

Stanford Law Review* – Guide to Student Submissions

We strongly encourage all students at Stanford Law School to submit Notes and Comments to the *Stanford Law Review* for publication. This guide attempts to answer the most frequently asked questions about the process. Should you have any concerns, please do not hesitate to contact the Notes Committee Liaison, Shel Abramson (shelton.abramson@gmail.com) who will then pass along your question anonymously to Jenna Sheldon-Sherman, the Senior Notes Editor.

WHAT IS A NOTE?

A Note is a student-authored piece of academic writing that discusses and analyzes an original legal issue or problem in some depth. Beyond this very general description, Notes are quite diverse, both in terms of topic and style. Some are doctrinally focused analyses of particular legal questions. Others present normative arguments on how courts or legislatures should analyze a particular problem that they have not yet addressed adequately. Still others are historical or theoretical. What all good Notes have in common is that they are well-written, interesting, and original treatments of legal problems. Most Notes begin their lives as term papers, either for traditional courses and seminars or for directed research.

WHAT IS A COMMENT?

A Comment is a student-authored piece of academic writing that is centered around an analysis of a recent case, legal development, piece of legislation, law journal article, or law-related book. Comments are significantly shorter than Notes and should be no longer than 7,500 words. We strongly encourage any students whose main subject is a critique/analysis of a case, a recent legal development, a piece of legislation, a law journal article, or a law-related book to submit their work as a Comment, rather than as a Note.

If you are interested in writing a Comment on a book, feel free to contact the Notes Liaison for access to the library of recent books that the *Law Review* receives from publishers.

WHO MAY SUBMIT A NOTE/COMMENT?

The *Stanford Law Review* accepts Notes and Comments only from current Stanford Law School students and Stanford students who graduated the prior year. Graduates must make their submissions by the June Note/Comment Call the year following their graduation. For instance, a May 2010 graduate would have until the June 2011 Note/Comment Call to submit. The *Stanford Law Review* does not accept submissions from students at other law schools.

Law Review membership is not required to make a submission, nor does it influence the selection

* The following sources provided immensely helpful background material in compiling this guide: Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247 (1998); and The Yale Law Journal, *Notes Submission Memo*, <http://www.yale.edu/yalelj/members.html> (Nov. 1, 2002).

process in any way. However, any 2L who makes a good faith effort on the *Law Review* candidate exercise, but is not offered an acceptance to the *Law Review*, is eligible to participate in the **Write-On Program**. If that student writes a Note that is accepted for publication before the start of Winter quarter,¹ the student will be offered membership on the *Law Review*. If the student accepts the offer, the student will become a member. The managing board will determine how to best ensure that the new member performs the same amount of editing duties as other members of the same class. **This policy does not apply to accepted Comments.**

During each Note/Comment call, a student may make no more than two total submissions (including both Comments and Notes). Additionally, each student is allowed to publish a maximum of two pieces in the *Law Review*. These publications may be any combination of Notes or Comments and in the same or different volumes.

HOW SHOULD A NOTE/COMMENT BE SUBMITTED?

Submissions are only accepted electronically. To submit your Note, please email it to the Notes Committee Liaison at notescommittee@stanfordlawreview.org.

Notes/Comments are accepted on a rolling basis, but they are reviewed only at specific points during the year, after a Note/Comment call is sent to law-announce. For Volume 63, the Note/Comment Calls will take place in January, April, June, and September of 2010. Volume 64's first Note/Comment Call will be in January 2011. Decisions regarding publication are typically made within a month of the deadline in the Note/Comment call. The review process for Notes is blind, and an author's name is only revealed to anyone other than the Notes Committee Liaison if the piece is accepted.

Because the review process is blind, all identifying information, including the author's name and any acknowledgements, must be removed prior to submission. While we strongly encourage students to reach out to Notes Committee members for general questions or advice about note writing, authors should take care not to discuss the substance of their work in a way that would allow any members of the Notes Committee to identify the author's work when it is submitted. Notes Committee members who can identify the author of a submitted piece will not participate in the evaluation of that submission. Volume 63's Notes Committee Members are: Kate Bearman, Michael Caesar, Loren Crary, Will Edelman, Max Etchemendy, Morgan Galland, Sophia Lin Lakin, Michael Miller, Erin Mohan, Jessica Rothschild, Jenna Sheldon-Sherman, and Tom Spahn.

WHAT ARE THE GUIDELINES FOR SUBMITTING A NOTE/COMMENT?

- **Statement of Originality:** All student work must contain an Originality form (see Appendix A at the end of this Guide) detailing how the argument being advanced fits into the current literature. It should be clear from this Statement how your argument differs from those of other authors. Model Statements of Originality can be found in Appendix B. For Comments,

¹ For current second-year law students (2011 graduating class), the Note must be accepted by the first day of the student's 3L year.

please include a list of other reviews of the case, legislation, article, or book, and address how yours adds to them. On the Statement of Originality form, please also provide information about the published scholarship that underlies or inspired your piece, the names of professors who would be well-suited to review your submission, and the names of professors who are already familiar with your piece. Please insert the Statement of Originality at the front of your submission, as a cover page(s).

- **Statement of Resubmission:** All resubmitted work must contain a Statement of Resubmission detailing how the paper has been improved since the prior submission. The author should include in this Statement a discussion of how she has taken into consideration any feedback provided by the Notes Committee from the prior submission; if the author felt that the feedback was not valid, she should indicate why.
- **Word Limit:** The Notes Committee is seeking **Notes** that are **15,000 words or fewer** and **Comments** that are **7,500 words or fewer**. While the Committee will consider Notes submissions up to 17,500 words, we strongly encourage authors to submit pieces that are shorter than these word limits. There is **no minimum length for either a Note or a Comment**. In fact, the majority of the Notes the Law Review has published within the last two years have been between 25 and 35 pages in length (approximately 9,000 to 14,000 words). These word limits include footnotes (be careful, as the default setting in Microsoft Word does not include footnotes in the word count), but do not include the table of contents, the Statement of Originality, the Statement of Resubmission, or Word Count. Many successful submissions are significantly shorter than these limits. The Notes Committee strongly advises authors to respect these word limits, as there is a presumption against accepting any piece which exceeds them.
- **Word Count:** All submissions must include a word count inserted just below the Statement of Originality.

DOES THE NOTES COMMITTEE OFFER EXPEDITED REVIEW?

Because our review process involves seeking a professor's substantive comments on each submission promoted to the second round of review, the Notes Committee cannot guarantee expedited review of any submission. Students with pending offers of publication should, however, contact the Notes Committee Liaison (shelton.abramson@gmail.com) with that information.

HOW DOES THE NOTE/COMMENT SELECTION PROCESS WORK?

The reviewing process is divided into two rounds. In the first round, each submission is typically read by three Notes Committee members. If there are any doubts about whether to promote a submission to the second round (for instance, if one reader liked it, and two did not), these doubts are always resolved in the author's favor, and the submission will be promoted.

The second round is a full-committee read. Each Notes Committee member reads all promoted papers, and the Committee meets to discuss which submissions should be published. The discussion is more of a deliberative process with the aim of reaching a consensus on every work; decisions to accept or reject a submission are almost always unanimous. On average, we have published about seven to ten student-written submissions each year, though this number has varied based on the quality of submissions received.

When the Notes Committee selects a piece for publication, the Senior Notes Editor will obtain the author's name from the Notes Committee Liaison and promptly contact the author. Those whose Notes/Comments have not been chosen will receive an e-mail from the Notes Committee Liaison informing them of the decision, along with a brief memo highlighting the committee's suggestions for revision of the piece for resubmission. Our feedback is not a comprehensive critique of a paper, but instead simply provides the main weaknesses that the Committee identified in the submission. Professors and friends might be able to provide authors with more substantial suggestions for revision. The names of authors whose pieces were not selected are *not* released to anyone other than the Liaison.

Rejection of a submission does not mean that the submission is forever unpublishable. Many Notes/Comments are not chosen because they have flaws that are important but fixable. We *strongly encourage* Note/Comment writers to revise their pieces and resubmit them at the next Note/Comment call. Past records show that many Notes/Comments are chosen on the second or third submission.

The entire Note/Comment selection process is blind. This strong commitment to confidentiality requires that writers, to the best of their ability, refrain from discussing their papers with members of the Notes Committee. Further, to ensure impartiality, members of the Notes Committee submitting papers for publication must recuse themselves from consideration of their submission.

If your piece is selected by the *Law Review*, you will be required to work with the editing staff to prepare your piece for publication. The submission will go through two rounds of substantive editing, cite-checking, and bluebooking. Substantial cooperation from authors is expected during this process.

WHAT DOES THE NOTES COMMITTEE LOOK FOR IN A NOTE?

The best way to get an idea of what constitutes a good submission is to look through past issues of the *Law Review*. Previously published student work shows the depth of analysis and level of originality for which we are looking. Further, they demonstrate the diversity of topics that authors tackle, as well as the variety of analytical approaches they take.

In addition, Eugene Volokh, a UCLA law professor, has produced some excellent guides for mastering the art of legal writing, even for students who consider themselves to be outstanding writers already. See Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247 (1998) (available through Westlaw). For a more in-depth treatment, see EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, AND SEMINAR PAPERS* (2003) (available in Open Reserves in the Law Library).

In general, Notes that have been accepted for publication:

1. *Are creative or original.* The author must approach her topic in a way that is new or different from others writing on the same subject. Mere summaries of the literature are typically not sufficient, unless the literature on a subject is particularly unclear. The original approach should be emphasized over a long doctrinal summary. Especially in the case of Comments, the author should not rely exclusively on what was written and researched in the case, legislation, article, or book. Some outside research and original analysis is essential to a good critique of the case, legislation, article, or book and ultimately will help the author fashion a much more useful and engaging discussion. Above all, in Notes and Comments, we want to see how you are advancing the subject matter on which you are writing.
2. *Tackle narrow, more modest topics rather than issues that are excessively broad.* As a general matter, students have less experience with legal scholarship than professors do and should thus choose topics which are manageable and well-defined. The focus should be on one central idea or concept.
3. *Have a focused, clearly discernible thesis.* The best submissions establish early on what they are going to address and carry that throughout the entire paper.
4. *Are clearly and logically organized and well written.* Superior submissions flow logically from one section to the next, and it is always clear to the reader how each paragraph is advancing the author's argument.
5. *Don't devote excessive space to background issues, to summarizing the history of the topic or the scholarship of others, to tracing the development of doctrine, or to quoting from cases.* While some background is always necessary in a Note, we find that students are prone to long summaries of existing case law or scholarship that do not add significantly to their submissions. We want to read your ideas, not those of others. Even in a Comment, where the principal focus is a critique or analysis of another work, authors should be careful not to quote or summarize heavily from the work—if we want to know what the other work says, we can read it ourselves!

6. *Are persuasive.* Good student work puts forward an argument that is innovative and persuasive. It is important to keep in mind that your audience is academics, judges, and practitioners, so it is critical that your argument not be far-fetched or obvious. Furthermore, if the paper identifies a problem, it is important that the author gives a concrete and workable solution that is plausible to the reader. Suggesting a solution that is not likely to ever occur, or merely indicating in a conclusory manner that courts should strike down some cases or that Congress should pass a law, is generally unsatisfying.
7. *Address all the issues the author promises to address.* Authors should take care to follow through with what is set out in the introduction to the paper.
8. *Are completely and accurately cited.* While we don't want long string cites just so that we can see that you have done some research, we do want footnotes and reasonable explanations for every statement that is not your own work. Further, we like to see that authors have done a reasonably decent job of putting their citations in Bluebook format.
9. *Are concise.* One of the main reasons that we have established a 17,500 word limit for Notes and a 7,500 word limit for Comments (including footnotes) is that we were getting extremely long pieces in which the argument was hard to follow. Persuasiveness, clarity, and originality are all more important than length. Conciseness is an important skill in legal writing and is difficult to master. The word limits we have established are generous, and we envision that most students should be able to make their arguments in substantially fewer words.
10. *Are readable (and not cluttered with jargon and legalese).* A reasonably educated layperson should be able to understand what you are writing, even if the topic is complex or highly technical. Avoid convoluted sentences, run-ons, and confusing or specialized terminology that is not explained. Specialized acronyms or acronyms invented just for the paper are highly discouraged.

WHERE ELSE BESIDES THE *LAW REVIEW* CAN I GET A NOTE PUBLISHED?

While, of course, we strongly encourage student authors to submit all their work to the *Law Review* for consideration, we also encourage authors to consider other publishing opportunities both at Stanford and elsewhere. All other student-run journals at Stanford, including the *Stanford Journal of International Law*; *Stanford Law & Policy Review*; *Stanford Environmental Law Journal*; *Stanford Journal of Law, Business, and Finance*; *Stanford Journal of Civil Rights and Civil Liberties*; and *Stanford Technology Law Review*, accept student-written material.

Additionally, outside of Stanford, there are literally hundreds of legal journals with dozens of different scholarly emphases. They are all hungry for good articles to publish, even from law students. With a little research, it is likely that you can find a journal that is looking to publish a piece like yours. A good compilation of law reviews and legal periodicals where you may be able to publish your work is available at the following web site:
<http://www.lexisnexis.com/lawschool/prodev/lawreview/>.

Appendix A: Form for Statement of Originality

Please insert the following material at the front of your submission.

Statement of Originality or Abstract. Please describe your piece and how the argument you advance fits into the current literature on the topic. It should be clear how your argument differs from those of other authors. If your piece challenges an existing theory or approach to the topic, please briefly explain the theory or approach from which you depart.

Please list the scholar(s) and specific published sources that provided the starting point or most important research material for your submission.

Please suggest any scholars (whether at Stanford or elsewhere) who would be well-suited to evaluate your submission.

Please list any scholars with whom you have already discussed this piece, or who could otherwise identify you as the author of this piece.

Word Count. Including the footnotes, but not the statement of originality or the table of contents, the submission contains _____ words.

Appendix B: Sample Statements of Originality

Fred O. Smith, Jr., *Crawford's Aftershock*, forthcoming in 60 STAN. L. REV. (2008).

The Supreme Court's groundbreaking² ruling in *Crawford v. Washington*,³ along with that case's progeny,⁴ limited the reach of the Sixth Amendment's guarantee that criminal defendants must be "confronted with the witnesses against [them]." After those decisions, the Confrontation Clause only covers testimonial hearsay. Authors have written extensively about these cases, primarily exploring what the definition of the word "testimonial" does or should entail.⁵ Still, few have written about the regulation of *non*-testimonial hearsay. A notable exception is an article by Laird C. Kirkpatrick,⁶ in which he concluded that the Supreme Court's decision to exempt non-testimonial hearsay from the clause's reach was "premature."

This Note goes substantially further. It explores what the purposes and history of the Confrontation Clause have to say about the admission of non-testimonial hearsay statements. Part I examines historical sources such as common law near the Founding, and argues that non-testimonial hearsay was one of the ills that the Confrontation Clause was designed to protect. Part I additionally proposes a two-tiered approach to interpreting the clause, in which testimonial statements receive the most vigorous form of constitutional scrutiny, but non-testimonial statements receive meaningful scrutiny as well.

Part II of the paper then more carefully explores what "confrontation" should mean, both historically and practically, in the context of non-testimonial hearsay. After marshalling relevant caselaw, historical texts, jury instructions and practitioners' guides, Part II additionally concludes that simply re-implementing the old pre-*Crawford* regime would not adequately or faithfully result in the type of meaningful confrontation demanded by the clause. Part III then proposes four interpretive reforms that would bring American courts closer to harmonizing the Confrontation Clause's regulation with the provision's full range of historical and practical values.

² *People v. Cage*, 15 Cal.Rptr.3d 846, 854 (2004) (calling *Crawford v. Washington* a "bombshell"); *State v. Hale*, 277 Wis.2d 593, 610 (2005) (calling the decision a "renaissance" and stating, "With the *Crawford* decision, a new day has dawned for Confrontation Clause jurisprudence.") *See also* *State v. Alvarez-Lopez*, 136 N.M. 309, 317 (2004) (stating that the courts now view the Confrontation Clause through "a newly shaped lens.").

³ *Davis v. Washington*, 126 S.Ct. 2266 (2006) (determining the circumstances in which a 911 call is "testimonial" and, therefore, subject to the Confrontation Clause); *Whorton v. Bockting*, 127 S. Ct. 1173 (2007) (holding that *Crawford* was not retroactive.).

⁴ *See, e.g.*, John Spies, *Testimonial or Nontestimonial? The Admissibility of Forensic Evidence After Crawford v. Washington*, 94 Ky. L.J. 187 (2006); Bradley Morin, *Science, Crawford and Testimonial Hearsay: Applying the Confrontation Clause to Laboratory Reports*, 85 B.U. L.Rev. 1243 (2005); Mark Dwyer, *Crawford's "Testimonial Hearsay" Category*, 71 Brook. L. Rev. 275 (2005) (providing a practitioner's perspective). The most succinct of such articles exploring this definition is Richard Friedman's *Grappling with the Meaning of "Testimonial,"* 71 Brook L. Rev. 241 (2005).

⁵ Laird Kilpatrick, *Nontestimonial Hearsay After Crawford, Davis and Bockting*, 19 Reg. Univ. L.Rev. 367 (2007).

Ariel R. Schwartz, *Doubtful Duty: Physicians' Legal Obligation to Treat in an Epidemic Context*, 60 STAN. L. REV. 657 (2008).

Despite a rich body of literature in medical journals concerning physicians' ethical obligations in epidemics and extensive legal commentary and case law on physicians' legal duties to HIV/AIDS patients under the Americans with Disabilities Act of 1990 (ADA), little has been written about how these legal frameworks apply in the context of other communicable diseases, especially highly infectious diseases such as Avian Flu, Ebola, and Severe Acute Respiratory Syndrome (SARS).

This note seeks to fill that void in the literature by illustrating that the federal legal mechanisms such as the ADA that address the duty to treat people with HIV/AIDS are not universally applicable to communicable diseases. Similarly, this note demonstrates that since state nondiscrimination laws overwhelmingly mirror the federal statutory scheme, state nondiscrimination laws do not impose additional requirements on doctors in an epidemic context. The current lack of clarity regarding physicians' obligations is particularly troublesome because of an absence of a strong or consistent tradition of physicians rendering care in epidemics. Most notably, within the last few decades, many physicians have expressed a profound reluctance to treat patients with HIV/AIDS.

Since September 11, the SARS outbreaks in 2002, and Hurricane Katrina, lawmakers have realized the need to update laws governing the prevention, management, and mitigation of emergencies and have focused their efforts on developing capacity at the state and local levels. As such, many states have adopted versions of the Model State Emergency Health Powers Act (MSEHPA), which gives governors enormous discretion upon the declaration of a state of emergency. This note argues that if states are going to allow governors to compel physicians to provide care in an epidemic, the states should require that governors and health authorities engage in a balancing test similar to that proscribed in the ADA, which would take into account whether the benefit to the patient and those who might be infected by the patient outweighs the risk to the physician, the relative risk to a physician as compared to a lay person, duties to other patients and family, as well as the resources to which the physician has access.

Currently there is no legal or medical scholarship that analyzes the applicability of the ADA framework in the context of an epidemic of a highly infectious disease. Furthermore, the literature does not consider the value of constraining governors' discretion by integrating an ADA balancing test. Most academics have focused primarily on the protections that should be afforded patients in an epidemic because of concerns that patients may be involuntarily subject to vaccinations, isolation, and quarantine. This note would be a valuable contribution to the health law, ethics, and emergency preparedness fields by highlighting the unique legal issues that arise for health care providers in an epidemic context.