proof-read.

Simple, eh? No; these steps are non-linear.

Repeat as needed.

If permitted, discuss your paper with others.

How Much Time Will It Take?

More than you think.

HOW MANY CITES SHOULD I HAVE?

More than you think.

YOUR HORIZON

Ask questions as needed.

Librarians are so helpful!

Do not hide from your supervising professor.

(Impressive questions may include steps you've already taken to try to answer them.)

AND THEN?

1. Get feedback
2. Think about the feedback*
3. Conduct further research as needed
4. Incorporate new information and thoughts into your text (NOT just data-entry)
5. Revise & proofread
6. Bask in satisfaction
7. Consider basking in fame as well

TIP:

- ▶ Even before it's required, you can make an appointment with your supervising prof to discuss your ideas, research, writing & questions so far.
- ▶ The appointment becomes a mini-deadline for you.
- ▶ Office hours may be fine for short questions or consultations.

VII. CONCLUSION

&

YOUR QUESTIONS