

The Note Development Process

A step-by-step review of the note/comment development process.

One of the most meaningful projects a staff member will undertake on Law Review is producing one or two pieces of scholarly writing. These pieces culminate in a comprehensive examination of a particular area of the law that has not been previously published. Staff members can either write a Note or two Case Comments to satisfy the writing requirement. A Note is usually 30 to 50 pages and has 100 to 200 hundred footnotes. Each Note and Case Comment must satisfy the Law Review's publishability requirements. The Articles Editors and Senior Editorial Board make the final determinations as to which Notes are published.

Stages of Note Writing and Deadlines



Each staff member has both a Personal Note Editor (PNE) and a Head Notes Editor (HNE). Your PNE will be your major advisor during the writing process. Before orientation, the Senior Head Notes Editor (SHNE) and EIC develop a schedule that establishes the entire note-writing process, from finding a topic to completing the publishable version. Each assignment on the schedule is very important and must be turned in on time. The purpose of these assignments is to walk staff members through the process one step at a time. All assignments must be submitted to both the PNE and HNE unless the HNE indicates otherwise. Failure to complete these assignments may lead to Law Review credits being withheld and dismissal from Law Review.

The following assignments are due throughout the semester. We will go over these assignments during weekly classes as we progress through the fall. The calendar, which includes due dates, is available on the K: drive in the folder named for the current volume of the Law Review.

What the Various Notes Editors Do

Most of your interaction will be with your PNE. Most PNEs work with only one author and can make more substantive comments during the process. HNEs work with ten or eleven authors apiece. You should direct questions first to the PNE, then to the HNEs, and, finally, to the SHNE during office hours. The note editors can:

- Help you find topics.
- Help answer research questions.
- Answer questions regarding assignments.
- Answer questions regarding writing.
- Answer questions regarding citations.

If for any reason you feel that your PNE is inadequate, you should contact the SHNE. Please do not feel as though the HNEs are unapproachable. They are there to help.

Senior Head Notes Editor

Should you have concerns about the writing process, about your editors, about the assignments, or about anything else related to Law Review, feel free to contact the SHNE. Keep in mind that before you ask for help, you should:

- Formulate your questions.
- Attempt to answer your questions independently.
- Properly schedule your time so that you are not asking how to begin the assignment just before the deadline.
- If you would like to go over some aspect of your writing, make sure to send the SHNE an electronic copy.

Head Notes Editors

Each HNE works with a group of ten to twelve second-year students and reviews your assignments after the PNEs are finished with them. The HNEs are also involved with teaching classes throughout the semester. Your HNE will be available to answer questions when, for whatever reason, your PNE is not available to provide the assistance you need. Remember that the HNEs are also acting as someone else's personal editor, so please try to contact your personal editor first.

Figure 1: Grading Sheet

Structure	
	Topic and transition sentences
	Effective point headings
Score (0-10)	
Grammar	
	Proofreading
	Passive voice
	Presence of run-on sentences
	Grammar
Score (0-10)	
Proper use of citation	
	Adherence to 18th ed. Bluebook
	Proper typeface
	Proper order of citation elements
	Proper use of signals/parentheticals
	Proper use of short forms
	Proper placement of citations
Score (0-10)	
Use of legal authority	
	Authority stands for what author says it does
	Persuasive use of secondary authority
	Internal consistency of text
	Argument is supported with proper authority
Score (0-10)	
Legal Analysis	
	Is there clear identification of key principles relevant to the Case Comment?
	Does the argument make sense?
	Are the facts of the specific legal issue interwoven with the legal discussion?
Score (0-10)	
Conclusions/solutions	
	Are solutions/recommendations practical or realistic?
	Is the answer well thought-out and appropriate?
	Is the answer to problem presented creative?
	Does the author consider conclusion's policy impact?
Score (0-10)	
Total Score (0-60) - 45 required to pass.	

The Note Writing Process

Find a Note Topic

Finding a topic is perhaps the most difficult part of writing the Note. Each member should choose a topic of interest because a great deal of time will be spent writing. In addition, it can be difficult to change topics once the process has begun. It may be helpful to review old copies of the Law Review in the office for an idea of previous topics or to consult the Cornell library “Research Databases,” available on the library’s website.

Some additional good sources for topics include: legal newspapers, *The United States Law Week* loose-leaf service, “highlights” on Westlaw and Lexis, law news on websites such as cnn.com, the United States Code Congressional and Administrative News (USCANN), and professors. Also, members can review national newspapers such as the *New York Times*, *Washington Post*, and *Wall Street Journal*. Local newspapers are most useful if you are writing on a state-specific issue.

The following websites might be helpful:

General Legal	Internet News Resources
www.lawcornell.edu www.jurist.law.pitt.edu www.findlaw.com www.hg.org www.loislawschool.com www.nlj.com (The National Law Journal) www.law.com www.abanet.com (American Bar Association) www.legaltimes.com (D.C./ Legal Times) www.nylj.com (New York Law Journal) www.law.com/newswire (Daily Legal Newswire)	www.npr.org (National Public Radio) www.vpr.net (Vermont Public Radio) www.nytimes.com (New York Times) www.wsj.com (Wall Street Journal) www.ap.org (Associated Press) www.reuters.co.uk www.washingtonpost.com

A topic must concern a legal issue. It must focus on a legal controversy; take a position with a reasonable basis in law, and must not be preempted by another academic writer or a court decision. Keep in mind that if you are interested in publishing with the *Vermont Law Review*, we may be more interested in publishing a Note about environmental law or a Vermont or regional issue. There is also demand for articles with practical application—notes that practitioners and judges will find useful. For recent Vermont decisions, visit www.vermontjudiciary.org.

Legal Issue

This is a very broad criterion. As long as a topic concerns the law, it is a legal issue. Note topics may involve other issues, but must relate to the law.

Controversy

There are several sources of controversy. The most obvious is a split in the federal circuit courts. When one circuit decides an issue in a manner contrary to the decision of another circuit, a legal controversy exists until the Supreme Court resolves it. Of course, this makes a split the most preemptable topic because the Supreme Court could resolve the issue before the Note is published. If a member decides to write a Note on a split in the circuits, he or she should either argue for one side or propose an alternate solution.

More subtle controversies might include a confusing statutory structure in need of a new framework or interpretation. Members should clearly state why this analysis is necessary when writing such a Note.

State law issues often present good controversial topics. There is frequently discord among the states. This includes many areas of law, such as family law, tort law, or insurance law. Staff members may also choose to write about a developing controversy. For example, a proposed new regulation could have various constituencies up in arms. Such Notes might be valuable to policy makers, but they require good timing. If they are published too late, they lose their value.

Basis in Law

The basis-in-law requirement means that every proposition in the Note must be supported by case law, statute, or reputable commentary. There is room for creativity within this boundary. Staff members can use existing authority imaginatively to support new propositions.

Preemption

Members will do several preemption checks during the note process. The purpose of the preemption search is to find out whether other notes or articles have covered the topic. If that is the case, the topic must be narrowed so that the Note is not completely preempted. Preemption searches must be done using at least the following sources: Westlaw, Lexis, Infotrac, Index to Legal Periodicals, and Current Law Index. The last three of these sources can be linked through the library website.

When the preemption checks are due, the staff member must turn in a list of relevant source materials. Each member must also read these sources to ensure that they do not preempt the proposed topic.

Topic Reservation

If two authors are considering the same topic, the SHNE reserves the right to decide whether both authors can use the topic without preempting one another. If the SHNE decides that this is impossible, only one author may use the topic.

Case Comments

Staff members of the *Vermont Law Review* have the option of producing two Case Comments instead of a Note. Case Comments should meet the same length and formatting requirements as a Note. Should an author choose to do two Comments, he or she will need to adhere to a schedule that conforms to the Note deadlines.

Purpose

A Case Comment is designed to inform both legal scholars and practicing lawyers of a particular case's contribution to the development of the law. The author must keep in mind that he or she is doing more than simply reporting what the court did in a particular case. Although a summary may be the bulk of the chief intellectual component that distinguishes law review writing from legal memoranda writing is the detailed explanation of how a particular case fits into the legal landscape. A few examples of the kind of legal analysis a writer might use to develop this critical aspect of the Comment are:

- Will the case have important ramifications in this and other areas of the law?
- Does the case resolve a legal issue which had previously been in dispute and, if so, was the court's analysis correct in view of all of the relevant considerations?
- Has the court failed to consider any significant aspects of the case and, if so, what are the implications?

These are only a few examples of the type of legal analysis to be used in relating any particular case to the law in general. Without some attempt to relate the case to the legal system as a whole, the Comment is incomplete.

Research

The author should carefully read the chosen case to discern the issues it addresses, the possible issues the court ignored, the policies and reasoning supporting the decision, and the supporting sources cited therein. Careful attention is important since the author's research should be directed toward finding other cases that resolve the issues raised in the instant case, reading cases that discuss relevant issues the court failed to address, and examining the reasoning of those cases to discover the policies behind alternative resolutions of the issues.

It is vital that the author become thoroughly familiar with the substantive law behind the case as soon as possible. Without such a background, it will be nearly impossible to provide the necessary legal analysis of the issues presented.

Although each author has a preferred method of researching, the author's initial examination of the substantive law should include legal encyclopedias, digests, treatises, hornbooks, and other law review articles. Case digests and Shepard's should also be examined thoroughly since it is important that no major cases relevant to the Comment escape the author's attention.

What to Ask Yourself

- Do I have something to say about this case, statute, or question? The Note must be constructive, not just an observation. Case Comments must critically evaluate the positive and negative outcomes of an opinion.
- Do I have enough professional, personal, and academic interest in this topic to make me want to work on it for six months?
- Do I have a sense about what has been said on this subject?
- Do I have a sense about who might use this research?
- If our law review does not publish it, who might?

Extensions

The PNEs and HNEs understand that staff members may have time constraints throughout the year. Nonetheless, it is extremely important that authors turn in assignments on time. If you think you may miss a deadline, you must request an extension from your HNE. Make your request well before the deadline unless an emergency makes early notice impossible. The request should include the reason for needing an extension and the amount of time needed. Because an extension has an impact on deadlines for subsequent stages of the Note writing process, extensions will be allowed only for good cause. Only one extension is permitted. Excuses on the day of or after missing the deadline will not be accepted.

Source Binder—both Notes and Case Comments

We suggest that you assemble all of your sources into a binder much like those we use for production work. This binder will become invaluable as you approach writing deadlines. Without this binder, you will undoubtedly waste a great deal of time wading through piles or random paperwork. Catalog everything you print by source number—you may find something helpful later that you currently think is not very useful. You are not required to turn in this binder. However, if you need help working material into your paper or adhering to *The Bluebook*, having this binder handy will make your editors much happier.

The Importance of Deadlines

It is critical that you meet all writing deadlines. Failure to meet two or more deadlines could result in dismissal from the Law Review. This means that you will not receive any credit for the year. To ensure that you do not have problems with deadlines:

- Plan your time wisely.
- Talk to your editors if you feel that you are unable to meet a deadline.
- Talk to your editors before the deadline if you cannot meet it.

Meeting the Advanced Writing Requirement

Each Vermont Law School J.D. candidate must complete an Advanced Writing Requirement. Your Law Review writing project may serve as the basis for your AWR. You must get a faculty advisor if you wish to use your Note as your AWR.

“Satisfactory completion of the Advanced Legal Writing Requirement (AWR) is also a graduation requirement. A student must submit a written project which a regular faculty member determines would receive a grade of C or better were it the sole basis of grading in a course for two or more credits.” Academic Regulations § II(A)(2)(d).

There are additional regulations and guidelines that apply to the AWR. Look in the current Student Handbook to find them. Among these provisions are the following (this list is not exhaustive):

- An adjunct professor may supervise your AWR.
- Your AWR should be complete prior to the start of your sixth semester.
- You must meet numerous times with your advisor.
- You must sign a contract with your advisor.

Exercise an AWR Contract

You can use the form on the next page as the basis for your contract to meet the AWR. In addition to completing this form, you must work with your faculty advisor to develop a schedule.

- You must submit at least one draft to your advisor.
- Your faculty advisor may have deadlines different from the Law Review’s.
- You must meet your Law Review deadlines regardless of your AWR deadlines.
- Your faculty advisor may ask you to turn in assignments different from the Law Review’s.
- You are responsible for turning in your Law Review assignments regardless of what other obligations you have.

Figure 2: Advanced Writing Requirement/Note Contract

Advanced Writing Requirement/Note Contract	
<p>To fulfill the <i>Vermont Law Review's</i> Student Note requirement and Vermont Law School's Advanced Writing Requirement, _____ (faculty advisor's name) agrees to act as faculty advisor to _____ (student's name). The satisfactory completion of the Note will fulfill the criteria required to earn one academic credit per semester for the 2009-2010 school year for participation on the <i>Vermont Law Review</i>. When the Note achieves the standards and requirements set forth by the faculty advisor, the Note will also fulfill Vermont Law School's Advanced Writing Requirement.</p>	
_____	_____
Student Name	Faculty Advisor Name
_____	_____
Student Signature/Date	Faculty Signature/Date