

UNIVERSITY OF ST. THOMAS
LAW JOURNAL
NOTES AND COMMENTS COMMITTEE PUBLISHING GUIDE

I. INTRODUCTION

This document has two purposes. First, it is intended to be a guide for Journal members as they select student pieces for publication. Second, it is intended to let student authors in on our process and to show them what we're looking for in a publishable piece. Since the Notes and Comments Committee is not an editing body, we aren't concerned about finer points of style just yet. Instead, this document will focus on a broader question: "what makes for a publishable, student-written, law review article?"

The Journal has always considered submissions from the student body for publication alongside professors' writing. In addition, it is now a requirement that every member of the St. Thomas Law Journal submit a piece to be considered for publication. With the advent of the new submission requirement, it is more important than ever that we take measures to make the selection process as objective as possible. We can expect that many student authors will have put a tremendous amount of effort into writing their pieces and they, in turn, will expect us to be professional and fair when it comes time to evaluate their work. Using some consistent standards for evaluating pieces and making the selection process transparent should help us move closer to that goal.

II. THE PROCESS

The Journal usually has three deadlines throughout the year for student submissions. Shortly after every deadline, the Notes and Comments Editor (NCE) removes the names from each submitted article, and makes individual copies for each Notes and Comments Committee (NCC) member. After the members have had time to read every piece thoroughly, the Notes and Comments Committee meets to vote on the submitted articles. Each member votes in one of three ways for each piece: reject, publish conditionally, and publish outright. A simple majority of votes in any of the three categories results in a final decision from the NCC.

Before coming to vote, each NCC member will have filled out a grading rubric for each piece they have read. The rubric allows NCC members to assign number values for how well a student piece conforms to the values set out in the publishing guide. Scores on the grading rubric are not determinative, but they will help the NCC members discuss each piece, and will help provide the basis for the feedback memorandum given to authors after each vote.

Every piece that is submitted to the Journal will receive a one-page memorandum explaining the strengths and weaknesses of the piece. Individual NCC members will be assigned to write memoranda to student authors after the NCC has voted. Student pieces are most often published conditionally, so the memorandum may also inform the author of any changes the NCC will expect before the selected article is officially ready for the editing process. The Journal employs a "light editing" policy that allows each author to

accept or reject any changes suggested by our editors. Thus, the “publish conditionally” classification allows the Journal to make sure that any fundamental weaknesses with an otherwise publishable piece will get addressed before the article goes to print.

III. OUR VALUES

This guide focuses on five aspects of law review articles: (1) thesis; (2) large-scale organization; (3) strength of argument; (4) use of authority; and (5) overall tone. There are, of course, dozens of other components to strong writing, but these five elements are essential to every successful article.

A. *Thesis*

Writing a law review article begins with reading law review articles. No law journal is willing to publish an article that repeats arguments published somewhere else. Instead, law journals look for articles that make new contributions to a particular field of law, as these are the articles that will be cited by other authors and add to the prestige of the journal. That being said, law review articles often devote a lot of space to contextualizing the author’s thesis within the body of existing work on a topic. We do not expect an author’s thesis to be entirely original in the sense that it was created in a vacuum, but only that it adds insights that are the product of the author’s original analysis and interpretation.

In order for an author to be confident that their thesis is original, they must devote significant time to searching through the law journal databases on Westlaw or LexisNexis to make sure their thesis has not already appeared in another publication. The NCC does not require student authors to work with the law school faculty in developing theses, but it is highly recommended. Law professors are often very familiar with the work of the other authors in their field and they can be quite helpful in developing an original thesis.

A thesis, broadly stated, is a claim about the world. These claims may either describe the world as it is or they might prescribe how the world should be. Eugene Volokh, law professor at UCLA and author of over thirty law review articles, has this to say about theses:

The most interesting claims are often ones that combine the descriptive and the prescriptive, telling readers something they didn’t know about the world—whether it’s about what courts have done, how a legal rule changes people’s behavior, or why a rule has developed in a particular way—but also suggesting what should be done.

A good thesis is essential. In most law review articles, the thesis comes toward the end of the introduction, right before a “roadmap” paragraph that explains how the article will go about proving its thesis. Not only is it important that the thesis is well-written—since it is helpful to readers to have a concise statement of what your article is about—but the substance of the thesis speaks volumes about the quality of the article overall.

Eugene Volokh and another authority on academic legal writing, Anne Equist, both have described a series of factors that make for a good thesis. They overlap considerably and can be distilled into one defining factor: utility. Utility anticipates how helpful a law review article will be to practitioners—lawyers, judges, etc. An article’s utility can often be measured by how often the article is cited, and by who cites it, in subsequent legal authority following publication. For example, if the Supreme Court cites an article in a landmark decision, there can be little doubt that the author had their fingers squarely on the pulse of an important development in the law. There’s also little doubt that the author crafted a readable and engaging piece of scholarship capable of persuading some of the finest legal minds in the nation to adopt his or her position on an issue. It is high praise indeed.

At the same time, there are a lot of important ideas out there that might never be of use to the Supreme Court and still deserve attention from our Journal. At the University of St. Thomas, our mission is to integrate faith and reason in the search for truth through a focus on morality and social justice. So while utility might be the paramount factor in assessing good legal scholarship, our Journal also makes room for work that explores underlying or peripheral questions in the law that might otherwise be ignored.

B. Large-Scale Organization

Large-scale organization concerns the structure and devices used by an author to prove their thesis and to make their article understandable to their audience. As mentioned earlier, a typical law review article will contain a roadmap paragraph that explains how the author has structured their piece. Additionally, most law review articles employ descriptive section headings that tell the reader what component of the article they are about to read.

Typically, a law review article begins with an introduction, then proceeds to lay background and context, next provides analysis, argument, and (if appropriate) a solution and finally concludes by briefly restating the main points. Articles that are structured well should be easy to read from beginning to end and have a persuasive effect on the reader. This is generally achieved by making the arguments and sub-arguments easy to identify and ordering them so that they flow logically from one to the next. Signs of a troublesome organization include questions raised in the article that don’t get answered until much later in the piece and excessive use of internal cross-referencing.

C. Strength of Argument

Not only is a great law review article structured well, but its interior logic must be well-reasoned and thorough. A well-written article will push a reader to agree with the author, but this won’t happen magically by using unequivocal language in a domineering tone. Rather, an argument is most persuasive when it is honest, nuanced, and when it takes account of the complexity of the issue it’s addressing. Strong arguments acknowledge uncertainty rather than claiming it doesn’t exist. Strong arguments persuade the reader why its interpretation of the facts is best rather than claim it is the only possible interpretation. In fact, effectively addressing counterarguments is one of the most important things an author can do. Every analytical move made by an author will have

implications. It's the author's job to anticipate these implications and to address them properly.

D. Use of Authority

In order to make a legal argument persuasive an author must cite legitimate authority for the claims that he or she makes. At the same time, it's not enough for a law review article to be a collage of other people's ideas. Rather, the NCC expects authors to employ a variety of authoritative sources in a creative and original fashion. If a lengthy string of footnotes are all citing to the same source, this may be sign that the author either needs to diversify their sources or that their work lacks analysis. Additionally, the NCC expects student authors to submit polished pieces that demonstrate a substantial effort to bring footnotes into conformity with Bluebook or ALWD formatting.

E. Overall Tone

This is the component of writing that is often referred to as the author's voice or style. Finding an appropriate tone in writing is generally a product of grammatical choices and finer points of style. The sentences in a good law review article will be clear, succinct, and persuasive. That's not to say that the writing must be simplistic or void of rhetorical flourishes. In fact, it's a very good thing for a writer to have his or her own recognizable voice. Some very persuasive and serious law review articles are also quite funny and have a breezy and conversational style that makes them enjoyable to read. Overall, it's important that an author takes a balanced approach and produces an article that is both fundamentally readable and persuasive.

IV. CONCLUSION

The Law Journal at the University of St. Thomas is growing in prestige and national reputation. A student-authored piece is just as capable of contributing to our growth in these areas as any piece written by one of our symposium contributors. In fact, student authors generally look at the legal landscape with fresh eyes and an intense curiosity, giving them an advantage over seasoned academics. Time has shown that law students can provide genuine contributions to practicing attorneys and judges. Many student pieces have come to be frequently-cited authorities, respected by bodies as esteemed as the Supreme Court of the United States. At the University of St. Thomas, we are excited to publish excellent student work and to show off our impressive students to the legal community at large.

At the same time, we recognize that we cannot publish every student piece submitted to us and that not every author will want us to publish their piece. In either case, publishing in another law journal may very well be an author's best option. The UST Law Journal does not prohibit students from submitting their article to other publications. It does, however, prohibit students from publishing their article elsewhere once it has been accepted for publication. If a student author would like help finding alternative publishers, we are happy to be of assistance.