

THE UNIVERSITY OF CHICAGO LAW REVIEW

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To: 2Ls and 3Ls
From: Bianca Chamusco and Matt Deates, Topic Access and Recruitment Editors,
The University of Chicago Law Review
Date: March 31, 2017
Re: *Law Review* membership via the Topic Access Program

Thank you for your interest in the Topic Access Program. This memorandum will help guide you through the process of writing a publishable Comment to join the *Law Review*. If you have questions, please contact the Topic Access and Recruitment Editors, Bianca Chamusco (bianca.chamusco@gmail.com) and Matt Deates (mattdeates@gmail.com). As Topic Access and Recruitment Editors, Bianca and Matt will guide you through the Topic Access Program and help prepare your Comment for submission. Please do not hesitate to contact them with questions, either by e-mail or in person. Once you begin the process, either Bianca or Matt will be assigned as your primary contact and will work with you to establish an individual timeline. Please also note the deadlines provided in Part VII at the end of this memorandum.

I. ADMISSION TO THE *LAW REVIEW*

To be admitted as a member of the *Law Review* via the Topic Access Program, a student must complete a Comment deemed acceptable for publication by the Volume 85 Managing Board.¹ The Board will evaluate Topic Access candidates' work using the same standard used to evaluate submissions by current *Law Review* members. A Comment written for the *Law Review* that is accepted for publication can serve as one of the substantial pieces of written work required for graduation. Students do not receive academic credit for writing a Comment through the Topic Access Program.²

Students admitted through the Topic Access Program are full members of the *Law Review*. Members must complete all responsibilities outlined in the Volume 85 Staff Contract during the course of the school year, regardless of the date on which they obtain membership.³ In addition, all 2Ls who submit a final, accepted Comment by November 14, 2017, and complete the required duties before selection of the Volume 86 Managing Board, are eligible to apply for positions on the Board.⁴ It is therefore a good idea for 2Ls to work on their Comments early, ideally beginning in the

¹ In the unlikely event that an applicant's Comment is preempted late in the process or other extraordinary circumstances arise that are out of the applicant's control, the Board may, at its discretion, nonetheless consider the applicant for membership on the *Law Review*.

² Candidates may receive credit for their Comment through separate arrangements, such as an Independent Study ("499") with faculty members. Any credit-granting process associated with a 499 is separate from the decision by the *Law Review* to admit the candidate.

³ Responsibilities of *Law Review* staff members include conducting substantive cite checks, reviewing pieces of scholarship for preemption risk, and proofing pieces for publication.

⁴ Please see the deadlines and optimal timelines in Part VII of this memorandum. November 14, 2017, is the last possible date for a final Comment submission for 3Ls to be considered for *Law Review* membership and

summer before 2L year. Please note that while members of other journals may seek admission to the *Law Review* through the Topic Access Program, LL.M students are not eligible.

II. BASIC PROCESS

There are four sequential steps to crafting a Comment: the Topic Proposal (“TP”), the Topic Analysis (“TA”), the Outline, and the Comment. Candidates must receive approval at each stage *before* proceeding to the next stage. Approval depends on a vote from the Comments Group to either accept or reject each submission. The Topic Access and Recruitment Editors will provide feedback after every vote and will establish individualized timelines to help ensure that each candidate continues to make progress. Note that it often takes multiple drafts at each stage before a submission is approved, and it is therefore strongly recommended that candidates start early.

This memorandum discusses each stage in greater detail below, but in short, a TP is usually about five to seven pages and focuses on describing a potential topic. An approved TP advances a candidate to the TA stage. A TA is usually about six to ten pages and contains a more thorough analysis of the topic, an exhaustive description of the existing cases and commentary on the issue, and a description of the Comment’s contribution to legal scholarship. It is not unusual for candidates to repeat the first two stages (TP and TA) multiple times. The Board sets a high bar for acceptance at the TA stage in an effort to save candidates the work of writing a full Comment on a topic that will face problems later. If the Board approves a candidate’s TA, the next step is to submit a detailed Outline of the topic to Bianca and Matt. Once they approve the Outline, the candidate will be ready to write a Comment draft.

At each of these stages (TP, TA, Outline, and Comment), candidates should e-mail their work to Bianca and Matt, who will share it with other members of the Board for evaluation (with the exception of Outlines, which Bianca and Matt evaluate on their own). Please note that at each step of the process, it is essential to adhere to the citation, formatting, and length guidelines provided below. **Approval at any of these stages is not a guarantee of ultimate admission to the *Law Review* or of publication of the Comment.**

III. WHAT IS A COMMENT?

A Comment is an essay of moderate length (10,000–13,500 words, including footnotes) that undertakes a detailed analysis of a significant, unresolved legal issue and then proposes a viable new legal solution or approach to that issue.

The key component of a Comment is its contribution to legal scholarship. This component must exhibit two elements: originality and thoroughness. A Comment that merely adopts one side of an existing legal debate or critiques an existing article will not suffice; there must be a novel approach to the issue. Similarly, a Comment must provide an extremely thorough analysis of every portion of the question proposed. Broad questions that cannot be comprehensively addressed in the space of a Comment are inappropriate. On the other hand, beware of simply trying to analyze the implications of a new law or a new case for an existing doctrine. That type of issue often more closely resembles a law-school exam hypothetical than a Comment.

To ensure the originality of Comments, the *Law Review* has a very high standard for preemption (discussed below). If a Comment is preempted, even late in the process, it will not be selected for publication in the *Law Review*. In that case, the Board may, at its discretion, nonetheless

for 2Ls interested in a Volume 86 Managing Board position; however, there are several earlier deadlines outlined in Part VII that must also be met.

consider the applicant for membership. There are two main types of preemption. First, if the Supreme Court grants certiorari on any of the cases or issues addressed in the Comment, that Comment will be considered preempted. A similar situation may arise if a Court of Appeals grants en banc review of a decision that is central to the Comment's legal issue. Second, if a Comment seeks to answer a question that has been addressed in the existing legal literature, it will be presumed preempted unless demonstrated otherwise. A candidate may propose a substantially different approach from those taken in existing scholarship, but that new approach must be clearly distinguishable from existing scholarship and must not merely represent a disagreement with the current approaches. However, candidates should not necessarily shy away from a topic simply because it has already been written about. Changing circumstances or the development of new legal doctrines may provide new ways to think about the issue. Nevertheless, it is *very important* that candidates flag any potential preemption issues *as soon as they arise*. Candidates should work, in consultation with the Topic Access and Recruitment Editors, to ensure that their approach is sufficiently novel to warrant continuing down a proposed path. Efforts to conceal or hide preemption issues at any stage of the process may result in immediate disqualification of the topic. Such efforts also run counter to a candidate's own interests, as they will eventually be discovered and will make the Comment unpublishable.

Comments generally fit into one of the following categories:⁵

- **The Circuit Split / Unresolved Legal Issue Comment**

This type of Comment takes a set of cases, points out the disagreement among them, and resolves the issue.

There are many advantages to this type of Comment. For example, these Comment topics are easy to find, easy to research, and quite useful to judges, clerks, and attorneys. However, it can be very hard to find an innovative solution when several courts have already addressed the issue. Comments must come up with a novel solution—that is, they must suggest an approach to the problem that is distinct from those found in the cases or in the existing scholarly literature. The problem with circuit splits is that often courts and other commentators have already picked the low-hanging fruit, and in some cases have picked the trees clean.

A cautionary word on circuit splits: choosing a circuit split—especially a recently developed split—creates significant preemption risks. If a candidate chooses to write on a circuit split, the candidate should keep in mind the possibility that a Comment on the same topic will be published in a different journal before his or her Comment is published. There are many other law reviews publishing student scholarship; if a candidate finds a circuit split topic in a news publication or on a blog, chances are that multiple other students have seen and considered the same topic. If someone else publishes first, the candidate's Comment will be preempted and will not be published.

⁵ The Volume 85 Comments Group is interested in publishing Comments on a wide variety of topics. Therefore, it is recommended that candidates think broadly when considering potential topics, rather than limiting themselves to a particular kind or structure.

For an example of a successful circuit split Comment, see generally Channing J. Turner, Comment, *Too Late to Stipulate: Reconciling Rule 68 with Summary Judgments*, 81 U Chi L Rev 361 (2014).

- **The Changed Circumstances Comment**

This type of Comment addresses a situation in which the law has not changed but the underlying situation has. For example, in the 1980s, many Comments addressed how the existing rules of evidence should deal with new understandings regarding Battered Woman Syndrome, the reliability of testimony from children, etc. The Federal Rules of Evidence (FRE) had not changed, but the types of testimony had changed. And it was not clear how the FRE would apply to the new testimony.

These Comments provide candidates an opportunity to be at the forefront of a developing issue. In addition, it is much easier to come up with a solution for these Comments because courts have not addressed these issues as often. Unfortunately, these topics are relatively difficult to find and may be publishable only in a narrow window of time.

See generally Tara E. Levens, Comment, *Too Fast, Too Frequent? High-Frequency Trading and Securities Class Actions*, 82 U Chi L Rev 1511 (2015).

- **The Empirical Comment**

These types of Comments attempt to give a definitive answer to an issue by analyzing hard data. Empirical Comments depend on data, and a candidate will often have to collect that data herself. If the solution to an empirical Comment requires data collection, the Board will be significantly more likely to approve the Comment if (a) the candidate has prior experience collecting and analyzing empirical data or (b) the data has already been collected. Note that, given the space limitations of a Comment, extensive empirical analysis can be difficult or even infeasible. Candidates should ask the Topic Access and Recruitment Editors if they have concerns about the scope of a potential topic.

See generally Matthew B. Kugler, Comment, *The Perceived Intrusiveness of Searching Electronic Devices at the Border: An Empirical Study*, 81 U Chi L Rev 1165 (2014).

- **The Historical Comment**

These Comments are useful because they do the legwork of finding and synthesizing historical sources. The downside to these Comments is that doing a thorough job with the research can be difficult because, for historical research to be novel, the topic must often be obscure. Candidates should think carefully before choosing this type of Comment, especially if they do not have prior experience with historical research.

See, for example, James A. Kraehenbuehl, Comment, *Lessons from the Past: How the Antebellum Fugitive Slave Debate Informs State Enforcement of Federal Immigration Law*, 78 U Chi L Rev 1465 (2011).

- **The Cross-Disciplinary Comment**

If a candidate has experience in another field, she may be able to borrow insight or analytical methods from this discipline to shed light on a particular legal problem. These Comments are particularly difficult and are significantly more likely to be approved if the Topic Access candidate has verifiable expertise in the area.

See generally Nicholas A. Deuschle, Comment, *Fun with Numbers: Gall's Mixed Message Regarding Variance Calculations*, 80 U Chi L Rev 1309 (2013).

- **Mixed Comments**

Some Comments involve mixed approaches. For example, the Comment cited below involved a circuit split that was brought about by changed circumstances. The author attempted to resolve the circuit split by reconciling the language in *Ashcroft v Iqbal* with pre-*Iqbal* law. Another example would be using empirical research to prove that a circuit split exists. Mixed Comments are more complicated than “pure” Comments, but if the issue itself is complicated, multiple approaches can help.

See, for example, William N. Evans, Comment, *Supervisory Liability after Iqbal: Decoupling Bivens from Section 1983*, 77 U Chi L Rev 1401 (2010).

Some things candidates should *not* do with their Comments:

- Suggest a new law or contradict a decision of the Supreme Court. A candidate may discuss Supreme Court decisions and their relative limitations but should not rest her solution on contradicting established precedent, either by calling for the Court to reverse itself or by calling for a legislative reversal.
- Simply take a side in an existing legal debate. Of course, candidates can agree with one side of a circuit split, but they must contribute a novel perspective to the debate.
- Address a question so broad that it cannot be fully answered in the space provided.
- Advocate for an approach based on policy, as opposed to legal, concerns. Although candidates may wish to raise policy arguments to support their solutions, candidates must have a strong legal grounding to their proposals. Candidates should ask themselves: Is this approach one that a judge could plausibly adopt based on current law?
- Propose a solution based exclusively on factual changes—it is important to highlight the *legal* implications of the argument and to move beyond pointing to a factual change.

IV. DEVELOPING A TOPIC

Judging the quality of a Comment is inherently subjective, and this description should serve only as a rough guide. Candidates should keep two things in mind:

- Candidates should use the TP/TA process (described in more detail in Part V of this memorandum), as well as meetings with the Topic Access and Recruitment Editors, to ensure that their Comments are on the right track. A Comment should never be written and submitted as a complete draft to the *Law Review* without first following the four-step process: TP, TA, Outline, and Comment. As further described below, even Topic Access candidates who wish to submit papers written for a class must follow this process, albeit with different timing requirements.
- Candidates should look at previously published Comments in the *Law Review*. Those examples will be the best guide for what the Board looks for in a publishable Comment.

The following list suggests sources for developing topics. Candidates should not be alarmed or disappointed if some sources do not turn up promising topics. Developing a good topic can be the hardest part of writing a Comment. Candidates should be persistent, as developing a topic will require significant time and effort.

- Talk to professors. Many Comment topics that ultimately develop into publishable Comments originate from conversations with professors. If candidates are not sure how to broach the topic, they should reach out to the Topic Access and Recruitment Editors for suggestions.
- Talk to colleagues and classmates who might have helpful ideas. Current *Law Review* members have all gone through this process and can provide useful insights. The Topic Access and Recruitment Editors are happy to meet with candidates and be a sounding board throughout the topic development process. Colleagues and other attorneys that a candidate knows can also be great sources of information regarding newly emerging or unsettled legal issues. Many young associates at law firms spend a lot of time writing memoranda on unclear legal issues and might be of great assistance. Note, however, that some legal employers may prefer that candidates ask for permission before using a topic that arose in the course of employment as the basis for a Comment.
- Think about legal questions from courses that appear to have no clear or satisfactory answer.
- Read the newspaper. It is an obvious yet invaluable resource. For example, the *Wall Street Journal* has an excellent column called “Legal Beat.”
- Read *US Law Week*. It provides recent Supreme Court and lower court cases of interest. It also provides summaries of cases and identifies legal issues currently facing the courts.
- Check the library’s Law Databases website at <http://www.lib.uchicago.edu/e/law/db/> under the “U.S. Topical” heading for access to a great variety of legal news focused on different subject areas.

- Visit <http://www.lib.uchicago.edu/e/law/db/bna.html> and sign up for BNA newsletters on particular research areas by e-mailing BNAsubscribe@lib.uchicago.edu.
- Read legal blogs. They can help generate ideas about current noteworthy legal issues. There are also lots of blogs covering particular legal areas (for example, criminal law, corporate law, labor and employment law, etc.) that can be helpful. General legal blogs that have been useful for writers in the past include:
 - *Concurring Opinions*, <http://www.concurringopinions.com>
 - *Feedly Legal*, <http://feedly.com/index.html#explore%2FLegal>
 - *How Appealing*, <http://howappealing.law.com>
 - *Prawfsblawg*, <http://prawfsblawg.blogs.com>
 - *The Volokh Conspiracy*, <http://www.washingtonpost.com/news/volokh-conspiracy>
- Talk to the research librarians about other resources available at the law school.

V. STEPS TO WRITING A COMMENT

A. Topic Proposal

First, candidates should write a Topic Proposal (“TP”) describing their Comment idea. This is an approximately **five to seven page document** that lays out the legal issue the candidate plans to explore and the general direction she plans to take. An approved TP “reserves” the topic for that candidate. Extensive legal research is not necessary, but candidates should try to set out the legal question in a way that shows how a Comment on that topic will make an interesting, timely, important, and original contribution to legal scholarship. The TP should briefly describe the most important cases that frame the legal issue. It must also demonstrate that the candidate performed an initial preemption check (see below for description), and should briefly summarize and distinguish any existing commentary on the legal issue.

Candidates should consult the sample TP on the *Law Review* website for guidance. Candidates should take this not as a perfect model but rather as a rough guide. They should also follow the guidelines in this memorandum, including using footnotes for citations. Keep in mind that legal issues often seem minor at first. In many cases, a seemingly uninteresting topic will reveal itself as just the opposite on further exploration. Candidates should cast their nets widely and write about something they feel they can make interesting. The Topic Access and Recruitment Editors are happy to answer any questions about writing the TP.

A candidate that is a member of another law journal may not submit a TP to the *Law Review* that was already submitted to that journal. **Finally, candidates must ensure that all submissions conform to the *Chicago Manual of Style* and are in proper *Maroonbook* form.** Because the Topic Access Program is about becoming a *Law Review* staffer in addition to possibly having a Comment published, it is essential that candidates follow these guidelines. The *Maroonbook* can be found on the *Law Review*’s website, <http://lawreview.uchicago.edu/page/maroonbook>. The *Chicago Manual of Style* is available through the law library’s website.

A TP has the following components, and should be written in twelve-point Garamond font (with footnotes in eleven-point Garamond font), single-spaced with one-inch margins:

- I. Issue: Briefly state (in no more than three sentences) the issue the TP will address.
- II. Discussion: Provide an introduction to the issue, citing relevant cases and statutes. Point out any existing approaches to the idea.
- III. Proposal Ideas: Describe the new approach the TP proposes. Keep in mind that the more detail included in this section, the better the Board will be able to provide guidance on appropriate paths for the TA.
- IV. Existing Commentary: Candidates should explain where they looked, what they found, and whether there are any possible preemption issues.
- V. Bibliography: Candidates should provide proper *Maroonbook* citations to the cases, statutes, and commentary they found.
- VI. Research Path: Candidates should provide a brief step-by-step synopsis of how they found the sources discussed in the Bibliography. Candidates *must* include a brief history of their search terms from Westlaw or Lexis.

For all submissions, clear writing is essential. It enables the Board to focus on the substance of the arguments and assess the value of the topic. Candidates should use road maps, repeated phrases, and topic sentences to guide readers through the piece.

After a TP has been approved, candidates may wish to find a faculty advisor who can supervise their further writing and research. If candidates do not find a faculty advisor at this stage, the *Law Review* will assign a faculty advisor after the TA is approved.

B. Topic Analysis

Once a TP is approved, a candidate will write a Topic Analysis (“TA”). The TA serves two functions. First, it demonstrates the topic is not preempted by case law or other scholarship. Second, it focuses on and communicates the question at issue, the current law, and why the topic and the candidate’s approach to it will make a good Comment.

1. Preemption check and initial research.

Although candidates will have already performed a preliminary preemption check for the TP, they must conduct a *very* thorough preemption check in the TA phase that does not simply repeat the information found during the TP preemption check. Preemption checks are vital. A thorough preemption check greatly reduces (but does not completely eliminate) the risk that a finished Comment will be unacceptable for publication or as the basis for membership.

A topic can be preempted either by another piece of legal scholarship, by Supreme Court review, or by en banc review of a case that is central to the topic. If published scholarship sufficiently covers the topic such that the potential for further original commentary is scant, the topic is preempted. Likewise, if the Supreme Court has granted certiorari on the legal question proposed by the Comment, the topic has been preempted. It is imperative that candidates do an

exhaustive preemption check as soon as a TP is approved, since they may need to select a new topic if the original topic is preempted. Additionally, it is essential that candidates continue to monitor any ongoing preemption risks to their topics throughout the Comment-writing process.

While the preemption check is extremely important, not every case or article touching on the topic is preemptive. Occasionally, there will be no alternative to abandoning a topic and starting fresh with a new one. However, many proposed topics can be reworked into more viable ones in the face of potential preemption concerns. The rule to remember is: when in doubt, contact the Topic Access and Recruitment Editors. It is imperative that candidates never hide preemption issues. Concealing or hiding preemption can result in automatic disqualification of the topic.

At this stage of the process, candidates will be more familiar with their topics than anyone else and can therefore tailor preemption checks to their topic's specific needs. The following steps must, however, be a part of every preemption check.

First, candidates should check whether certiorari has been applied for or granted on the cases germane to the topic. Candidates can search for certiorari petitions by running searches on the relevant cases in the *US Law Week* database on Lexis and Westlaw. Generally, losing parties in cases in state courts, as well as in civil cases heard in federal courts, have ninety days to file for certiorari. Parties must apply for certiorari in federal criminal cases within thirty days. Candidates should note that *US Law Week* takes some time to report a filing, so a few days should be added to these time limits. If certiorari is pending on a candidate's topic, the candidate should not continue work on the topic unless she and the Board can be sure that the Comment will be published before the case is resolved. If an appellate-level panel decision is important to the Comment (for example, if there is a circuit split), candidates should also check for a rehearing en banc.

Second, candidates should use Lexis, Westlaw, SSRN, and Legal Trac to find articles online. Candidates should be sure to sign up for Westlaw or Lexis alerts keyed to cases and articles that are important to their topics. This will keep candidates informed of any new developments and alert them of potential preemption. An SSRN search will also alert candidates to any forthcoming preemptive scholarship.

If a candidate thinks that there is any possibility that her topic may be preempted, she should *immediately* consult the Topic Access and Recruitment Editors.

2. Writing the TA.

If the topic survives this more exhaustive preemption check, the candidate will write a TA. TAs should be approximately **six to ten pages**, single-spaced in twelve-point Garamond font (with footnotes in eleven-point Garamond font), and should comply with *Chicago Manual of Style* and *Maroonbook* rules. It is important for candidates to do great work at this stage: Board members evaluate a proposal based on the TA, and careful planning early on will make the rest of the writing much easier. Besides reporting on the preemption check, the goals of the TA are to show why the topic will make an interesting Comment and how the candidate plans to analyze and resolve the issue. As candidates write their Comments, the analysis and resolution will undoubtedly undergo changes. However, candidates should develop a direction for analysis (or two) at this stage. This way, the Board can tell whether the Comment topic is likely to make a workable Comment before a candidate gets too far into writing. Of course, there are no guarantees. But having a sketch of a viable solution at the TA stage will greatly enhance the chances that a Comment will ultimately be accepted. Finally, candidates should keep in mind that an approved TA does not ensure acceptance for membership or publication after the Comment is finished.

The format for a TA is as follows:

I. Introduction: One page framing the issue. This section should succinctly state the issue presented and why it is important.

II. Analysis of Current Law: Four to six pages setting out the relevant cases, statutes, secondary materials, and nonlegal sources. Research should be thorough and systematic but should avoid being mechanical. This section should synthesize relevant cases to reveal agreement or disagreement about the law and to identify trends and majority views. In describing cases, candidates should state and explain the cases' novelty or value as authority.

III. Commentary: A two-page discussion of what has been said in academic work—and more importantly, what has *not* been said. In describing existing academic works relating to the topic, candidates should include assessments of their quality, the extent of their coverage of the issues to be dealt with in the proposed Comment, and their continuing validity in light of later developments. If a topic is close to being preempted, it should be noted here. If it is not, this section should explain why different articles, comments, and notes do not preempt the proposed topic.

IV. Evaluation: The central function of the TA is to analyze whether the topic is viable for a Comment. At this point, the candidate has already undertaken the first step in addressing this issue in the Analysis of Current Law and Commentary sections. In this section, the TA should do two things. First, it should advise the Board on why it should approve the TA and explain the foundation for the TA's recommendation. Second, it should outline the arguments the candidate would like to make and suggest lines of further research. Candidates should make sure that the scope of the topic is appropriate for a student Comment (about **10,000–13,500 words**, including footnotes). The TA should also identify potential weaknesses in the candidate's arguments and address them forthrightly.

V. Annotated Bibliography: In the bibliography, candidates should add brief parentheticals describing the sources, especially for sources not discussed in the body of the TA. This is very important, especially because thorough research can go a long way toward resolving doubts in Board members' minds about preemption and unexplored avenues. As in the TP phase, candidates should include a history of their search terms from Westlaw or Lexis.

C. Outline

Once a TA has been approved, candidates should set up a meeting with their Topic Access and Recruitment Editor to discuss goals, priorities, and a tentative timeline for their work. Candidates *must* write an Outline and have it approved by both Topic Access and Recruitment Editors before beginning to write a first draft of the Comment. The Outline should be detailed and thorough. The Topic Access and Recruitment Editors should be able to track all of the arguments, evaluate their support, and understand the direction in which a candidate wishes her Comment to go. Writing an Outline can be a very helpful way to organize thoughts. It also gives the Topic Access and Recruitment Editors a chance to provide detailed feedback. Candidates who are a member of another journal must demonstrate to the Topic Access and Recruitment Editors that they have notified the other journal's Editor-in-Chief regarding their work for the Topic Access Program before beginning their Outline.

It is highly recommended that an Outline contain the following sections:

I. Introduction: A very brief description of the question that the Comment will address and seek to resolve. In a first draft, this will be expanded to include a short road map of the Comment.

II. Background Law: Here, a candidate should detail the law to the extent necessary for a legal reader unfamiliar with the topic to understand the legal issues that the Comment confronts.

III. Presentation of the Problem: This section should explain the legal issue that the Comment will attempt to resolve.

IV. Proposed Solution: This section should propose an approach to solving the problem. This proposal should be as detailed as possible, as it greatly helps the Topic Access and Recruitment Editors identify potential issues and provide guidance. Keep in mind that a solution may neither contradict a holding of the Supreme Court nor require legislative action.

D. Comment Drafting

1. Preliminaries.

The candidate's Topic Access and Recruitment Editor will be aggressive in editing and making suggestions. Candidates should feel free to exercise discretion in adopting these suggestions. Candidates should keep in mind, however, that all published Comments undergo extensive revisions. Also, a candidate should not be disheartened if a Comment is not accepted after the first time it is submitted. Comments are rarely accepted on their first submission. The process of writing a publishable Comment requires a substantial amount of time, but the payoff in the end is worth the effort.

Comments must be submitted in *Maroonbook* format. If a Comment does not properly follow these rules, the Topic Access and Recruitment Editors will return it for revisions before Board members vote on whether to approve it. All submissions must be in twelve-point Garamond font, single-spaced with footnotes in eleven-point Garamond, and must have one-inch margins. The submission must also conform to the Volume 85 submission formatting and procedures applicable to all staffers. The Topic Access and Recruitment Editors will provide a copy of these standards before submission.

2. Tips and suggestions.

- Candidates should set up a Google alert for their topic at: <http://www.google.com/alerts>. They should also set up Westlaw and Lexis alerts on their topics and central cases.
- Candidates should keep a source list as they progress through various drafts of their Comments. This reduces the need to look up bibliographic details when time would be better spent focusing on writing.

- In early drafts, candidates should not use “id” in the footnotes. Text inevitably gets moved around, and using short citations instead of “id” prevents difficulty in tracking down the sources of quotations or propositions. Similarly, candidates should hyperlink all cross-references from the outset to avoid footnote-renumbering problems.
- The first draft of any piece of writing is likely to need significant revisions. Candidates should accept that, write a draft, and be ready to move on. The first drafts of Comments are rarely selected for publication, so candidates should not attempt perfection at this stage. The goal is to get ideas out in an organized fashion in order to get feedback on what to do next.
- Candidates should try to set aside times for extensive work on their Comments and times when they won’t work on it at all. Time away will give candidates new insights and allow them to recharge their batteries.
- Candidates should meet regularly with the Topic Access and Recruitment Editors. The more feedback candidates seek out, the easier the process is.
- Candidates should take note of the deadlines for submission detailed in Part VII of this memorandum. The Board *strongly* encourages submission in advance of those deadlines. Because it is very rare that a Comment is accepted on the first or second submission, the likelihood of acceptance is higher the earlier a Comment is submitted.

VI. COMMENTS GENERATED BY A 499 OR SEMINAR PAPER

Second- and third-year students may submit 499 (that is, Independent Study) papers or seminar papers for consideration. However, past experience has taught the Board that there is often a significant difference between papers for credit (even those receiving high grades) and Comments that meet the *Law Review’s* membership and publication requirements. The *Law Review* has a different readership than a typical 499 paper and, thus, has different requirements for the content of Comments. For example, 499 papers often base their arguments in policy rather than legal doctrine. A student who wishes to successfully use a 499 paper for a Comment should expect to revise the paper substantially.

Candidates who wish to use a 499 paper as the basis for a Comment should keep the following guidelines in mind:

- Candidates must notify the Topic Access and Recruitment Editors as soon as they know that they are contemplating using a 499 or seminar paper as the basis for a Topic Access submission. This should be done before the submission of a Topic Proposal.
- In order to receive any substantive feedback on a Topic Proposal, Topic Analysis, Outline, or Comment draft from the *Law Review* for work that is also being done for

a 499 or seminar paper, candidates **must** first obtain written permission from the faculty member who will be evaluating the paper. The Topic Access and Recruitment Editors cannot give any substantive feedback without first receiving this written preapproval from the faculty member. In addition, all feedback from any *Law Review* member must also be disclosed to the evaluating faculty member. For further information, candidates should reach out to Bianca and Matt, or see the Student Handbook.

- To increase the likelihood that a 499 or seminar paper will be appropriate for the Topic Access Program, candidates should ideally submit a Topic Proposal before beginning the paper. All Topic Access participants must complete a Topic Proposal and a Topic Analysis before they can submit a Comment to be considered for publication, regardless of whether they have already written the paper.

VII. DEADLINES AND SUGGESTED TIMELINE

A. Final Deadlines

Please note that the deadlines listed below are *absolute, final dates*. It is very rare that a TA or a Comment is approved after the first submission; it frequently takes three or more submissions of a Comment before it is accepted for publication. We strongly encourage candidates to submit drafts early. While it is certainly possible to start later, beginning the process early in the 2L year gives applicants the greatest opportunity to develop their work and submit multiple times. Please contact Bianca and Matt if there are any concerns with the deadlines below.

Date	Requirement
Rolling	TP/TA/Outline/Comment
Rising-3L Deadlines	
August 22, 2017	Final TA submission
September 26, 2017	A <i>first</i> Comment draft must be submitted for 3Ls
November 14, 2017	Final Comment submission for 3Ls to be considered for membership
Rising-2L v86 Board Consideration Deadlines	
August 22, 2017	Final TA submission for 2Ls who wish to be considered for Volume 86 Board membership
September 26, 2017	A <i>first</i> Comment draft must be submitted for 2Ls who wish to be considered for Volume 84 Board membership
November 14, 2017	Final Comment submission for 2Ls who wish to be considered for Volume 86 Board membership

B. Optimal Timelines

As noted, starting the Topic Access process early increases the opportunities to develop work and, thus, ultimately increases the chances of having a Comment accepted by the *Law Review*. The Topic Access and Recruitment Editors will create an individualized timeline for candidates once

they begin the process to help ensure that candidates stay on track. However, for reference, below are a few optimal guideline dates for each stage.

Date	Deadline
Optimal Rising-3L Timeline	
April/May 2017	Final TP and initial TA submissions
Early June 2017	Final TA submission
Early August 2017	First Comment draft submission
Optimal Rising-2L Timeline	
Early August 2017	First TP and initial TA submissions
Mid-August 2017	Final TA submission for those interested in being considered for Volume 86 Board membership
Mid-September 2017	Submission of first Comment draft for those interested in being considered for Volume 86 Board membership