

## ***Stanford Law Review* – Guide to Student Submissions**

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We strongly encourage all students at Stanford Law School to submit Notes, Comments, and other submissions 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 SLR Executive Editor Tierney O'Rourke (torourke@stanford.edu), who will then pass along your question anonymously to the Senior Notes Editor, Maria Buxton.

### **NOTES**

A Note is a student-authored piece of academic writing that discusses and analyzes an original legal issue or problem in some depth. 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 make an original claim about the legal problem they address. The word limit for Notes is **17,500**.

### **COMMENTS**

A Comment is a shorter and more focused piece of student writing that centers on an analysis of a recent case or other development in the law or legal scholarship. We encourage any students whose main subject is a critique/analysis of a case, an analysis of a new piece of legislation, a response to a law journal article, or a review of a law-related book to submit their work as a Comment, rather than as a Note. The word limit for Comments is **7,500**.

### **... OTHER SUBMISSIONS?**

Because the *Stanford Law Review* aims first and foremost to publish the best student scholarship whatever its form, pieces fitting neither description above may occasionally be considered. If you are unsure whether a piece whose genre, theme, structure, or length differs from the above guidelines might merit our review, please contact the Notes Committee Liaison.

### **WHO MAY SUBMIT?**

The *Stanford Law Review* accepts Notes and Comments only from current Stanford Law School students and Stanford students who graduated within the past year. Graduates must make their submissions by the third Submissions Call in the year following their graduation, which takes place in June. (Class of 2015 graduates may submit until the June 2016 call.) The *Stanford Law Review* does not accept submissions from students at other law schools.

A student may make no more than two submissions during any given call. Each student is allowed to publish a maximum of two pieces in the *Stanford Law Review*. For the purposes of both limits, publications may be any combination of Notes, Comments, or other submissions, and they may be in the same or different volumes. (Publication in *SLR Online* does not count.)

### **HOW DOES AN AUTHOR SUBMIT TO STANFORD LAW REVIEW?**

Submissions are only accepted electronically. To submit your work, please visit <http://www.stanfordlawreview.org/submissions/print/note> and follow the website directions.

Submissions are accepted on a rolling basis, but they are reviewed only at specific points during the year, after a Submissions Call is sent to law-announce. For Volume 69, the Submission Calls will take place in March, April/May, June, and August of 2016. Volume 69's first Note/Comment Call deadline will be on March 1, 2016. Decisions regarding publication are typically made 4-6 weeks after the deadline for submissions.

The review process is blind. For that reason, all identifying information, including the author's name and any acknowledgements, must be removed prior to submission. Please consult the following links for information on how to remove identifying information from Microsoft Word documents: <http://tinyurl.com/oy8lysm>.

Though Notes Committee members are always happy to provide general guidance and information about note-writing and the submission process, authors should take special 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 69's Notes Committee Members are: Lauren Zack, Stephen Liu, Abbee Cox, George Hayward, Hannah Kieschnick, Sarah Kushner, and Daniel Rubin.

### WHAT MUST I INCLUDE WITH MY 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 the work's argument differs from those of other authors. Model Statements of Originality can be found in Appendix B. For Comments, the Statement should include a list of other reviews of the case, legislation, article, or book, and address how the work adds to them. The Statement should also provide information about the published scholarship that underlies or inspired the piece, the names of professors who would be well-suited to review the submission (they need not be at Stanford), and the names of professors who are already familiar with the piece and its authorship. The Statement of Originality should be inserted at the front of the submission, as a cover page.
- **Word Count:** All submissions must include a word count inserted just below the Statement of Originality. The Notes Committee prefers Notes that are 15,000 words or fewer and Comments that are 6,000 words or fewer. The Committee will consider **Note** submissions **up to 17,500 words** and **Comment** submissions **up to 7,500 words**, but we strongly encourage authors to submit pieces that are considerably shorter than the maximum. There is no minimum word limit. The **word limits include footnotes** (be careful, as the default setting in Microsoft Word does not include footnotes in the word count), but the limits do not include any Statement of Originality, Statement of Resubmission, abstract, or table of contents. The Notes Committee reserves the right to return any submission that exceeds the word limit without consideration, and any over-length submissions that are reviewed will face a strong presumption against acceptance.

- **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.

### **HOW DOES THE SELECTION PROCESS WORK?**

The reviewing process is divided into two rounds. In the first round, every submission is read by two to three Notes Committee members. Submissions meriting further review are then promoted to a full-committee read, at which time the Committee also solicits comments from faculty with relevant expertise. Each Notes Committee member reads all promoted papers and any faculty-reviewer comments, and the Committee meets to discuss which submissions should be published. Those deliberations aim for consensus; decisions to accept or reject a submission are almost always unanimous.

The entire selection process is blind. To ensure impartiality, members of the Notes Committee must recuse themselves from consideration of any submission when they know the identity of the author.

On average, the *Stanford Law Review* publishes about six to ten student-written submissions each year. There is no set target for any given call; the number of pieces accepted will always depend on the quality of submissions received.

### **DOES THE NOTES COMMITTEE OFFER EXPEDITED REVIEW?**

The Notes Committee cannot guarantee expedited review of any submission. Students with pending offers of publication should, however, contact the Notes Committee Liaison with that information, including wherever possible a specific expedite deadline by which they need to decide on that offer. The Committee will do its best to accommodate such requests.

### **HOW WILL I BE NOTIFIED OF THE COMMITTEE'S DECISION?**

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 submissions have not been chosen will receive an e-mail from the Notes Committee Liaison informing them of the decision.

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

The names of authors whose pieces were not selected are *not* released to anyone other than the Liaison, who will notify the authors of that result. Authors who request feedback will receive a memo that describes the Committee's likes and dislikes about the piece, explains why it is not suitable for publication in its current form, and makes suggestions for improvement.

The Committee strives to provide feedback memos that are honest, transparent, constructive, and appropriately tailored. The memos are designed to serve as a jumping-off point for revisions; only rarely will they represent a comprehensive catalog of every specific thing the Committee believes could be improved about a piece.

**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 encourage all authors to revise their pieces and resubmit them at the next Submission Call. Past records show that many pieces are chosen on the second or third submission.

**WHAT DOES THE NOTES COMMITTEE LOOK FOR IN A SUBMISSION?**

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 works show 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, which even students who already consider themselves to be outstanding writers often find instructive. *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 and 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 or existing doctrine are typically insufficient, unless the literature on a subject is particularly unclear. A good rule of thumb is that you should not find yourself relying exclusively on the writing and ideas of others who have opined on the same topic; some outside research and original analysis is essential.
2. *Tackle narrow, more modest topics rather than issues that are excessively broad.* As a general matter, students benefit from choosing topics that 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 focus through the entire piece. What your introduction promises, the remainder should deliver.
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, many students writers are prone to include 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 too heavily.

6. *Make a contribution that's useful and persuasive.* Good student work puts forward an argument that is not merely novel but also persuasive. Your audience is academics, judges, and practitioners, all of whom have little use for arguments that are far-fetched or obvious. If the paper identifies a problem, it is important to give a concrete and workable solution that is plausible to the reader. Suggesting a solution that is not likely to ever occur, or merely stating in a conclusory manner that courts should strike down some cases or that Congress should pass a law, is generally unsatisfying.
7. *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 made a good-faith effort to put their citations into Bluebook format.
8. *Are concise.* One of the main reasons for the 17,500 word limit for Notes and the 7,500 word limit for Comments (including footnotes) is to avoid getting extremely long pieces in which the argument is hard to follow. Persuasiveness, clarity, and originality are all more important than length. The word limits are generous, and most students should be able to make their arguments in substantially fewer words.
9. *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 unnecessary or unexplained. 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. The other student-run journals at Stanford all accept student-written material. They are:

- *Stanford Environmental Law Journal*
- *Stanford Journal of Animal Law and Policy*
- *Stanford Journal of Civil Rights and Civil Liberties*
- *Stanford Journal of Complex Litigation*
- *Stanford Journal of Criminal Law and Policy*
- *Stanford Journal of International Law*
- *Stanford Journal of Law, Business, and Finance*
- *Stanford Law & Policy Review*
- *Stanford Technology Law Review*

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. For more information about submitting your scholarship for publication outside Stanford, see Appendix C at the end of this guide.

### **Appendix A: Form for Statement of Originality**

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

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

Please suggest any scholars (whether at Stanford or elsewhere) who would be well-suited to evaluate your submission. (Do not include any of the scholars listed above who can identify you.)

**Word Count.** Including the footnotes, but not the statement of originality or any table of contents or abstract, the submission contains \_\_\_\_\_ words.

## Appendix B: Sample Statements of Originality

[SAMPLE 1]

### Abstract and Statement of Originality

“We have been unable to identify any parallel . . . in the history of our nation in which Congress has intervened to prohibit the prosecution of particular persons or crimes.”<sup>1</sup> So wrote Eric Holder in a December 2010 letter addressed to the leadership of the U.S. Senate in response to proposed congressional funding restrictions that would have forbidden the Executive Branch from using any appropriated funds to transfer Guantánamo detainees—Khalid Sheikh Mohammed (KSM) in particular—to the United States. Those funding restrictions have since been signed into law, twice.

There is little doubt that Congress’s decision to bar the President from using any appropriated funds to transfer KSM and four alleged 9/11 co-conspirators destroyed all hope the Obama administration had for trying these men in U.S. federal court. What is in doubt, however, is whether Congress had the power to do so in the first place. Remarkably, although Congress’s actions have been labeled by the Attorney General as “dangerous”<sup>2</sup> and by the President as “unprecedented,”<sup>3</sup> no legal scholarship has yet been published that analyzes whether or not Congress’s putative exercise of its purse power *unconstitutionally* infringed on either the President’s authority as Commander in Chief or the Executive’s monopoly over the federal prosecution of named individuals, such as KSM. This Note aims to be the first voice on the issue.

Using both a separation-of-powers balancing analysis, as well as a tripartite framework redolent of Justice Jackson’s famed concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*,<sup>4</sup> this Note concludes that while Congress has indeed stretched the permissible limits of its purse power in this instance, the legislature has not violated the Constitution. The analysis reveals, however, that Congress’s funding restrictions infringed less on the President’s military authority as Commander in Chief than on his prosecutorial authority. Even though the funding prohibitions may be a constitutional exercise of the purse power, this Note also raises the ultimate question of whether Congress forbidding the prosecution of named individuals (i.e., KSM) in federal court is still bad policy.

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<sup>1</sup> Letter from Eric Holder, U.S. Att’y Gen., to Harry Reid, U.S. Senate Majority Leader, and Mitch McConnell, U.S. Senate Republican Leader (Dec. 9, 2010), *available at* <http://www.justice.gov/opa/pr/2010/December/10-ag-1411.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Presidential Statement on Signing the Department of Defense and Full-Year Continuing Appropriations Act, 2011, 2011 DAILY COMP. PRES. DOC. 263 (Apr. 15, 2011), *available at* <http://www.whitehouse.gov/the-press-office/2011/04/15/statement-president-hr-1473>.

<sup>4</sup> 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring)

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

- Public Citizen v. U.S. Dep't of Justice, 491 U.S. 440, 484 (1989) (Kennedy, J., concurring) (restating the separation-of-powers balancing analysis, developed in *Morrison v. Olson*, 487 U.S. 654, 695 (1988), that the Court has often used to decide whether actions taken by one branch of the federal government unconstitutionally invaded the province of another).
- Charles Tiefer, *Can Congress Make a President Step Up a War?*, 71 LA. L. REV. 391 (2011) (providing a tripartite framework of analysis, which I modified slightly to apply to this Note's constitutional inquiry).
- WILLIAM C. BANKS & PETER RAVEN-HANSEN, NATIONAL SECURITY LAW AND THE POWER OF THE PURSE (1994) (describing historical instances of Congress using its purse power to constrain the Executive in the context of war and national security policy).
- The United States Constitution

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

This paper was originally written for a course taught by Professor Mariano-Florentino Cuéllar (Executive Power). Professor Jenny S. Martinez has also reviewed this work.

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

Professor Allen Weiner; Professor Janet Cooper Alexander; Professor Michael W. McConnell.

Word Count: Including the footnotes, but not the statement of originality, title, or the table of contents, the submission contains 14,477 words.



Abstract and Statement of Originality

Since 2001, the U.S. has captured and detained hundreds of foreign nationals at overseas facilities, raising the question of whether the Constitution applies extraterritorially to these detainees. Detainee legal challenges over the past decade culminated in the Supreme Court decision *Boumediene v. Bush*,<sup>1</sup> whereby foreign nationals held at Guantanamo Bay, Cuba, were provided the right to petition for a writ of habeas corpus in federal court. Although this landmark decision provided detainees at Guantanamo the means to challenge their detention, it begged the question whether detainees at *other* overseas facilities would also be allowed to seek habeas relief. The U.S. Court of Appeals for the D.C. Circuit recently provided an answer to that question in *Al-Maqaleh v. Gates*:<sup>2</sup> the federal courts lack jurisdiction to hear the habeas petitions of detainees held at Bagram Air Base, Afghanistan.

This paper is principally a response to that decision. I argue that the District Court in *Al-Maqaleh* faithfully applied the *Boumediene* multi-factor test for extending habeas extraterritorially, in light of the Supreme Court's functional, pragmatic analysis in that case. By contrast, the D.C. Circuit employed a wooden, formalistic analysis of the relevant factors and marginalized the centrally important separation of powers concern that animated *Boumediene*. In light of *Boumediene*, as well as the demands of the modern international system, the D.C. Circuit's decision missed the mark, damaging extraterritoriality doctrine with regard to the "sacred writ."

While some have commented on *Al-Maqaleh*, there is currently a dearth of legal scholarship situating the case (and its predecessor habeas jurisdiction cases) into extraterritoriality jurisprudence generally. This paper seeks to fill that void by going beyond habeas, to examine extraterritoriality in the context of substantive rights (most importantly, the Due Process Clause of the Fifth Amendment). I argue that because the Supreme Court's current position on substantive rights—most recently articulated in *United States v. Verdugo-Urquidez*<sup>3</sup>—formalistically limits such rights to the U.S. national community, it is outdated and in conflict with *Boumediene*. Because the lower courts have distinguished *Boumediene* and continue to follow *Verdugo*, they continue to deny foreign nationals even basic substantive rights, despite the Supreme Court's move towards a more expansive application of Constitutional protections.

The Supreme Court has therefore left the two halves of extraterritoriality jurisprudence in unfortunate limbo: In light of the doctrinal shift toward functional tests and pragmatism (and away from bright-line rules that invite Executive manipulation), the Court should formulate a clear multi-factor test for substantive rights (as it has already done, in *Boumediene*, for habeas protection). This would eliminate the current inconsistency and provide detainees the modicum of legal review necessary to legitimize U.S. detention policies.

While the paper discusses precedents at some length, this discussion is necessary to understand not only the flawed analysis in *Al-Maqaleh* but also the current inconsistency in the doctrine. These precedents suggest that *Al-Maqaleh* and analogous lower court decisions limiting the extension of substantive rights are not only inconsistent with the spirit of *Boumediene*, they are also in conflict with gradual expansion of Constitutional rights beyond U.S. borders.

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<sup>1</sup> *Boumediene v. Bush*, 553 U.S. 723 (2008).

<sup>2</sup> *Al-Maqaleh v. Gates*, 605 F.3d 84 (D.C. Cir. 2010).

<sup>3</sup> *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990).

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

This paper primarily builds on the work of Professor Chimène Keitner<sup>4</sup> and Professor Gerald Neuman.<sup>5</sup> Professor Keitner has formulated an interesting framework for understanding extraterritoriality doctrine, and Professor Neuman has written extensively on Boumediene's impact on future extraterritoriality analysis. Professors Marc Falkoff<sup>6</sup> and Robert Knowles<sup>7</sup> also provide an alternative, "limited government" interpretation of Boumediene.<sup>8</sup>

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

This paper was originally written under the guidance of Professor Jenny Martinez.<sup>9</sup>

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

Prof. Shirin Sinnar; Prof. Burt Neuborne (NYU); Prof. Allen Weiner

Word Count: Including the footnotes, but not the abstract, the submission contains 10,037 words.

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<sup>4</sup> Associate Professor of Law, University of California, Hastings College of Law. *See* Chimène I. Keitner, *Rights Beyond Borders*, forthcoming 36 YALE J. INT'L L. \_\_ (2011).

<sup>5</sup> J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law, Harvard Law School. *See* Gerald L. Neuman, *The Extraterritorial Constitution After Boumediene v. Bush*, 82 S. CAL. L. REV. 259 (2009).

<sup>6</sup> Associate Professor of Law, Northern Illinois University College of Law.

<sup>7</sup> Visiting Assistant Professor of Law, Chicago-Kent College of Law.

<sup>8</sup> *See* Marc D. Falkoff & Robert Knowles, *Bagram, Boumediene, and Limited Government*, 59 DEPAUL L. REV. 851 (2010).

<sup>9</sup> Professor of Law and Justin M. Roach, Jr. Faculty Scholar, Stanford Law School.

## Appendix C: Tips for Submitting Your Work to Other Journals

### General Guidelines

- **How**
  - Almost all law reviews accept submissions via ExpressO (<http://law.bepress.com/expresso/>), which lets you automatically send your work to many journals at once. Submissions normally cost \$2 per journal, but if you use your Stanford email address, the system won't charge you.
  - Lesser-used alternatives include LexOpus (<http://lexopus.yiil.org/lexopus/>) and SSRN (<http://www.ssrn.com/>).
  - You can also directly email or mail your submission to journals.
- Student pieces may be published as notes or as articles. Not all journals accept submissions from students at other law schools. You may need to check journal websites to determine their policy on submissions from other schools' students.
- **When**
  - Although submissions may be reviewed year round, the busiest submission and review periods for most journals are in March and August. Accordingly, the best time to submit articles tends to be mid-February to March and mid- to late August.
  - If you don't get an offer after several weeks, send your piece to more journals. Don't wait for your piece to be rejected everywhere you've sent it before you try again; many journals don't send rejection letters.
- **Where**
  - Submission guidelines and rankings for general law reviews can be found here: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1019029](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1019029); and here: <http://lawlib.wlu.edu/LJ/>.
  - Consider submitting your piece to specialty journals.
  - If you get an offer at one journal, it is common to use that offer to request expedited review at another journal.

### Other Resources

- See these links for more information on law reviews and contacts, submission methods, rankings:
  - Emory Law School, Law Review Submission Resources: <http://library.law.emory.edu/for-law-faculty/support-for-scholarship/law-review-submission-resources/>
  - Arizona State University, Guide to Legal Publishing for Students: <http://www.law.asu.edu/library/RossBlakleyLawLibrary/LawStudents/GuidetoLegalPublishingforStudents.aspx>
  - Eugene Volokh's book *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review*, is a helpful guide on not only how to get published (including what to do once you get an offer of publication), but also all steps of the note-writing process. It is available at course reserves in the library (call number KF250 .V65 2010, <http://searchworks.stanford.edu/view/8546034>).