Topic Selection

A Publishable Article

- **Casenote or Comment**
- "Hot" Topic
- Strong Thesis
- Four-Part Structure
- Extensive Use of Footnotes (Bluebook)

What is a Casenote?

❑ An analysis of one case (typically new, typically appellate or Supreme Court).

❑ Originally a vehicle for informing law review readers that a significant case had been decided. (SW p. 9)

 ❑ Online and looseleaf services perform these functions more quickly and efficiently than a law review can.

 ❑ Today the function is to provide thoughtful and original evaluation of a decision.

What is a Casenote?

❑ Casenote MUST go beyond paraphrasing to analysis.

  ❑ A casenote is not case-briefing.

  ❑ NEVER sufficient to argue that the majority is correct for the reasons that the majority advances!

  ❑ Critical writing – analyzing what lies between the lines.

  ❑ Looking beyond the Court's "articulated" reasons.

What is a Casenote?

❑ Casenote evaluates both the result and the reasoning of a judicial opinion.

    ❑   The result was correct, but the court proposed no clear standard for guidance in the future; XYZ would be a workable standard;

    ❑   The result was incorrect; further the court's standard is so complex that the outcome of future cases cannot be predicted; ABC would be a better standard;

What is a Casenote?

❏ Casenote evaluates both the result and the reasoning of a judicial opinion.

   ❏ The result was incorrect; the court failed to consider a significant issue which would have been dispositive;

   ❏ The result was incorrect; the court miscontrued or misused precedent.

❏ See Page 10 of SW text for more examples.

What is a Comment?

❑ An analysis of a development or controversy in an aspect of the law.

❑ Four major versions, but scholarly comments can cover a wide spectrum. (SW text pg.6-7 lists several different formats these can take).

What is a Comment?

1. **"*Typical*"** article analyzes case law in an area that is confused, in conflict, or in transition.

   ❑ Author resolves the conflict or problem by reference to policy, offering a solution that best advances goals of equity, efficiency, and so forth.

2. **"*Law reform*"** article argues that a legal rule or institution is not just incoherent, but bad – has evil consequences, inequitable, or unfair.

   ❑ The writer shows how to change the rule to avoid these problems.

What is a Comment?

3. "*Legislative*" article
   - ❏ Author analyzes proposed or recently enacted legislation, often section by section, offering comments, criticisms, and sometimes suggestions for improvement.

4. "*Interdisciplinary*" article
   - ❏ Author shows how insights from another field, such as psychology, economics, or sociology, enable the law to deal better with some recurring problem.

A Publishable Article

❑ Casenote or Comment

❑ **"Hot" Topic**

❑ Strong Thesis

❑ Four-Part Structure

    ❑ *Comprehensive* Legal Analysis

❑ Extensive Use of Footnotes (Bluebook)

Picking a "Hot" Topic

❑ Pick a topic that will express *original*, *useful*, and *timely* ideas about an *important* subject

❑ Pick a topic that interests YOU

 ❑ What kind of law do you want to practice?

❑ Talk to professors

❑ Talk to a judge or an attorney

Hot Topics:
Let the Topic Come to You

❑ Major Newspapers – <u>NYT</u>, WSJ, Wash Post

❑ As part of your normal TV & Internet surfing

❑ NPR - National Public Radio <u>www.npr.org</u>

❑ Findlaw - <u>http://lp.findlaw.com/</u> (legal news tab)

❑ CNN – <u>www.cnn.com</u>

❑ Blawgs - <u>http://www.abajournal.com/blawgs</u>

❑ Recent Law Review articles

❑ Conversations

Hot Topics:
Casenote Resources

- ❑ **Recent Appellate Decisions:**
    - ❑ Westlaw
    - ❑ LexisNexis
- ❑ Circuit split sites:
    - ❑ BNA USLW CIRCUIT SPLIT ROUNDUP section
    - ❑ http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1143&context=circuit_review
- ❑ New Supreme Court cases
    - ❑ Cornell LII, SCOTUSblog, supremecourtus.gov

Hot Topics: Comments

❑ Timely large social and global issues

❑ Your own experiences

❑ Recent cases

❑ Current awareness tools – listservs, newsletters, bar journals, current topical treatises, web sites (Google blog search, LII, Bar Assn discussion boards)

Current Hot Topics

❏ Cell phone searches – courts split?

❏ Affirmative action ongoing hot topic

❏ Gun control ongoing hot topic

❏ LGBTQ Rights

❏ Police brutality

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Developing a Strong Thesis

❑ Thesis – an original and supportable proposition about the subject.

❑ It is not enough to simply identify a problem – you need to try to resolve it.

❑ Narrow your thesis to something manageable.
  ❑ If the focus is sufficiently narrow, you will be able to read a lot of material and become an expert in that one area in a short amount of time.
  ❑ Sometimes, your initial research will suggest ways to narrow focus.

Developing a Strong Thesis

- "[F]ind one new point, one new insight, one new way of looking at a piece of law, and organize your entire article around that. One insight from another discipline, one application of simple logic to a problem where it has never been made before is all you need." (SW page 25).

Develop Your Thesis

❑ **Develop a Thesis – an original and supportable proposition about the subject**

  ❑ Find one new point, one new insight, one new way of looking at the law, and organize your entire article around that.

  ❑ Probe sources to search for an original thesis – critical reading.

  ❑ Read for inconsistency, logical error, and omission.

  ❑ Write down ideas while you read.

❑ **After you identify your thesis, test it.**

  ❑ If your thesis identifies a problem and proposes a solution, bombard it with hypotheticals to see if the solution works in all its likely applications.