

# THE GEORGETOWN LAW JOURNAL NOTES MANUAL

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## Letter from the Senior Notes Editor & General Information

Dear new Member of the *Journal*:

I join my *Journal* colleagues in congratulating you on your acceptance onto *The Georgetown Law Journal*! We are so excited to have you with us and hope that your *Journal* experience will be a fulfilling one.

As you are likely aware, the *Journal* requires its members to write a scholarly Note by January of their 3L/4E year. We are taking steps to update the Notes requirement for Volume 109 and 110 Editors to create a more flexible Notes requirement. The Notes Committee will consider all submissions for publication in the *Journal*.

The philosophy behind the Note requirement recognizes that the *Journal* experience should provide an opportunity for members to gain experience with scholarly writing, improve their writing technique through the Note-writing process, and possibly experience the author's side of the rigorous editing process associated with publication in the *Journal*.

Publication in the *Journal*, while a significant honor and worthy pursuit, is far from the only potential benefit of writing a Note. A Note will likely be the most significant piece of academic writing you do in law school, and many *Journal* members use their Note as a writing sample for clerkship applications, job applications, and other applications for post-graduate opportunities.

This Manual is intended to provide valuable information about the Note requirement: what it is, what types of written work satisfy the requirement, and technical information about the requirement such as submission dates and publication standards. Perhaps more importantly, however, this Manual is intended to walk you through the process of writing a Note, including topic selection and the mechanics of writing your Note.

Because you may want to structure some course selections around the Note requirement, it will be to your advantage to begin thinking about your options soon. If you have any questions, comments, or concerns, either now or at any point, feel free to contact me or any other member of the Notes Committee. Good luck and, again, congrats and welcome!

Best,

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## The Note Requirement: Timeline

All *Journal* members must submit their Notes to fulfill the Note requirement by **February of their third year**. Evening and dual degree students may submit their Notes to fulfill the Note requirement by **February of their graduating year**. Students with other graduation schedules should contact the Senior Notes Editor to establish a timeline for the submission of their Notes to fulfill the Note requirement.

## Submission Deadlines and Getting Published

There are six submission deadlines for every volume of the *Journal*. Please refer to the Notes section on the *Journal*'s website, <https://georgetownlawjournal.org/submit>, for current deadlines. *Journal* members and all other GULC students may submit a Note for publication for any submission deadline up until the fourth issue following their graduation. For example, students graduating in 2021 may submit their Note for publication for each issue up to and including issue 110.5. Students may submit multiple Notes for publication. Submission for publication made before a particular *Journal* member's deadline for the Note requirement will also fulfill the Note requirement. Notes must be submitted through the *Journal* website's [submission page](#) with all identifying information removed from the Note.

The Note selection process is anonymous. When you submit your Note for publication consideration, you will not include your name or any other identifying information. In addition, our strong commitment to confidentiality requires that Note writers refrain from discussing their papers with sitting members of the Notes Committee.

Every submission must be accompanied by a short statement of originality. The statement of originality is a one-page abstract that emphasizes a Note's current and/or unique nature with respect to the surrounding legal scholarship. Most statements briefly summarize: (1) the specific area of law the Note addresses; (2) why the Note is original or what it adds to existing scholarship; and (3) why the Note is timely because of recent political or legal events.

The Notes Committee meets and considers Notes submitted for publication shortly after each submission deadline. A copy of the Notes Committee Selection Criteria is included on page six of this Manual. After the Notes Committee has made its decision, the Senior Notes Editor will notify each author of the results by e-mail.

The *Journal* considers Note publication to be a collaborative effort. Notes Editors strive to be active participants in the entire editing process, ensuring at all stages that the Note author is heading in the right direction. The Note editing process is thorough and vigorous, including feedback and written comments. In addition, collaboration with fellow associate editors, other students, and faculty is encouraged.

Acceptance of your Note for publication, however, is only the beginning of the process. After your Note has been accepted, you will have additional responsibilities, including the following:

- Responding to the Primary Edit Memo. A member of the Notes Committee will draft a memorandum shortly after your Note is accepted with feedback from members of the committee. Typically, such feedback will include substantive suggestions of ways to strengthen the Note, as well as suggestions for further editing. While your Note remains your own, and you control the changes, prompt and meaningful responses to this constructive criticism are expected. In some instances, the Notes Committee may provisionally accept your Note for publication, pending your completion of additional work or changes to your Note that the Notes Committee believes are essential to making your Note publishable.
- The Citechecking Process. As your Note moves through the various stages of citecheck review, you will be asked to respond to author queries, questions, and suggestions that arise. You are expected, as is any author published in the *Journal*, to respond promptly and thoroughly to these requests.

### Resubmission

Authors who submit their Notes and are not selected for publication are free to resubmit their Notes for publication at a later date. **Rejection of a Note does not mean that it is forever unpublishable.** In fact, the *Journal* publishes many Notes upon resubmission. Working with writing center can be a valuable tool for improving a Note for resubmission.

### Complying With Law Center Regulations

Many *Journal* members choose to fulfill the Note requirement by turning a paper written in a course or seminar into a Note. The Office of Journal Administration has applied the following requirements to the use of academic work to fulfill the Note requirement:

- Students may use seminar papers as student Notes only after they have submitted the paper to the professor for a grade or credit. Students **may not** use Notes edited by the *Journal* for seminar papers.
- Students may use seminar papers as student Notes only with prior approval of the professor and the journal. Professors are not required to grant students their approval.

For a detailed discussion of these requirements, please also see the Georgetown Law Student Handbook of Academic Policies: <http://www.law.georgetown.edu/campus-services/registrar/handbook/index.cfm>.

## Miscellaneous Information

You may submit your Note to competitions. However, we ask that you do the following:

- Let the Senior Notes Editor know that you plan to submit your Note to a competition (email [gljnoteseditor@gmail.com](mailto:gljnoteseditor@gmail.com)).
- Verify with the competition organizers that it is acceptable the Note will eventually be published and determine whether they will accept a version edited by the Journal or if it must be the original version.
- Ensure the competition does not plan to publish the Note in another publication.
- Let us know what happens! We'd love to promote your Note even further through social media if you win an award.

## What Is a Note and What Should It Accomplish?

### What Is and Is Not a Note?

A Note is a student-authored, medium-length piece of academic writing that discusses and analyzes a legal issue or problem in some depth. Notes can be quite diverse in topic and style. Some are doctrinally focused analyses of legal questions. Others present normative arguments on how courts or legislatures should approach problems they have not yet considered or have handled poorly, and others examine historical, theoretical, or even biographical themes.

One thing that all good Notes have in common is that they are well researched. Skimming through some Notes published in previous issues of the *Journal* will give you an idea of the level and variety of supporting authority that is expected.

It may also be helpful to understand what a Note is not. A Note is neither an article nor a typical term paper. Articles provide more in-depth treatments of legal issues, tend to be longer than Notes, and are usually written by professors, judges, or scholarly-minded practitioners. In other words, pieces that are co-authored with professors do not qualify as Notes.

The distinction between a Note and a typical term paper may be less intuitive and is probably more important for your purposes. In short, to be published, a Note must be: (1) **broadly interesting**, (2) **well- documented**, and (3) **original**.

For example, although a summary of the existing literature on a particular subject might make a very good term paper, it likely would not provide sufficient original analysis for a good Note. Similarly, although a very creative but sparsely footnoted paper might be appropriate in some class contexts, publishable Notes require strong documentation. And although a discussion of an esoteric subject that few people would find interesting might demonstrate the author's writing and research abilities and make for a worthy term paper, the same discussion likely would not be compelling enough for the Notes Committee to publish. On the other hand, a paper that deals with a current problem that is likely to be resolved prior to publication (generally within one year) might make a good paper but would not have the shelf-life required of a good Note. Finally, bench memos and similarly- themed legal writing documents are not appropriate for a Note.

### What Should a Note Accomplish?

Student-written Notes serve a unique role in legal scholarship as a whole. A good Note accomplishes two things:

- It **sets out the current state of the law** with respect to the topic at hand, elaborating the arguments on *both* sides of the debate; and
- It puts forward and **defends a thesis** that, if adopted, would eliminate the current legal dispute or uncertainty.

Two important virtues of Note-writing are clarity and brevity. Practitioners and scholars turn to Notes for short, comprehensible articulations of complex topics, for arguments to use (or that

may be used against them) to persuade judges, lawmakers, administrative bodies, or other scholars, and for succinct explications of existing authority. In short, Notes are written not only to be read, but to be used.

The most important considerations for any Note are identifying a clearly explained and considered problem and offering a clear, understandable, and identifiable thesis or solution. Depending on the topic, your Note may address one of several different types of legal problems and make one of several different types of legal claims.

Consider the following examples of types of legal claims:

- “Law X is unconstitutional because . . .”
- “The legislature ought to enact the following statute . . .”
- “Properly interpreted, this statute means . . .”
- “This law is likely to have the following side effects . . .”
- “This law is likely to have the following side effects . . . and therefore should be rejected or modified to say . . .”
- “Courts have interpreted the statute in the following ways . . . and therefore the statute should be amended as follows . . .”
- “Viewing this law from a [feminist/Catholic/economic] perspective leads us to conclude that the law is flawed, and should be changed this way . . .”

Whatever type of claim you choose, your Note will likely include both descriptive and prescriptive components—you will need to identify the problem or issue your Note addresses by explaining existing law and scholarship before you can propose a solution to that problem. Although, in certain instances, your Note will be mainly descriptive—for example, where you are attempting to identify a previously unrealized legal issue—the best Notes are typically those that involve both descriptive and prescriptive elements. Avoid writing a Note that reads like a legal treatise on a particular topic. Even if you are explaining an unidentified issue, or reinterpreting a body of law in a novel way, you are in a unique position to draw normative conclusions on the basis of your research and thought.



## Topic Selection

The most important, and arguably the most difficult, aspect of the Note writing process is selecting a topic that will fulfill all the purposes of a successful Note and also yield an enjoyable and intellectually fulfilling experience. Unfortunately, there is no magic formula that will give life to the perfect topic; however there are several features that any successful topic must present. A Note topic must be:

- novel,
- interesting, and
- provide an opportunity for substantive legal analysis.

### “Interesting Topics”: Where to Look for Inspiration?

A successful Note requires a topic that holds the attention of the author for several months and the attention of the reader for about an hour. That said, finding a Note topic that inspires you is the most important aspect of the selection process, and an author who is able to maintain a passion for his or her work should be able to capture the interest of the reader. There are in theory an infinite number of paths you can take to arrive at an interesting topic, and you should feel free to choose whatever method works best for you. However, if you are having difficulty pinpointing a topic that interests you, here are a few suggestions for places to look:

Class and Textbook Discussions: Your professors and the professors who write your class textbooks often pose hypothetical questions regarding legal issues arising in your classes or point out currently unanswered questions in these areas of law. These questions may very well be ripe for in-depth legal analysis and may form the basis for a great Note topic. In short, don't skip over those questions at the end of a case or completely ignore a professor when he or she goes off on a tangent. Your perfect Note topic may be right in front of you.

Newspapers: Look for topics in the news that have potential legal implications. If the news event is relatively recent and you can present an interesting legal angle to the event, news-inspired topics can be very good at grabbing the interest of a broad range of legal readers.

Summer/Internship Work: You should consider interesting issues that may have arisen during research assignments given to you in an internship. Summer associates and interns are often asked to research discrete, unusual topics that are perfect for Notes. Before using any such topics, however, you should talk to your employer to ensure that you would not be generating any confidentiality issues by further exploring research assignments. If no professional ethics issues exist, attorneys are often very excited to help with the topic selection process because it in essence amounts to a semester's worth of “free” legal research.

Controversies Among Jurisdictions: A classic and effective method of finding a great Note topic is to look for conflicts among states on particular legal questions or to look for so-called “Circuit Splits” among the United States Courts of Appeals. On the state level, a Note could discuss the differing ways in which states have interpreted uniform laws or the common law. Circuit Splits are great ways of identifying distinctly conflicting interpretations of federal law

and in some ways lay out a live legal controversy on a silver platter. There are several ways to find Circuit Splits:

- First, to find circuit splits identified in cases, you can simply search the U.S. Courts of Appeals database on Westlaw or Lexis for a few keywords related to your topics and one of the following search terms: (1) circuit or authority /s split; (2) “decline to follow” /s circuit or appeals; or (3) disagree /s circuit /s first or second or third or fourth or fifth or sixth or seventh or eighth or ninth or tenth or eleventh or D.C. or federal; (4) and “courts diverge.”
- Second, you can look at the “Circuit Split Roundup” published in *U.S. Law Week*, available both in the library and in Westlaw under BNA United States Law Week (if in Westlaw, use the search term circuit /s split plus a few relevant keywords).
- Third, keeping an eye on legal blogs is a good way of keeping track of jurisdictional controversies. Two good sources are <http://www.scotusblog.com> and <http://howappealing.law.com>.

Interdisciplinary Topics: If you have expertise in a discipline outside of law that could provide meaningful guidance in resolving legal dilemmas, you should feel free to utilize that knowledge as inspiration for your Note topic. These interdisciplinary topics have the potential for being creative but can also be difficult to execute effectively. You may need to access materials likely not available in the Law Center libraries and accordingly may need to construct a two-part research plan (one for legal research and one for non-legal research). Furthermore, despite how passionate you may be for this other area of scholarship, you must remember that your legal analysis should remain the central focus of your Note, despite its interdisciplinary scope.

If you are still feeling stuck, a good additional resource is Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 UTAH L. REV. 917 (1996).

### Your Topic Must Be, to Some Extent, “Legal”

Although it is certainly acceptable to take one side of a legal debate in your Note, your Note should not primarily be an advocacy piece. Policy arguments are welcome, but the focus of the Note should be “legal” analysis couched in legal terminology. Although the line between legal argument and political advocacy is often blurry, legal pieces are generally targeted at judges, law students, and law professors, while advocacy pieces typically address legislative or administrative bodies. **Your Note should not be a bench memo, economic paper, or sociology paper completely devoid of scholarly legal analysis.**

### “Novelty”: Performing a Preemption Check

A Note must be an original contribution to the existing body of legal scholarship. As such, it is crucial that the central arguments of a Note are novel and not either previously addressed by other legal scholars or mooted by legislative or judicial authority. Therefore, it is essential that you perform an extensive and thorough preemption check to ensure that another author has not

previously addressed your precise topic.

A preemption check typically involves examining two bodies of authority: case law and academic scholarship. It is also advisable to investigate relevant legislative authorities to make sure that identified controversies have not been similarly mooted by statute (of course, this does not apply if your argument is constitutional).

The first step is to make sure that the United States Supreme Court has not already resolved the issue and that it is not planning to do so in the near future. To do so, it is essential to Shepardize or Keycite all of the cases on which you anticipate your Note will rely and make sure that all are still good law. If certiorari has recently been granted to consider the issue, this should be a red flag that your topic is likely to be preempted in the near future because the Supreme Court has agreed to resolve the precise issue that you are addressing in your Note. If your Note relies primarily on interesting issues of state law, the same process should be employed within the relevant Lexis or Westlaw state court databases.

Anticipating legislative preemption is a bit more difficult because the introduction of a bill that would moot your Note topic does not necessarily mean it will even be the subject of a vote. Nevertheless, if you anticipate that such a vote is imminent, the risk of preemption might be significant enough to avoid this topic until such a vote has taken place.

Once you ensure that your Note topic has not been legislatively or judicially preempted, you must make sure that no other legal scholar has published a piece that addresses your topic and makes the same legal arguments you propose. Although it is acceptable that other Notes or Articles have addressed the same issue, or have taken the same side of the debate, you must ensure that your analysis differs significantly from any existing scholarship. This is often a judgment call; however, if you have any substantial doubts about the novelty of your topic, it is probably best to look elsewhere.

If you are having a difficult time identifying whether your arguments overlap with another author's, a good way of approaching this process is to identify the main, narrowly defined thesis of your proposed topic and then to identify one or more broader sub-theses also addressed by your topic. If there is some overlap on the sub-thesis level, you are probably fine as far as preemption; however, if you find that other works cover your main thesis or several of your sub-theses, you should be concerned about preemption. To perform a scholarly preemption check, you should search the legal periodicals/journals databases on Westlaw or Lexis and enter several key words from your topic or cases or statutes that address your topic. The *Index of Legal Periodicals*, available in the Library, is also a good source. Make sure to construct searches using relatively broad search terms—remember that other authors may have used different terms and phrases to make an argument similar to your thesis.

Although a preemption check may seem tedious, it is an essential safeguard for the Note-writing process. **It is better to invest a few hours early on in the endeavor than spend a semester working on your Note only for the Notes Committee to discover a case or article mooting all your hard work.** It is also important to remember that the risk of preemption exists up until publication. A lot can happen in the law during the year-long Note writing and

publication process, and it is essential that you stay abreast of all happenings in relevant areas.

If a preemption risk arises, you must be able to rework your topic so that it retains its initial novelty. Accordingly, you are welcome to pick a topic that is currently “hot,” but be warned that the hotter the topic, the greater the potential for preemption.

### Using Academic Coursework to Fulfill Your Note Requirement

The process of topic selection for your Note is essentially the same as for any substantial piece of legal scholarship. Luckily, Georgetown Law students can use their for-credit scholarship as the basis for their student Note.

There are multiple types of for-credit courses that may provide the opportunity for writing a paper that could ultimately become a Note: seminars with a paper satisfying the Writing Requirement and Supervised Research (Independent Study). In addition, Georgetown offers a course specifically focused on producing publishable writing, entitled “Introduction to Scholarly Note Writing.”

#### *Seminar Papers that Fulfill the Writing Requirement*

These papers have the following requirements: (1) use of legal forms of citations (when appropriate); (2) submission of an outline and a first draft, in accordance with the professor’s instructions and schedule; (3) submission of a revised final paper based on the professor’s comments; and (4) both the first draft and final paper must have a length of no less than 6,000 words (excluding footnotes), which is approximately twenty-five (25) typewritten pages using customary margins and spacing.

Students may use seminar papers as student Notes only after they have submitted the paper to the professor for a grade or credit.

Students may use seminar papers as student Notes only with prior approval of the professor and the journal. Professors are not required to grant students their approval.

#### *Supervised Research*

Supervised Research is a two-credit graded academic project that satisfies the Law Center’s Writing Requirement. Students must acquire the sponsorship of a full-time faculty member to oversee this project; however, an adjunct may sponsor the project if the student makes a good-faith effort to find a full-time faculty member and is unable to do so. Projects cannot repeat work for which credit has previously been granted in another course or for which the student has been compensated during employment. The project may be completed in one or two semesters, but only two-credit hours can be awarded in total. A student may only complete a single Supervised Research project while at the Law Center.

The administration requires that a student and supervising professor make the following commitments when embarking upon Supervised Research: (1) an agreement that the topic is sufficiently ambitious to warrant an award of two-credit hours of study; (2) a schedule of several meetings to discuss the research and writing of the paper; (3) an agreement that the student will prepare (and the professor will carefully review and provide feedback on) both a detailed outline and a subsequent complete first draft; and (4) subsequent submission by the student (and grading by the professor) of a final polished paper, expected to meet the standards of the Legal Writing Requirement.

Application Process: Students must submit an application form (located at <http://www.law.georgetown.edu/campus-services/registrar/course-registration/jd-supervised-research.cfm>) to the Office of the Registrar. The application form requires that the student: (1) describe the topic for research; (2) demonstrate why it would lead to a paper satisfying the Writing Requirement; (3) show the sponsoring professor's agreement; (4) indicate the scheduled meeting dates and due dates for outline, first draft, and final project; (5) list the semester in which the project will be completed; and (6), if approval is sought for sponsorship by adjunct faculty member, describe efforts to obtain sponsorship by full time faculty member.

### *Introduction to Scholarly Note Writing*

Introduction to Scholarly Note Writing is a course that assists students in discovering, understanding, and experiencing the writing process involved in publishing a scholarly Note. The class meets seven times during the semester at intervals intended to track a successful writing process. Areas considered include topic selection and scholarly research; design choices and drafting; and revision, editing, and polishing. Assignments will include readings on relevant topics, writing assignments related to your Note, and contributions to workshop classes. Priority is given to students who are members of one of the law journals during the academic year.

Again, for a detailed discussion of these requirements, please also see the Georgetown Law Student Handbook of Academic Policies: <http://www.law.georgetown.edu/campus-services/registrar/handbook/index.cfm>.

## **Brass Tacks: The Mechanics of Writing Your Note**

Having selected your topic, kicked off your research, and started down the long road to caffeine addiction, you're ready to start writing. But, you have no idea where to begin. Don't fret. The following section will do a couple of things for you: it will lay out and explain the typical structure of a Note and provide you with a few key technical tips.

This brief guide is not meant to lock you into any one form or style. Note authors frequently innovate. That said, if you feel the need to innovate, make sure you keep a close eye on clarity, thematic consistency, and persuasive impact.

### How to Structure an Effective Note

A basic Note has five parts: the Introduction, Parts I through III, and the Conclusion. The Introduction grabs your audience's attention. Part I lays out the legal and factual background. Part II proves your claim. Part III explores the theoretical, legal, and practical implications of your claim more broadly and suggests or addresses subsidiary questions. The Conclusion synthesizes the whole.

Though each section is addressed below, notice the underlying format: introduce, explain, prove, explore, and conclude. Even if your Note has six or seven parts, the basic progression should be something to this effect.

### INTRODUCTION

This is the most important section. Or, at least it is when you have to quickly and forcefully ensnare the attention of busy Note editors or casual readers.

Practically every introduction should do three things: (1) make the reader care; (2) set out your proposal and show the reader why it is, in the immortal formulation of Professor Volokh, novel, non-obvious, useful, and sound; and (3) frame the debate. It should do so quickly and, for the reader, painlessly.

Let's break it down:

- First, why should the reader care? Luckily, there are tricks to engage your audience. As Professor Volokh suggests—at the very outset of your introduction—be real. Provide the reader with a concrete example or hypothetical of why this particular problem needs your legal wizardry.
  - Snooze: “The USA Patriot Act, passed in the wake of 9/11, has depressed public discourse, alienated certain immigrant communities in America, and led to a resurgence of public distrust in government.”

- Hot: “John Johansen, a professor of Islamic studies at Northwestern and a noted critic of both terrorism and the Saudi monarchy, was startled to find several black helicopters circling his house in the early morning hours of June 15, 2004.”
- Second, what’s my claim, and why is it novel, inventive, and potentially useful? For the sake of emphasis, take each of these goals in turn:
  - The Claim: Should be stated succinctly and very early (ideally, right after you paint a picture of the problem for your reader). Hopefully, you can do it in a sentence; at the most, it should be two or three.
  - Novelty: As mentioned earlier in this guide, the Notes Committee is looking for new and innovative scholarship. That doesn’t mean, however, that you need to tread into unmapped territory. Nuance in a well-trodden field is perfectly acceptable. Just make clear that your take on the issue is new and exciting.
  - Inventiveness: As contrasted with novelty, inventiveness is about creativity in your approach to a novel issue. Professor Volokh calls it “non-obviousness.” In other words, your approach may not have been addressed in the existing scholarship, but it may still seem self-evident. You need to throw the reader for a loop.
  - Utility: Show the utility of your argument with the soft-sell. State the practical and theoretical implications of your argument and why its implementation will lead to beneficial results.
- Third, frame the debate for the reader. This step is analogous to the political “frame.” Is this about “tax relief” or “tax breaks”? Is it about “equal rights” or “special rights”? As Professor Volokh explains, “The introduction is the place where you give a simple summary that puts the reader in the right mindset to absorb and agree with your point. Write with this in mind.”
- Finally, be brief. This introduction to the Introduction is already too long. Keep it short and concise. And, ideally, keep it to four to six paragraphs.

## PART I—PRIME THE READER, BUT AVOID THE PRIMER

The typical law review Note is between thirty and fifty-five pages. Unfortunately, many authors spend the bulk of that real estate describing the legal and factual background rather than analyzing this information in depth in the proof section.

The reader wants enough background to be able to understand the persuasive material that follows but does not want to read a primer. If **you feel the need to be absolutely exhaustive, do so in the footnotes.** Try to keep the background section focused on what the reader needs to know to grasp your argument.

Professor Volokh suggests a handy approach to writing the background section: synthesize your precedents, don't summarize them. State a rule of law, and then explain the basis for the rule in a footnote, using appropriate signals and parenthetical explanations.

Finally, when writing Part I, keep bringing your reader back to *why* you're bothering to explain all this in the first place. Use roadmap sentences and foreshadowing to situate a particular factual or legal claim in the context of *your* Note.

## PART II—MAKE ME BELIEVE...

Although the Introduction may be the most important section in keeping the reader reading, the middle section is substantively the most important of the Note. Here, you persuade. Often, in a Notes Committee selection meeting, an exceedingly well-written Note will flounder on the ostensible mushiness of its claim. Even though the author has a discrete thesis, it can be hidden or obscured. Be explicit and assertive in your argument. Restate your thesis often. Keep the reader anchored.

- Look to Professor Volokh's suggestions (paraphrased for space):
- Try to incorporate policy arguments into your legal claims. For instance, while the War Powers Act may be constitutional, is it good for the country?
- Give concrete examples. When possible, this is absolutely essential. It helps ground your reader, it's often entertaining and it helps the author think in more sophisticated terms about a theoretical problem.
- Use what Professor Volokh calls "test suites." In essence, apply your proposed rule, statute, interpretation, or standard to a variety of concrete scenarios in search of unintended consequences or internal inconsistencies.
- Address counter-arguments but lead with your own. Use counter-arguments to tailor and improve your argument. Acknowledge uncertainty. A good Note will thoroughly address, and not just acknowledge, counterarguments.
- Acknowledge costs.

## PART III—EXPLORE

After you've proven your point, play around with it for a while. Some authors use this part of the Note to suggest a solution to a problem they identified in the proof section. This can be effective, especially when identifying a legal shortcoming is the meat of the piece. You can:

- Suggest implications for broader debates. For instance, does your argument about school choice involve issues of federalism, or does the debate over federalism have implications for your argument?



- Suggest analogies in seemingly unrelated areas. For instance, does your argument against automatic liability in per se antitrust cases have implications for per se negligence in torts, or vice-versa?
- Suggest additional questions raised by your conclusion. Does your defense of a Victims Rights Amendment open the door to prosecutorial misconduct? Will it hamstring prosecutors?

Again, however, be careful in how you craft this section. Don't allow it to swallow your primary argument or undercut the persuasive force of your Note.

## CONCLUSION

Before concluding, rewrite your introduction to reflect any epiphanies you may have had while writing. As for the conclusion, at this stage, you should have already introduced your claim, explored the legal and factual background, proven your claim, and explored ancillary points. Here, you synthesize the whole into an extremely short coda. Remind the reader of your argument, your primary conclusions, and any crucial subsidiary points.

### Some General Advice

All law students know how to write. For the sake of the reader, however, here are a couple of best practices that are particularly applicable to the world of Note writing:

- Use relatively detailed subheadings.
- Roadmap effectively and often (at the beginning of every section, every subsection, and every paragraph).
- Pay attention to transitions. Guide your reader down the garden path.
- Use plain English; recast legal terms into kitchen-table language. Don't lose your reader in a jungle of uncommon abbreviations.
- Be prudent when using metaphor, figurative speech, or humor.
- Be respectful of your adversaries.
- Be consistent in punctuation, capitalization, and word choice.
- Bluebook assiduously and keep a style guide on hand.
- Don't use the passive voice except when it works.
- Finally, watch out for both redundancies and repetitiousness. These are not quite the same thing. The former involves using nonessential words—like “actually”—multiple times in a short span of text. The latter is a plague in Notes. Too often, the author either makes nuanced points that sound similar or actually reiterates the same point throughout the text. Minimize this.

## Writing With an Eye Towards Publication

*Don't write a seminar paper; write a Note. If you write with the intent of creating a publishable, academic piece, you'll write a stellar seminar paper. If you write a stellar seminar paper, it may still not be ready to be published as a Note without substantial revision or a complete change of orientation.*

-Dave Yellin, student author

There is little point in putting in the effort a Note requires if you never give it a fighting chance to appear in print. Preparing a Note for publication is no different than preparing a Note generally. Every Note should be of publishable quality.

Speaking broadly, the Notes Committee looks for Notes that teach us; for interesting, novel ideas that make us think; for pieces of scholarship that we would be proud to place under the title of *The Georgetown Law Journal*. Below are the general guidelines we use to judge a Note. Consider these questions when you are researching and drafting your own Note. If you can't answer these questions affirmatively, neither will we.

- In general, is the Note of publishable quality?
- Is this topic appropriate for GLJ publication, i.e. is it novel, timely, sufficiently appealing to a wide readership, etc.?
- Does the author present a thesis and make a logical argument supporting it?
- Are the thesis and argument adequately supported by authority?
- Do organizational problems cause the argument to fall apart?
- Is the piece well written?
- Are the citations in correct Bluebook format?

To give you a more concrete idea on how to prepare your Note for submission to the Notes Committee follow these tips:

### **Eight Ways to Improve your Note and Increase Chances of Publication:**

#### **1. Draft, Draft, and Redraft**

Good prose shines. Strong arguments stand out. But no one gets there on the first try. The best way to improve your Note is to have it read, by others and by yourself. Do not underestimate the worth of reading your own Note, even aloud. Polish it until there are no prickly parts or unsightly seams. Remember, a published Note is the one piece of your resume that everyone can access—thanks to Westlaw and Lexis—for the rest of time.

#### **2. Structure-ize**

You can't judge a book by its cover, but you can judge a Note by its table of contents. A well-laid-out Note is a well-thought-out Note. As a Note writer, your primary goal is to educate the reader. Don't make your readers work for it; they won't. Just remember the basics: strong theses and frequent roadmaps.

### 3. Proofread Proofread

Finding careless errors in a Note or Article instantly makes the reader think less of the argument they form a part of. If you can't correctly use a comma, the thinking goes, why should we believe your novel interpretation of *Marbury v. Madison*? Beyond making you look careless, proofing errors make you look apathetic. And no one wants to work with an apathetic author.

### 4. Bluebook and Edit!!

You will soon become familiar with the extremely high standard that *The Georgetown Law Journal* demands when preparing any piece for publication. Unfortunately, you will also inevitably become familiar with the frustration that accompanies citechecking a poorly Bluebooked piece, or a piece that has been casual with citations. Any Note that is accepted for publication goes through the same citechecking and proofing process that an Article does. That means, should your Note be published, it will be read, commented on, citechecked, and edited by your peers. Don't subject your peers to the same frustration you feel when citechecking a poorly edited Article—it's not only slightly embarrassing, but as a soon-to-be skilled citechecker, well, you should know better. Accordingly, keep the following "Golden Rules" of Bluebooking and Editing in mind when writing your Note and preparing it for submission to the Notes Committee.

- a. **Include Pin-Cites.** Simply put, legal readers are trained to be skeptical of claims supported by citations that do not include a page number. Whenever you *can* include a pin-cite, you should. *See generally* cites are appropriate in certain circumstances, but they should be the exception to the rule. Make your life easier and be diligent about including pin-cites as you write. Going back to include them after you've written your Note is guaranteed to be an unpleasant task.
- b. **Include Parentheticals.** Except when quoting a source, or stating a proposition directly stated by the source, you should usually include parentheticals for your citations explaining the relevance of the source that you are citing. Remember that certain types of signals require parenthetical explanations: particularly, *see generally* and *see also* strings. A Note lacking parentheticals for most of the sources cited will immediately raise warning flags for the reader—and for the Notes Committee.
- c. **Pay Attention to Detail.** Just as you would when citechecking an Article, pay attention to the more technical rules of the Bluebook. For example, remember to use appropriate typeface for citations; group your citations in the appropriate order according to the Bluebook; use appropriate abbreviations for case names, courts, and law reviews and journals; and so on.
- d. **Do Not "Punt" Difficult Citations.** Your Note may include citations to legal materials with difficult and complex citation rules—for example, international materials such as cases or treaties, or sources only available on the Internet. While no one expects every citation in your Note to be perfect, do your best to master the citation rules that apply to the source that you are citing. Doing so will make your Note much easier to citecheck, and your fellow *Journal* members will be grateful.

Before submitting, set your Note aside for a few days, and then citecheck it as thoroughly as possible. Remember that a poorly cited Note is an indication of a poorly researched Note; and a poorly researched Note does not get published.

## 5. Hold Your Sources

You will need them. At some point, you will likely be asked for a clearer discussion of an issue, or notified that a certain proposition needs a citation or a pincite. Hold on to your sources and keep them organized. You will thank yourself later.

## 6. Is This a Note or a Novel?

One of the most frequent complaints heard in Notes Committee meetings is that the pieces are too long. While there is no ideal length for *all* Notes, there usually is an appropriate length for a *particular* Note. Readers of law journals are busy people; conciseness is not looked down upon, but appreciated. That being said, if your argument requires eighty pages, by all means, take eighty pages. Selling your subject short is an even greater sin than giving it too much ink. But make sure you put a premium on conciseness and clarity.

## 7. Swallow Your Pride

Even the greatest writers on earth need editors. And what editors do is not always painless. They tell you that your style is overblown; they delete whole paragraphs of your carefully crafted prose; and they do it all without showing an ounce of remorse. But an editor's job is to make writers look smarter than they actually are. America's finest legal minds submit to being critiqued by your lowly law student peers; so can you.

## 8. Resubmit

If at first you don't succeed . . . take our suggestions, redraft, and submit again. For obvious reasons, the acceptance rate for resubmitted Notes is much higher than for first tries. This is one more reason why the earlier you submit your Note for consideration, the better.

### A Note on Plagiarism

**plagiarism**, *n.* *The act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind. To be liable for plagiarism it is not necessary to exactly duplicate another's work, it being sufficient if unfair use of such work is made by lifting of substantial portion thereof . . .*

Plagiarism, while uncommon, does happen—but to avoid it, one must know what it is. Some cases are easy: exact language, of course, deserves quotes. But what about a paraphrase? What about a universally known fact that just happens to appear in one of your sources?

*When in doubt, cite.* In legal writing, citing to another authority strengthens, not diminishes, your argument. Footnotes are a sign of good scholarship; do not be afraid of using too many.

Having your Note rejected for plagiarism is not only embarrassing, but it could have significant

implications for your legal career and record at Georgetown Law. If you have a question regarding how or whether to cite a passage, ask a member of the editorial board for direction. But if you decide to guess, err on the side of safety. The Notes Committee, of course, does everything it can to identify instances of plagiarism when selecting a Note, but ultimately only you can safeguard at every step of writing your Note that the text and ideas are either your own, or are properly quoted and cited. Consider the following general rules on avoiding plagiarism from the Legal Writing Institute:

**Rule 1: You must acknowledge direct use of someone else's words.**

When you **quote or copy words directly** from a source, you must use quotation marks and give a citation.

**Rule 2: You must acknowledge any words you paraphrase from any source.**

Even if you change a few words and mix up the order of the source sentence, you must give a citation. It is permissible to paraphrase only if you give proper attribution.

**Rule 3: You must acknowledge your direct use of someone else's idea.**

To avoid plagiarism, you need a citation when your own text **expresses the same idea** as the source article. If you borrowed the idea from a source, you must include a citation. If you are ever in doubt, you should err on the side of giving credit; remember that a citation increases persuasiveness.

In addition, *careful* legal scholarship requires adherence to two additional rules:

**Rule 4: Acknowledge a source when your own analysis or conclusion builds on that source.**

**Rule 5: Acknowledge a source when your idea about a legal opinion came from a source other than the opinion itself.**

Please also review the plagiarism policies set out in the Georgetown Law Student Handbook of Academic Policies: <http://www.law.georgetown.edu/campus-services/registrar/handbook/index.cfm>.

## Notes Committee Selection Criteria

*The Georgetown Law Journal* endeavors to publish student-written legal scholarship that is innovative, thoughtful, thoroughly researched, and well-written. In an effort to ensure that the selection of student work remains as objective and transparent as possible, the *Journal* has formulated the following criteria to guide the evaluative process. Although this list of criteria is not exhaustive, our aim is to provide guidance on our understanding of the attributes of good student-written legal scholarship.

To aid in the selection process, the Committee encourages authors to address the first two criteria in a brief statement of originality that accompanies the submission. Our guiding criteria are:

1. The work should contribute appreciably to the existing literature on the chosen subject. Typically, this involves presenting a novel legal issue and/or analyzing an issue in an innovative way. The Committee will particularly credit the author's originality in approach and the importance of the work to the legal community, broadly defined. The Notes Committee performs a prior publication check to ensure the submission has not been preempted by prior scholarship.
2. The submission should be currently relevant—that is, the work's contribution to the literature at the time of publication should be interesting, useful, and meaningful to the legal community. Current relevance, however, does not require that the work analyze or discuss recently decided cases or enacted or proposed legislation.
3. Although a normative or policy-based analysis contributes significantly to a submission's analysis—and should be included, when relevant—the work should be sufficiently grounded in legal analysis to appeal to the *Journal's* readership. A purely policy-based analysis that lacks any recognizable form of *legal* reasoning is disfavored.
4. The work should present its analysis in a clear and unobtrusive way. Particularly, submissions should have a coherent and workable theme, and the author should use adequate legal reasoning—along with policy justifications—to support the author's conclusions. The Committee has found that a well-written introduction with a thoughtful explanation of the subject, along with an effective roadmap of the work, is helpful in understanding and evaluating the author's analysis and conclusions.
5. Although there is no single format or “type” of piece that the Committee requires, it may be wise to follow an established model or genre. These include (among others) pieces that: discuss and critique recent cases, propose doctrinal reforms, describe legally relevant historical developments, synthesize legal theory from cases and statutes, compare legal regimes, respond to or criticize recent scholarship, and incorporate insights from other disciplines.
6. Good writing, both on a large and small scale, benefits the reader and aids in understanding. The author should use a writing style that is accessible and readable to the *Journal's* audience.

The *Journal* also prefers that authors avoid using legal jargon as a substitute for thoughtful explanation. Authors should, of course, avoid grammatical and citation errors.

7. The author's analysis should be adequately supported by citations to sources. Excessive footnoting and exhaustive explanations in footnotes, however, can detract from an otherwise well-written submission.
8. Submission length is difficult to prescribe. The Committee encourages authors to avoid lengthy recapitulation of the facts and history of cases, unless doing so is specifically relevant to the author's analysis. In general, Note submissions are approximately 30-55 double-spaced pages in length.

As always, feel free to direct any questions to the Senior Notes Editor at [gljnoteseditor@gmail.com](mailto:gljnoteseditor@gmail.com), or feel free to reach out to any other member of the Notes Committee.