

Tip Sheet on Sources in Legal Scholarship

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This document contains quick advice about what kinds of sources to use in legal scholarly writing. Mostly, this is a matter of citations in footnotes (i.e., “below-the-line” support). But to the extent you discuss sources in above-the-line text, the same advice applies.

Facts

(historical facts, current events, public opinion, empirical data, scientific background, academic theories outside of legal scholarship, etc.)

BEST – use whenever possible

academic books and articles by non-legal scholars; government reports; litigation documents usable as evidence or clearly reliable (declarations, affidavits, responses to requests for admissions, statements against interest in pleadings and briefs)

OKAY – use if you must

newspaper and magazine articles written by journalists; judicial opinions

VERY WEAK – should generally be avoided

law review articles; books by legal scholars; litigation documents not useable as evidence (be alert to obvious issues of reliability: if you are citing a complaint for a factual proposition advanced by the plaintiff against the defendant, that can only be called an “allegation” and would have to be labelled as such)

Law

BEST – use whenever possible

judicial opinions; statutes

OKAY – use if you must

law review articles; books by legal scholars; treatises; restatements; some government reports (such as a multi-jurisdiction survey by DOJ or CRS)

VERY WEAK – should generally be avoided

articles in bar journals; blog posts by legal scholars and lawyers; most government reports

USELESS – avoid entirely

newspaper and magazine articles written by journalists; academic books and articles by non-legal scholars; general text on a website

Legal Scholarly Thought

BEST – use whenever possible

law review articles; books by legal scholars; treatises; blog posts by legal scholars

OKAY – use if you must

judicial opinions; academic books and articles by non-legal scholars

VERY WEAK – should generally be avoided

newspaper and magazine articles written by journalists; academic books and articles by non-legal scholars; general text on a website

Important caveat: others' ideas

When someone else's idea is involved, give credit where credit is due. For instance, suppose a new idea for a legal reform was originally proposed in the form of general text on a website by an author with no legal training. In that case, cite the website and its author. But if you go on to say that this a legal-reform idea has caught on among legal scholars, then it's best to cite a legal scholarly source for the catching-on part.

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