

Strategies and  
Techniques for  
Teaching Legal  
Analysis and Writing

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# Strategies and Techniques for Teaching Legal Analysis and Writing

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Techniques for  
Teaching Legal  
Analysis and Writing



# I. Introduction

There is good news and bad news about teaching Legal Writing. The good news is that teaching it well requires constantly updating and changing the class content. The bad news is that teaching it well requires constantly updating and changing the class content.

Perhaps more than any other first-year course, a Legal Writing course must stay current. This means designing a class that will leave students able to perform as early as their first summer of law school. For example, 10 years ago we would not have included instruction on writing e-mails to clients or colleagues. Now most legal correspondence is done by e-mail, so we would be remiss if we did not make the writing of effective e-mails an integral part of the course.

This guide is for Legal Writing directors who manage professors, instructors, or adjuncts, and for Legal Writing professors who are new to the class or interested in ideas for changing an established course plan. The approach covered here is aimed at preparing lawyers to be practice-ready. *Practice-ready* does not mean that after two (or even three) semesters of Legal Writing students will be capable of performing tasks that fully trained lawyers can accomplish. However, they should have the foundational skills to do quality legal analysis and communicate that analysis effectively. They should also know what it means to be professional in a legal job.

The legal writing community is dynamic and supportive. The Legal Writing Institute (LWI) Web site at [www.lwionline.org](http://www.lwionline.org) contains a wealth of information and maintains an active listserv (LRWPROF). The legal writing blog at [lawprofessors.typepad.com](http://lawprofessors.typepad.com) is another great place to stay up-to-date on what other schools are doing or to get or share ideas on teaching Legal Writing.

## II. The Big Picture

### A. PREPARING TO BE A LEGAL WRITING PROFESSOR

Basic preparation for teaching Legal Writing naturally requires knowledge of practicing law and experience in legal writing and oral argument. However, good experience and strong legal writing and editing skills are only half the battle. Many accomplished attorneys

flounder as Legal Writing professors because they lack the essential skills of a good teacher, namely the ability to do the following:

- Define the course goals
- Prepare and organize materials
- Craft class plans
- Develop effective exercises
- Engage students with different learning styles
- Evaluate student work in a way that teaches and encourages advancement

This guide will help you do all of these things and more.

### **III. Identifying Course Objectives and Competencies**

The competencies you expect of your graduating students will obviously determine how you plan and execute your Legal Writing courses. The list of such competencies is fluid and must respond to the way law is being practiced in real life; Legal Writing is not an academic exercise. What follows is a suggested list of objectives; you can make appropriate adjustments for future changes in legal practice. Later in this guide, you will get suggestions for building into your program ways to bridge the gap between what you teach in class and the actual expectations of your students' future employers.

Assuming a standard two-semester (fall–spring) academic calendar, the first-year Legal Writing course typically proceeds as follows:

- First semester devoted to objective legal analysis. Approximately 28 classes.
- Second semester focused on persuasive legal analysis and oral communication.

Setting course competencies does not mean that every student will have mastery of the skills taught, but it does mean that every student should have basic ability in the identified skills. Here is a list of the essentials:

1. Reading and comprehending applicable law
2. Preparing a complete legal analysis

3. Organizing a logical legal analysis using some version of an IRAC model
4. Rough-drafting to communicate succinctly a logical, effective progression of ideas
5. Revising and editing to achieve straightforward writing that conforms to all writing, grammar, and professional standards
6. Citing authorities using correct standards and formatting
7. Adopting the appropriate tone and style for the product's purpose and intended audience
8. Completing writing projects on time

By the end of the second semester, a student should be able to use these basic skills to effectively advocate a legal argument. This includes competency in writing a persuasive argument and orally arguing a persuasive legal argument.

Once you have established a clear list of expected competencies, the design of your course will be much easier: Every assignment and class should be aimed at achieving one or more of your identified objectives.

## **IV. Structuring the Course**

### **A. DESIGNING A SYLLABUS**

Students should understand clearly and from the beginning the goals and expected competencies of the course. It is therefore helpful, and will save much aggravation later at grading time, if you communicate in detail the due dates for all assignments and precisely how students will be evaluated on each one. It is particularly helpful for students if they can find all this information in one place. Providing students with a course supplement or information packet is a useful way to convey the information. Items in the supplement could include the following:

1. Course goals and competencies
2. Contact information for professors and teaching assistants
3. List of all course materials

4. Summary of course structure
5. Professionalism expectations, such as requirements for attendance, deadlines, and classroom rules
6. Formatting rules for written work
7. Plagiarism and collaboration rules
8. Guidelines for students with disabilities
9. Information about the role of teaching assistants

## B. CHARTING ASSIGNMENTS AND CLASSES

A typical first semester of Legal Writing will include 28 classes. If you are teaching a two-credit course, the classes will be one hour (or 50 minutes). Students need as many opportunities to write and receive feedback as can reasonably fit within these confines. Providing high-quality grading and feedback takes time, so there are obviously a limited number of assignments that will fit. You therefore need to create a series of high-impact assignments that allow you sufficient time to review the work and return it to students so they can apply the feedback to the next assignment.

Most first-semester Legal Writing courses will have three or four graded assignments. Reading and grading assignments take at least 10 days. One way to design the first-semester course is to have one distinct writing project for each month. Assuming a typical fall first-semester calendar, September's assignment should be a single-issue legal problem that is short and focuses on basic case reading, analysis, and some writing fundamentals. October's project should introduce a slightly more complex task like a two-issue problem, as well as other components of legal writing, such as drafting facts. The final problem can be still more complex and also require students to do independent legal research.

Designing "mock" legal problems for first-year law students is a project unto itself. Every problem you assign must be thoroughly vetted before students begin working on it. There is almost nothing worse than realizing you have a problem with the law or the cases when the students are midway through an assignment. For example, if you assign a case with a closed universe and then realize late in the game that one of your cases has been reversed, it is hard (although



not impossible) to rectify the situation. If you have a strong student actually do the assignment and check the law before assigning the problem, you should be all set.

Although specifics about how to create a problem will be addressed later in this guide, you might want to consider using a case file method. A case file is similar to what students see on the Multistate Performance Test—the preferred bar examination in over half of the states.<sup>1</sup> Case files are also similar to the type of work interns and new lawyers see in practice.

Here is a suggested course structure built around three case files.

<p>August–September</p> <p>The first case file is a simple straightforward problem. Students will learn basic skills. They will write an outline and one draft of a legal discussion only (no facts section) and get feedback on the organization, the analysis, and citation. The outline will be turned in during the third week of school and the memo will be turned in during the fifth week.</p>	<p>Case File 1</p> <ul style="list-style-type: none"> <li>• Assignment is a two-page objective memo.</li> <li>• Case file contains memo to student from “senior partner” outlining the client’s problem, two or three cases, and a statute.</li> </ul> <p>Skills</p> <ul style="list-style-type: none"> <li>• Understand U.S. court system</li> <li>• Briefing a case</li> <li>• Close case reading</li> <li>• Identifying key client facts</li> <li>• Formulating an issue</li> <li>• Deconstructing case law to form a rule</li> <li>• Reading and understanding a simple statute</li> <li>• Writing an outline</li> <li>• Organizing an analysis including explaining the rule and applying the rule</li> <li>• Writing an issue</li> <li>• Writing the legal discussion of an objective interoffice memo</li> <li>• Introduction to some version of IRAC</li> </ul>
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<p>October</p> <p>The second case file requires students to draft a whole legal memo, including an issue statement and a fact section. Students will also have to find the cases listed in the case file, although they will not have to do independent research. The skills required for the first case file are also required for this case file. Thus, students must build on what they have learned and apply new skills such as case synthesis, writing facts, and writing about more than one legal issue.</p> <p>Students will write a draft on which they will receive feedback. They will also have an individual conference with their professor to talk about the draft.</p> <p>The draft of Case File 2 is due in mid-October. The next two weeks are spent conferencing with students. The final memo is due early in November.</p>	<p>Case File 2</p> <ul style="list-style-type: none"> <li>• Assignment is a five-page interoffice legal memorandum containing at least two separate legal issues.</li> <li>• Case file contains: memo to student from “senior partner” outlining the client’s problem, a list of six possible cases (but not the cases themselves), and a statute (optional). This case file can also include an e-mail assignment requiring students to brief a client on the case.</li> </ul> <p>Skills</p> <ul style="list-style-type: none"> <li>• Close case reading</li> <li>• Identifying key client facts</li> <li>• Formulating an issue</li> <li>• Deconstructing and synthesizing case law to form a rule</li> <li>• Organizing two legal issues including explaining the rule, applying the rule, and identifying how the two issues relate</li> <li>• Identifying and addressing weaknesses or counterarguments</li> <li>• Writing an outline, draft, and final draft of a complete interoffice memo including a fact section and the legal discussion section</li> <li>• Editing, proofing, and grammar checking</li> <li>• Conferencing</li> </ul>
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<p>November–December</p> <p>The third case file presents students with a more complex legal issue and requires them to do the research independently. Of the three case files, students receive the least amount of direction and thus it is more like a final exam. The memo is turned in on the last day of classes.</p>	<p>Case File 3</p> <ul style="list-style-type: none"> <li>• Assignment is a seven-page interoffice legal memorandum containing at least three separate legal issues.</li> <li>• Case file contains memo to student from “senior partner” outlining the client’s problem.</li> </ul> <p>Skills</p> <ul style="list-style-type: none"> <li>• Close case reading</li> <li>• Identifying key client facts</li> <li>• Formulating an issue</li> <li>• Conducting independent research</li> <li>• Deconstructing and synthesizing case law to form a rule</li> <li>• Organizing three legal issues including explaining the rule, applying the rule, and identifying how the three issues relate</li> <li>• Identifying and addressing weaknesses or counterarguments</li> <li>• Writing an outline, draft, and final draft of a complete interoffice memo including a fact section and the legal discussion section</li> <li>• Editing, proofing, and grammar checking</li> </ul>
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Notice how the case file method is recursive. Students must circle back to skills they learned earlier while continuing to apply new concepts and develop new competencies.

## C. CHOOSING A TEXTBOOK

If you are joining a program that has already selected a book, this part is easy. However, if you need to select a book, some suggestions follow.

- Fitting your style—Your choice of text is a matter of personal preference. Unlike casebooks, Legal Writing textbooks largely cover the same material. The author's style of writing and organization should be similar to the style you want to teach. For example, if you plan to teach a strict IRAC (Issue, Rule, Application of law, Conclusion) structure, be sure that the book contains enough relevant examples. Students want samples and they will follow samples closely as they write.
- Accessibility—Students in their first semester of Legal Writing are learning a new language. They will appreciate a book that is straightforward, uses simple language, and has lots of examples.
- Length—Legal Writing texts are resources for students, not casebooks. The shorter the text, the more likely it is that students will use it repeatedly as a resource.
- Samples and examples—Be sure to read through the samples at the end of the textbook. They should be clear and annotated so that that students know why they are effective. Each chapter or topic should have examples, including examples of what not to do.
- Grammar and mechanics—A textbook should include a chapter or more on mechanics. Teaching grammar to graduate students can be tricky. Most students arriving at law school feel confident in their grammar skills, only to realize that they need a refresher (or more!). The chapters on mechanics should be clear and not too elementary. You might want to supplement a textbook with an additional book on writing style, such as *The Redbook* or *Plain English for Lawyers*. The latter contains short exercises and has a teacher's manual with answers.
- Given that practice now requires skill in crafting e-mails, look for a textbook that contains specific instruction on this.
- Lead time—Give yourself enough time to make an informed decision. Order review copies from publishers four to six months ahead of time. Plowing through a number of alternatives and potentially garnering support from other Legal Writing colleagues takes more time than you think. The newer texts now include

e-mail drafting and instruction aimed at trial-level brief writing. When you are reviewing textbooks, it is critical that you carefully read the samples.

## **V. Preparing Problems**

### **A. DESIGNING CASE FILES FOR THE FIRST SEMESTER: OBJECTIVE WRITING**

How you design legal problems for your students is, of course, a matter of personal preference. If you practiced in one area of law, it makes sense to assign at least one problem that deals with issues with which you are familiar. In addition, the LWI Web site has an Idea Bank that contains many different kinds of problems. These typically include all the necessary documents needed to launch the problem.

An effective Legal Writing problem should give students the chance to practice their newfound skills. Problems should get more complex with each new assignment, and, if possible, should integrate first-year doctrinal law. At least one of the assignments should require analysis of settled law (usually a shorter memo) and one should require analysis of unsettled law (usually longer). At least one or more of the problems should require students to work with and interpret a statute.

What follows are suggestions for developing three first-semester problems and one second-semester moot court problem. You might decide to assign more or less, or require greater or shorter length, but you will find some basic guidelines here.

#### **1. Legal Writing Problems Designed Around Real Practice Expectations**

The first year of Legal Writing should prepare students for the demands of their first summer job and set a foundation for their second summer and postgraduate employment. Law schools are increasingly focusing on preparing practice-ready students given current economic realities. Rather than train students and graduates on the job, employers prefer that students have at least some basic practical knowledge; legal writing competency is expected. Problems

should look like the types of assignments employers will give interns or new lawyers. Students and new lawyers rarely write lengthy memos or documents, so the first-semester assignments should be short. A longer, in-depth assignment is appropriate in the second semester.

Most legal writing programs teach objective writing in the first semester and persuasive writing in the second semester. Pedagogically this makes sense. Students need a solid foundation in basic legal analysis before moving into a role of advocacy. If students are asked to take an advocacy role too early—before they know how to analyze cases and statutes—they tend to rely on their own opinions rather than grounding an argument in law and facts.

The first assignment should be based on a simple, straightforward legal issue that students have covered in one of their doctrinal classes. For instance, a criminal issue involving *mens rea*, a torts issue involving duty, or a contracts issue involving offer would all fit the bill. It is helpful to work with the doctrinal professors, obtain their syllabi, and confer about the selection of the legal issue. If you are going to assign a problem that is based on an issue from a doctrinal course—and any integration you can do on this front will be very helpful to students—it is imperative that you and the doctrinal professor are giving students the same information. Read the cases in the doctrinal textbook that pertains to the legal issue you have assigned. This will assure that you understand the context and language the students are learning in the doctrinal course.

You can use the first problem to introduce statutory analysis. A criminal problem works well. For example, if you assign a burglary problem and create an issue that calls into question one of the statutory terms (such as *dwelling*), students will get an introduction to the relationship between common law and statutory construction.

You cannot make the first problem too simple for first-year law students. As earlier noted, they are learning a new language. Even if an incoming student has excelled at writing in a prior career or academic setting, chances are good that he or she will have a difficult transition to Legal Writing. Therefore, the assignment—or “call of the question”—should contain one issue, no more than four cases (although two or three is better), and only require that the student write an issue and a legal discussion. The focus for this assignment was outlined earlier. The basic skills students must implement are close case reading, organizing, explaining a simple legal issue, and

applying client facts to the issue. Writing mechanics are also a focus of the first assignment.

First-year Legal Writing typically covers drafting an objective legal memo in the fall and, in the spring, a persuasive brief or trial-level brief. These are the basic documents that students will need to master, but, ideally, students should get some practice at drafting other kinds of legal documents such as client letters, e-mails, or complaints. Increasingly, more legal correspondence is being done through e-mail and it is likely that your students will have to draft an e-mail to a client or colleague as early as their summer job after their first year. You should try to have them practice this skill at least once in the fall and, ideally, twice—once in the fall and once in the spring.

One way to assign an e-mail in the fall is to have students send a “strategy” e-mail to their client that outlines the issues in a case and possible outcomes based on the law. Although it can be tricky to add another graded assignment given that grading takes time, there are other options available for giving feedback to students on the e-mail. For example, you can have teaching assistants read the e-mails and give limited feedback but no grade. You can also give out a very specific rubric and have students review each other’s e-mail and compare the e-mail to the rubric—again, for feedback, but no grade.

It is possible to give feedback on the e-mails yourself if you limit the assignment length to a page or less. If this assignment comes between the outline and the memo draft for the first or second case file, it will provide you with useful information about whether students have correctly identified the issues. An e-mail to a client would not contain citations to cases and it is usually less formal than a legal memo. Having students provide a client with a succinct summary of the issues, applicable law, and possible outcomes should help them organize and describe the law in the subsequent legal memo.

Asking students to draft a complaint, at least in their first semester, is likely more than you will want to cover. However, it is helpful to include a complaint (or a criminal charging document) as part of a case file so that students can understand how a lawsuit or criminal case gets started and the critical nature of clarity and explicitness in the document. If you include the document in a case file, you can take time having students review it. The contents of a complaint or indictment could also be one of the sources students use to determine and write about the facts. Finally, a charging document or a civil complaint will typically have a reference to a statute and this presents

a helpful means of showing students how the statute is connected to the case.

The second and third problems can also require some statutory analysis. Building on the skills students learned in their first problem, consider adding a slightly more complex statutory question. Examples include an assignment that calls into question the actual language of a statute and requires students to address the issue of plain language and legislative intent.

## 2. Legal Writing Problems as Preparation for the Multistate Performance Test

A majority of the states now administer the Multistate Performance Test (MPT) as part of the bar exam. The test requires students to analyze and draft a memorandum on a specific legal problem. The test materials include a “file” consisting of source documents containing all the facts of the case and a “library” consisting of cases, statutes, or other legal sources necessary to complete the project. The library might include a source that is not relevant to the issue—providing a measurement of whether the test-taker can discern between helpful and nonhelpful sources.

The case file method described earlier is modeled after the MPT. Exposing students early to this type of material and method will give them a jumpstart on bar preparation. The MPT tests use of fundamental lawyering skills in a realistic situation and evaluates an applicant’s ability to complete a task that a beginning lawyer should be able to accomplish.

Summaries of old tests are available on the National Conference of Bar Examiners Web site at [www.ncbex.org](http://www.ncbex.org).

## 3. Vetting the Problems

You need to vet your problems! During the summer before the semester starts, enlist one or two research assistants to review the problems you have selected. Give them the assignment and ask them to draft the memo as if they were first-year students. Tell them to keep track of their time so you can gauge how long it will take a first-year student. If there are any inconsistencies or stumbling points in the problem, the research assistant will inevitably find them.



Once the research assistant has drafted the memo, you can edit it and use it as a “teacher memo”—a guide for what you will be looking for in the student memos. This is especially helpful if you work with a group of adjuncts or other Legal Writing professors because it assures some consistency in how you assess students’ papers.

If you are recycling an old problem or one from the idea bank, ask the research assistant to update the law and make sure there is nothing new that should be added.

#### 4. Contents of a Case File

Typically a case file should contain an assigning memo and clear, succinct instructions. The first case file should also contain the actual cases or cites to cases that the students must read to complete the project. As the complexity of the assignment is increased with each new case file, more documents can be included such as complaints, exhibits, depositions, or interrogatories. The last case file of the fall semester should require students to do research on their own.

To give the case files more verisimilitude, ask an upper level student to pose as the client and conduct a client interview. You can do this “live” in class or record it on a DVD. You might also want to ask an upper level student to pose as the interviewing attorney to demonstrate to students that they, too, will need to have the skills to interview a client.

#### 5. Developing Your Own Bank of Problems

Legal Writing programs vary on whether they give the same problems every year. The downside of assigning the same problem is that students might find and copy old memos they find floating around. The upside is that your instruction will grow stronger with repetition. Online teaching resources such as Blackboard now have programs that allow you to check for plagiarism. Letting students know that you will be checking is probably a sufficient deterrent. You can also build up a store of rotating problems—similar to the LWI Idea Bank. If you develop a sufficient number of problems (or case files), they can be easily recycled.

## B. DESIGNING A PROBLEM FOR THE SECOND SEMESTER: PERSUASIVE WRITING

Gaining competence at collecting and framing facts is a key skill for students to learn in the second semester. They will have begun to learn this in the fall, but the fact patterns are necessarily simple and relatively short. Because the first-semester focus is on objective writing, students will not have had the opportunity to organize facts and present them persuasively. In the second semester, problems should therefore provide complex fact patterns that challenge students to find and argue the legal logic.

You will find it useful to have a research assistant work on the problem in the summer before the school year starts. Then you will have time during the winter break to work out any kinks and finalize the record for students. Ideally, the teaching assistant should draft a “teacher brief” that you can edit and develop. That way, you will have a good grasp of what the students’ final project should include before the semester starts. You can use the brief to design the layout of the course; that is, work backward from the brief to make sure you cover everything.

The LWI Idea Bank is also a good source for second-semester moot court problems.

### Drafting a Sample

First-year law students are hungry for examples that show the format and content their professors are looking for. The textbook you use will have samples of objective interoffice memos and briefs. Carefully review the samples in the book and be sure they match the content of what you are teaching. Where there are differences, you can point them out to students.

Drafting your own sample or samples is helpful both for you and for your students. Annotating the sample is even better. That way you have at least one document that reflects exactly what you expect the students to do. You will likely have particular styles for how an issue (or question presented) should be worded, or how you prefer to construct a topic (or thesis) sentence. Drafting your sample, although time-consuming (it must be perfect!), works well with students. A good sample can be used, with minor changes, for a number of years. If there are several professors or adjuncts, you might want to have

everyone use the same sample for consistency. Getting together to go over the sample has the added benefit of assuring you are all consistent with what you are teaching.

## **VI. In the Classroom**

By the time you are in the classroom, you have already planned how the semester will be organized. The students will know from your materials what to expect, when assignments are due, what the course goals are, and what they will be learning. It is essential for students to read all the course description materials and syllabus either before the first class, or at least by the second meeting. Legal Writing will not look like any of their other classes—the classroom experience, frequency of assignments, textbook format, and so on will all be novel. They need to understand the different expectations you have for them. It is important to explain this so they know that different things will be asked of them in your class than in their other classes. For example, the textbook you assign will not be like any of their casebooks. Explain how you expect them to use your materials as resources.

Although a lecture format is certainly one way to teach Legal Writing, some of the best minds in the Legal Writing field have found it less effective. Instead, you might want to vary your methods between active learning exercises, minilectures, group work, and in-class demonstrations. Legal Writing is essentially a form of clinical course work, without “real” clients. Vary your classes so that the work you do in class has as much connection to practice as possible. One suggested structure is to divide each class into thirds made up of lecture, small-group work, and discussion sections.

Legal Writing classes are typically smaller than doctrinal classes. You will likely get to know your students very well. The smaller class lends itself to a more informal atmosphere. Because you want to be an example for your students of the professionalism you teach, it is important to not be too informal. Finding just the right balance can be tricky. One way to approach it is to let your students know how you plan to run the class. If you want some level of informality to promote collaboration, tell them. But you might also want to let them know that informality should not be mistaken for lowering the standards of professionalism you expect.

Learn students' names as soon as possible—preferably by the second class. Spend at least some time during the first class on ice-breaker exercises. This should help put students at ease and allow them to start to get to know each other. Encourage them (or do an exercise) to learn all of their fellow students' names. In this way, students will understand right off the bat that this class requires their full engagement. One way to do this is to study the face pictures and come into the first class already knowing their names. You will gain their goodwill just by knowing who they are and they will be able to relax a little, which will likely foster better learning.

## A. SETTING AN AGENDA FOR EVERY CLASS

Students need to know where they are going and what they are expected to get out of class. Either on a worksheet or on the board, set out the agenda for the class—much as you would if you were chairing a meeting. Begin class with a very brief summary of the last class, and let them know what they can expect as the “take-aways” at the end of the class. Setting your own goals will give you a helpful rudder. If you know that by the end of the class you want students to have learned a certain skill, you will stay oriented to teaching that skill.

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### **Sample First-Semester Class Plan**

#### CLASS 4

##### **Goals: Legal analysis/rule explanation, Outlining**

- Identify rules and subrules in decided cases
- Define and write a synthesized rule and rule explanation
- Incorporate a synthesized rule and rule explanation into outline

##### **Assignment**

Read *Textbook*, Chs. 5 and 11.

Do *Textbook* problems 5A–D and 11A.

Add synthesized rule and rule explanation to structural outline—due in next class.

**Study Questions (Students have been assigned to consider these questions as they read the assignment)**

1. What are the elements of a legal rule?
2. What is a subrule?
3. What is a factor test?
4. What is a synthesized rule?
5. Which cases do you use to create the synthesized rule in Case File 1?
6. What is the synthesized rule in Case File 1?
7. What is the rule explanation in Case File 1?

**Review where we are (5 minutes)**

1. Reviewed file
2. Studied cases
3. Identified issue
4. Began to brainstorm and outline analysis

**How do you synthesize a rule? (15 minutes)**

1. See attached exercise.
2. Review *Textbook* exercises.

**How do you describe a case? (20 minutes)**

1. Show how description is done in a sample memo (project on screen and walk through this or hand it out). For example, in *Lesnick*, where the defendant claimed that she stabbed her husband in self-defense, believing him to be an unknown intruder, the court admitted evidence of a prior similar act because it was relevant to show absence of accident. *Id.*
2. Using one of the cases assigned, write a brief (1–2 sentences) description of the case. Each team or firm can do one case.
3. Put on board or screen the composite of the descriptions.

**Outline Exercise (15 minutes)**

1. Have students work through the outlining exercise, “Adding Detail and Structure to the Outline.”

**Where do we go from here? (5 minutes)**

1. Putting students in teams or firms
- 

One effective strategy for the Legal Writing classroom is to have students work in teams or “firms.” Team-based learning is now a well-studied and widely used method in undergraduate and many graduate programs, including those in law schools.<sup>2</sup> Collaboration is a critical skill for law students. Requiring students to function as part of a team reinforces this skill and provides opportunities to learn effective collaboration.

Literature on team-based learning will be a helpful resource if you decide to utilize this system fully. The literature has suggestions about how to set up teams, methods of evaluating team and individual contributions, and assessment exercises.

You can also implement your own version of team learning. If you decide to use teams in the classroom, you can either set them up the first day and have them stay in those teams throughout the semester, or you can change the teams during the semester. If you are having students work in teams, set up the classroom in groups of four or five. Arrange desks or chairs so that students are facing each other. You can also do this on an ad hoc basis if you choose to have students work in teams on some days, but listen to lectures or view demonstrations on other days.

Having students sit and work in teams enhances their classroom experience in the following ways:

- Helping students understand how they can learn to work as effective collaborators
- Holding students accountable to each other to be prepared and on task
- Deepening their analysis by seeing other students’ understandings of cases, statutes, and facts
- Improving their own writing as a result of peer feedback and collective drafting
- Fostering connections and support that creates a positive learning environment

Although students might be reluctant to let others see their work, learning to receive critique and respond to it productively is an essential skill they must learn. Be explicit about why you are requiring this kind of collaboration.

## B. USING IN-CLASS WORKSHEETS

You will want to devote class time to exercises designed to apply a concept you have introduced. Ideally the reading assignment for the class has prepared them to practice a particular skill in class. For example, in the first few classes students will read about deconstructing a case to find a rule. In class, you can have students work together in their team to read through one, two, or three cases and collectively identify and craft the rule. Once teams have completed the exercise, they can write their answers on the board or put them on a screen via an overhead projector or by e-mail to you. With each team's work on view for the whole class, you can comment, give feedback, and guide students to the correct answer.

The in-class worksheet gives the directions for what students will do in class. Preparing worksheets to distribute before or during class provides written directions for students who do better with visual directions and you can include any extra material you want them to consult.

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### **Example of In-Class Worksheet**

#### Legal Writing I: In-Class Worksheet, Class 3

##### Exercise 1: Starting to form the Overall rule

In teams:

- a. Read statute and highlight key terms in statute that need further definition
- b. List elements in statute
- c. Identify which element to focus on

**STATUTE**

265:82 Driving Under Influence of Drugs or Liquor; Driving with Excess Alcohol Concentration.

I. No person shall drive or attempt to drive a vehicle upon any way:

(a) While such person is under the influence of intoxicating liquor or any controlled drug or any combination of intoxicating liquor and controlled drugs; or

(b) While such person has an alcohol concentration of 0.08 or more or in the case of a person under the age of 21, 0.02 or more.

**Exercise 2: Writing the rule**

In teams, reviewing the cases, including *Willard*, and the statute, what rule can you come up with about actual physical control? Ask yourselves, “How can I synthesize the rules derived from each case and the statute?” Here are some suggestions for phrasing the rule to help you get started. You might find the chart attached helpful for this exercise, but you do not have to use it.

Where/When a driver . . . he will be found in “actual physical control” of a vehicle.

Even if asleep, a driver can still be found in “actual physical control” of a vehicle where . . .

**Exercise 3: Begin to construct outline**

Using the Generic Template (attached) for an outline, begin to fill out each part. Note that we only have one element in the *Potter* case.

## C. TEACHING STUDENTS TO ACTIVELY READ A CASE AND A STATUTE

Students must understand that reading and writing in law are different than in other disciplines. As undergraduates, they might have read to understand the information. In law, if they just understand the material, they have not served the client. Instead, you want to show students how to study cases by rereading them several times. New law students are accustomed to doing research online and not in books. They are used to reading small pieces of information on a



screen. Training them to read entire cases and study them carefully has therefore become a critical new skill for students to learn.

Encourage students to read cases effectively by giving them study questions to consult as they read. The questions should dovetail with the language and instruction coming from the textbook. For example, if the textbook uses a term such as *legally significant facts* to distinguish key facts from nonkey facts, the study question should track the same language. It is important that students have the questions as they are reading so they can use the questions as a guide. As part of the first case file, students could be given a list of questions such as these:

- What court is the case in?
- What is the procedural history of the case?
- What are the overall facts?
- What are the key legally significant facts?
- How do you know which facts are legally significant?
- How does the statute fit in to the case?
- What is the holding? The rule?

## 1. Teaching Students a Version of IRAC

The IRAC formula is the foundation for organizing legal documents. Most Legal Writing programs teach students to use some version of this structure (CREAC, TRAC, etc.). As a scaffolding tool for students, the IRAC paradigm works well, but do not be wedded to this as the only way to teach students how to organize their analysis. Although it is useful to show students how to use an IRAC method for the first assignments, you might want to consider allowing for a more varied approach to the last memo of the fall and the persuasive memo or brief in the spring.

Introducing students to a different approach does not mean that organization goes out the window—far from it. Instead you can encourage students to think less rigidly and develop a structure that is driven by the specific problem rather than fitting the problem into a rigid structure.

A typical IRAC structure looks like this:

- Issue
- Rule

- Overall synthesized rule (including statutory reference, if any)
- Explanation of the rule using case descriptions
- Application of the rule and case descriptions to the key facts of the client's case
- Conclusion

A modified or integrated approach might look like this:

- Issue
- Rule
  - Overall synthesized rule (including statutory reference, if any)
  - Application of overall rule to client's facts
  - Description of cases using comparisons to client facts to prove conclusion
- Conclusion

Keep in mind that one advantage to teaching a strict organizational approach is that it is easier to assess students' work. If students are all using the same structure, you can readily identify which students have undeveloped analysis and which ones do not. This is why it is a good idea to start by teaching the basic and rigid structure. As you get further into the semester and into the spring, you can introduce the notion of flexible organization structure that is dictated by the nature of the issues, rather than by adherence to the IRAC formula. You will do a service to your students by teaching them to be flexible. Their future employers will have different preferences about organization and you want your students to be nimble.

## **VII. Teaching Citation**

Your students must be proficient in legal citation after their first year. You will need to decide whether you want to teach from *The Bluebook* citation manual or from the *ALWD Citation Manual*. This is a matter of choice to some extent, but you might want to gather data about what your students will be asked to use in practice.

Most Legal Writing teachers use their teaching assistants (if they have them) to do the bulk of citation training. This can be accomplished through group sessions with teaching assistants or through individual teaching assistant feedback and assessment. The reality is that you cannot entirely delegate citation instruction. Students need to get from you a clear message of its importance. Allot a class or two, or a part of several classes, at the start of the semester for a discussion and practice with citation. Come back to it again before students complete their final project. In between these classes, your teaching assistants will be covering citation in their sessions.

The first step in teaching citation is to get students familiar with *The Bluebook* (or the *ALWD Citation Manual*). Create study questions and exercises that make students accountable for what they have read in the book. Initial study questions aimed at getting students into the pages of *The Bluebook* might include the following:

- Why does the legal profession use *The Bluebook*?
- When do you use a citation in a legal memo?
- Where do you find how to do a long-form citation?
- Which pages in *The Bluebook* tell you how to abbreviate the words in case names, case name rules generally, reporter, and jurisdiction?
- When do you use “Id.”?
- Where do you look in *The Bluebook* to find the hierarchy of courts in your jurisdiction?
- Can you use “Id.” when the prior cite contains two or more cases?
- Where do you find the page and formatting requirements for this memo?

As students become more familiar with *The Bluebook*, add complexity to the questions. Although Legal Writing does not lend itself easily to assessing students’ capability through testing, citation is one area where you can use short quizzes. Multiple-choice questions or passages with citation errors that students must correct work well. One word of caution is in order here: Be certain that you and your teaching assistants agree on the answers. It is well worth taking the time to go through every answer to assure that students are not getting any conflicting information. There are also online resources for learning and testing citation skills.

## A. TECHNOLOGY: POWERPOINTS, SAMPLES, AND GAMES

Technology can be your friend or your foe in legal writing. The ability to show samples and work through them on a big screen can be enormously useful—or create the perfect atmosphere for your students to take a nap. The same goes for Microsoft PowerPoint presentations. Use “big-screen” technology as part of other active exercises or make the presentations brief. There are many resources available that instruct on giving effective slide presentations. Consult at least some of these before using PowerPoint displays in class.

Your students will likely have their laptops in class. This allows for teams to work together and send their work product via e-mail so they can show the rest of the class. Google Docs and other similar programs allow several users to work on the same document together. Use technology to collaboratively create and edit legal writing. Make sure that your school’s Wi-Fi system allows for this before the class. There are few things worse than preparing a class around shared use of technology only to have it fail in the execution!

Do not be afraid of the blackboard (or whiteboard). Despite our wired nature, the blackboard remains an effective tool for teaching. You can use it, and you can also have students come up to write down rules, case descriptions, or excerpts they have completed in their groups or on their own.

## VIII. Assessment and Evaluation

In Legal Writing, your students will get your feedback early. Unlike their other classes, they will know where they stand and where they need to focus their energy for improvement well before they have a similar awareness in their doctrinal courses. This can sometimes make for an adversarial relationship between you and your students. Most first-year law students are nervous, and even if they entered school with confidence, it is common for them to experience some instability in their confidence once they get their feet wet in Legal Writing. It has likely been many years since they received direct feedback on the technical quality of their writing, and they can bristle at the notion that their work product isn’t up to par.

Your evaluation of students’ work should come in a variety of forms—written, oral, in-class, and in general feedback memos

directed at the whole class that address common issues. The goal is to reach as many learning styles as you can in the hope of maximizing the feedback you give. The smaller the class, the more effective you can be. Ideally, a writing class should be capped at 15 students, but the reality is that you will likely have a section of 20 to 30, or two sections of 20 to 30.<sup>3</sup>

It is important to design your syllabus and due dates so that you have adequate time to give feedback. When you lay out the due dates, give yourself (and your colleagues) at least one full weekend to do written feedback, and preferably two. Developing a rubric you give to students and a checklist for yourself will give you a helpful structure and facilitate consistency.

Most Legal Writing students will say that the one-on-one conferences with their professors were the most helpful form of feedback they received. You should hold at least one 30-minute conference with each student per semester. If you can fit in another, shorter conference, that would be ideal. What follows are suggestions for optimizing your feedback.

## A. COMPETENCIES

Before you begin teaching, develop a list of the core competencies you seek to teach students. The competencies should be different for the fall and for the spring. The list of skills in which you expect competent work will become a guide for writing rubrics, giving feedback, and developing assessment tools.

A list of first-semester competencies might include that a student be capable of doing the following to pass the course:

- Read and comprehend legal authorities, including accurately identifying:
  - Holdings, rules, reasoning, and key facts from cases
  - Synthesized rule from a number of sources
  - Statutory elements or factors
  - Identity of different sources of law
  - Interpretation of the hierarchy of authority
  - Accurate application of weight of authority
  - Settled versus unsettled legal issues
- Analyze a client's legal problem, including:
  - Identifying key client facts

- Predicting a reasonable outcome based on legal authority and client’s facts
- Selecting, explaining, and applying appropriate legal authority
- Write a predictive analysis supported by law and fact, including:
  - Designing a tight organization based on the nature of the legal issue
  - Selecting appropriate reasoning methods (deductive, inductive) based on rule, nature of law, and client facts
- Use proper, effective writing style and conventions, including:
  - Organizing sentences for efficient reading
  - Revising written work to eliminate excess words
  - Using accurate grammar and punctuation
- Citation:
  - Using accurate long and short form case citation
  - Using accurate long and short form statutory citation
- Deadlines and format, including:
  - Following formatting instructions
  - Completing assignments on time
- Professionalism, including:
  - Engaging at a high level
  - Collaborating effectively

## B. ANONYMOUS VERSUS NONANONYMOUS GRADING

Whether to grade students anonymously is mostly a matter of personal choice. Both methods have advantages and disadvantages. Nonanonymous grading is more in keeping with a coaching model where you work individually with a student and target your feedback on his or her strengths and weaknesses. When you know whose paper you are reading, you note how that student’s work on one particular aspect of a paper has paid off. It can be helpful and encouraging to a student to know this, even if he or she has not mastered the skill. Students will know that what they are doing is advancing their writing in the right direction.

Because writing is personal, it is hard for the writer to receive criticism. Author Annie Lamott has a great description about the perils of criticism in her book about writing, *Bird by Bird*:

My first response if they have a lot of suggestions is never profound relief that I have someone in my life who will be honest

with me and help me do the very best work of which I am capable. No, my first thought is, “Well, I’m sorry, but I can’t be friends with you anymore, because you have too many problems. And you have a bad personality. And a bad character.”<sup>4</sup>

If you grade your students’ work anonymously, the feedback becomes depersonalized, which can soften any perceived sting. In addition, if a student does poorly, he or she is more likely to take responsibility for the problems and less likely to claim that the professor is biased against the student (a common response to professor feedback). Students will typically be graded anonymously in their other first-year courses and you might not want them to perceive writing as any different or less important.

A hybrid approach might be an effective solution. Do not anonymously grade the early assignments, or the draft on which you and the student conference. It is on these assignments that you will serve in more of an individual coaching role. On the last assignment, which should count for a substantial part of the grade (at least 50 percent), have students use an exam number. The last assignment then takes on the form of a final exam—a comprehensive assignment leading to an objective assessment measuring the student’s work against the course competencies.

### C. WRITTEN FEEDBACK

There are lots of helpful articles on giving effective feedback and it is a good idea to familiarize yourself with the research on how to optimize feedback. The bottom line is that you do not want to overwhelm students with too much, or disappoint them with too little. It takes time to gauge this balance. New Legal Writing teachers are prone to giving too much feedback. With experience, the new teacher will come to realize that there is only so much a student can absorb and that too much feedback could actually have a negative effect on students’ writing and confidence. Ask more experienced Legal Writing teachers (either at your school or at other schools) if they would share with you some of their graded papers. You will notice that the feedback is targeted and tied to the specific goal of the assignment.

The first memo a law student hands in will be short (hopefully)—no more than three pages. The feedback on this assignment should

focus on no more than three learning objectives and you should let students know that you will be giving them feedback on the three objectives and not on everything in the memo. For example, you can focus feedback on organization, case descriptions, and application of facts. You can limit feedback on mechanics and style, as long as students know you are doing so ahead of time. It can be hard for a writing teacher to refrain from editing and ignore grammatical problems, but it is important to keep in mind what you want students to learn from this assignment.

Here is an example of narrative feedback on an early memo. This kind of feedback is in addition to margin notes and a rubric.

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Dear Student,

This memo demonstrates that you can now apply many of the skills we have covered thus far. As you know, my feedback on this assignment covers three skills:

1. Paragraph structure: Be sure that every paragraph starts with a sentence that specifically summarizes for the reader the theme of the paragraph. Try to avoid starting out with a case name. Use concepts to guide the thesis instead.
2. Synthesize cases first, before analyzing them individually—avoid the “book reports” with cases: As you work on the Rule Explanation/Case Descriptions, first look at your authorities to determine what the cases have in common. Then list those common parts first. This allows the reader to understand the context for the details and analysis that come later. It is easier for the reader to understand the overall law on an issue if it is provided in this form rather than reading all about one case and then later reading all about another.
3. Develop the reasoning of the court so the reader understands why certain facts are important. Make the analogies distinct and specific: When giving the reader the holding and key facts of the case, make the link between the facts and the reasoning explicit. Legal writing requires the use of specific detail and precise identification of what is important for the reader to understand about any given



legal issue. I have put some stars where more explicit explanation is needed about why the analogy is helpful. Strive for making sure that every time a fact is written it is specific and each reference to reasoning precisely identifies why the reference matters to your prediction.

4. Clear writing: As you develop and gain more comfort with legal analysis, you will want to sharpen your organization and your writing. The busy legal reader, more than other kinds of readers, needs the writing to flow easily and give only the critical information. You do not want the substance of your analysis to be obscured by wordiness, poor grammar, or confusing organization. Here, your writing is clear and your mechanics are solid. The organization is hard to follow, however. As we get further into the writing process, I will have you focus more on the technical writing along with the substance. But, for this first attempt, I have not given extensive feedback on writing. I want you to first really focus on putting together the legal analysis.

Remember, the legal reader needs your writing to walk him or her through it. Do more than stating that your client's situation is like or unlike the defendants in other cases. *Show* the reader what the specific factual similarities are and why the comparison supports your prediction. Take a look at the worksheet from class about analogies. I think it will be helpful to you. Let me know if you have any questions.

Professor *Name*

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With each assignment, your comments can address more objectives. Limiting the focus of your feedback on the first assignments will give students a chance to become competent at individual skills. Later assignments can bring focus to grammar, mechanics, counterarguments, or more nuanced analysis.

Comments can include margin notes, endnotes, or a memo. Whether you comment by hand or electronically is a matter of personal preference. Margin notes done electronically have the benefit of being legible, and you can preserve your comments on your own computer files.

You might notice that the feedback example just given does not address mechanical writing. As a Legal Writing professor, you need to teach both clear writing *and* competent analysis. However, at the very outset, it is a good idea to focus more on the substance and less on the writing mechanics. With each assignment, you will want to expect more in the way of effective mechanics and you will evaluate accordingly. By the last assignment, students should know that even if their substance is accurate, if the writing is so poor that the analysis is obscured, they will lose points both on writing and on substance.

One way to manage feedback is to create a portfolio for every student at the beginning of the semester. Essentially this is a manila file folder with the student's name on it. Every time a student turns in an assignment, he or she uses the folder to submit it. Once you have completed your feedback, you return the folder with your written feedback, your teaching assistant's feedback on citation, and any other material you want the student to review. By having all of the student's assignments and feedback in one place, you will be able to note where he or she is struggling and where he or she is gaining mastery.

The portfolio system will need to be modified or omitted if you grade every assignment anonymously.

#### D. INDIVIDUAL STUDENT CONFERENCES

At least once a semester, and ideally twice, you will hold a conference with each of your students. Thirty- to 45-minute meetings are ideal if you can schedule them. The more students you have, the harder it is, but a lot of learning goes on in the conferences so it is well worth the time. Make sure that students prepare for these. Ask them to review any feedback they have gotten and note specific questions they want to ask you. You should also develop an agenda of items you want to cover.

Typically, the individual conferences are timed so that students have already received feedback on at least two different assignments. This ensures that both you and the students know the areas where they most need specific guidance. This also means that they will be working on a draft of their third assignment. The conference can be used, in part, to give them feedback on this draft.

It is not unusual for students to work on specific things you covered in the conference and then show their work to you again to be sure they are on the right track. This can be accomplished by holding brief (five-minute) optional follow-up conferences or via e-mail. Your students want to be sure that they understand what you are looking for, especially before they turn in a final assignment that is worth a large part of their grade.

There are other methods of holding conferences. If your schedule and course load permits, it is worth exploring ways to increase individual face-to-face feedback. In addition to individual conferences, you can meet with students in groups of two or three or hold tutorials. Students will benefit from hearing their peers' questions and your answers.

### E. "LIVE" FEEDBACK

Live feedback occurs in class. Ask for volunteers who are willing to send you their work before class. For example, ask volunteers to send you their rule or case descriptions on a specific issue or subissue. Or, you can create your own sample that demonstrates the particular problem you want to show. Put a few of them together in one document (removing the students' names), and project the excerpts on a screen. Go through the samples, inserting comments and discussing what you are seeing as you go along—exactly as you would if you were grading the work. Students will be able to see and hear your feedback and apply it their own work. This works well if you can isolate short excerpts that are contained (issue statements, introductory paragraphs, etc.). After you have given the live feedback, give students some time to rework their own similar section. This exercise can be varied. For example, you could pass out copies of the excerpts and ask students to do their own assessment, using a rubric, before you give feedback. This gives them the opportunity to see the problems and suggest rewrites on their own first.

### F. USING RUBRICS AND CHECKLISTS FOR GRADING

A common complaint about Legal Writing is that the grading process is subjective. It *is* subjective. There is no way around it. Presumably you have been hired because you have some expertise

in legal writing. You will assess your students' work based on your expertise. This is no different than what students will encounter in practice—they will have to learn to write for different people who have their own preferences. Subjectivity is inherent in the field of legal writing and it does not equate with unfairness, although some students might perceive it this way.

Concern about consistency in grading might be legitimate. Students need to know that they are being evaluated using common criteria. You will also want to feel that you are applying the same standards to the first memo that you read as you are to the twentieth one or the last one. If you use a rubric, particularly if you give the rubric to students ahead of time, you will create a common standard against which each memo will be assessed.

One way to use rubrics is to tie the criteria to your course competencies and create a generic format that you will use throughout the course. If the first assignment does not include writing facts, omit this section for the first case file. You can designate points as appropriate or change the criteria to match your class content and objectives. The bottom line is that using a rubric will let students know what you expect and help you be consistent in your assessment. Students will know the grading criteria from the start.

Check the LWI Web site for samples of rubrics or ask colleagues at your school or other schools. Here is one sample of a grading rubric that can be adjusted according to point allotment and grading criteria.

<b>Legal Writing Rubric—Objective Memorandum</b>		
Memo Component	Available Points	Earned Points/ Comments
<b>Issue</b>		
<ul style="list-style-type: none"> <li>• Concise, clear issue</li> <li>• Identifies client</li> </ul>		
<b>Facts</b>		
<ul style="list-style-type: none"> <li>• Includes all material facts, excludes extraneous facts or legal conclusions. Well organized and persuasively written.</li> </ul>		

Discussion		
<p>Global paragraph</p> <ul style="list-style-type: none"> <li>• Starts with thesis</li> <li>• Includes overall rule including statute if any</li> <li>• Briefly applies facts</li> <li>• Includes some policy</li> <li>• Other</li> </ul> <p>Explanation of law</p> <ul style="list-style-type: none"> <li>• Synthesizes rule</li> <li>• Explains or describes law, including policy</li> <li>• Includes effective and sophisticated range of cases and accurately applies weight of authority</li> <li>• Uses case examples including key facts, holding reasoning</li> <li>• Includes complete discussion of relevant subpoints if any</li> <li>• Other</li> </ul> <p>Application of law</p> <ul style="list-style-type: none"> <li>• Applies law (analysis of law)</li> <li>• Includes case comparisons</li> <li>• Uses case comparisons including specific and explicit analogies and distinctions</li> <li>• Applies reasoning and policy</li> <li>• Uses clear language and structure</li> <li>• Other</li> </ul>		

Writing and Formatting		
Organization <ul style="list-style-type: none"> <li>• Organizes issues and paragraphs effectively (internally)</li> <li>• Orders overall paragraphs logically</li> <li>• Organizes in a persuasive manner</li> <li>• Other</li> </ul>		
Format <ul style="list-style-type: none"> <li>• Follows required format</li> </ul>		
Writing <ul style="list-style-type: none"> <li>• Sentences well structured, including well-crafted thesis, topic sentence, and concluding sentences</li> <li>• Follows grammar conventions</li> <li>• Avoids excessive words</li> <li>• Uses active voice</li> <li>• Writing is concise and easy to read</li> <li>• Other</li> </ul>		
<b>Citation:</b> See separate rubric		

In addition to the rubric, create a substantive checklist for yourself that is specific to each assignment. This is another way for you to ensure consistency in the content you expect from students. The checklist can be extrapolated from the teacher memo for each assignment. If you have a lot of papers to grade, the checklist is especially helpful.

The following is a sample checklist for a first memo. The assignment was to write a discussion section of an objective memo on whether the client can be convicted of driving while intoxicated after he was found asleep behind the wheel of his running car and his blood alcohol content was 0.10.

## Checklist Memo 1

### Discussion

#### Global Paragraph

- Starts with conclusion about whether Potter is driving
- Identifies rule and statute—definition of “drive”
  - Identifies public policy (optional)
  - Explains importance of facts that establish intent (optional?)
- Cites to at least one case
- Cites statute

#### Explanation Paragraphs

- Starts with topic/conclusion/thesis
- Gives definition of APC (capacity to bodily guide . . .)
- Identifies circumstantial evidence as method of proof of driving
- Describes legally relevant points to support definition of APC and CE (keys in ignition, etc.)
- Gives facts, holding, and reasoning of *Winstead*
- Gives facts, holding, and reasoning of *Holloran*
  - Explains stationary shelter (optional)
  - Application paragraphs
- Starts with a topic/conclusion/thesis about whether Potter was “driving” under the statute and cases
- Identifies counterargument re: stationary shelter (optional)

## G. PROFESSIONALISM

The extent to which you grade students on professional engagement is up to you. Much has been written about the need to teach and model professionalism as part of a law school's curriculum. Grading professionalism can be tricky. One way to do it is to designate a certain number of points to professionalism—perhaps 20 or 25 percent. Let students know that the points are theirs to lose and spell out for them what the expectations are. Tie each expectation to practice so that students understand why they are being graded on them. For example, your syllabus can include a section on professionalism standards. Here is a sample of professionalism standards:

This semester you will begin to develop your professional reputation as you interact here with students and professors who later might become your colleagues in the bar. Accordingly, you will serve yourself well by behaving now as though you already are adhering to the best professional standards. These include the following expectations for this class, which are directly related to standards you will need to meet as an attorney.

**Engagement.** Producing an effective work product requires an attorney to be fully engaged in each step of the creative process. You will learn best and most quickly by “doing.” Consequently, classes require your active participation. You will need your classmates' active participation to help you develop your ideas and work product, and they, in turn, will need yours. As a result, you must be fully prepared and engaged in class. You are responsible for participating to an appropriate extent: neither being silent nor dominating the discussion, but doing your share. If you are online for reasons unrelated to class or texting in class, you are not engaged. If you have not completed a writing assignment for use in class, we might ask you to leave because only the students who already completed the assignment should benefit from the discussion.

**Attendance.** As an attorney, you will be expected to attend required court hearings, conferences, and client meetings. Consequently, we expect you to attend all classes. At the designated time for class to start, please be signed in, seated, organized, and ready. If you need to arrange for an excused absence, contact your



professor by e-mail before that class to discuss your absence and its impact on your work and deadlines. If a planned absence occurs, you must submit any work due at that class prior to the missed class. If you are not comfortable explaining your reason for the absence to your professor, please contact the Associate Dean for Students. An unexplained absence will result in a zero for that class with respect to both class participation and any work due. Your attendance record impacts your professionalism points for this course. If you accumulate four or more absences, you will fail the course. If you miss a class, you are responsible for learning the information you missed.

**Deadlines.** An attorney who misses a court deadline risks a default judgment against the client, a malpractice claim, a professional conduct complaint, and negative career consequences. Additionally, courts do not care whether your computer crashed or whether a traffic jam prevented filing. Consequently, assignments are due at the beginning of class on the due date. You can obtain an extension only with advanced written permission from the professor (e-mail is acceptable), and only where exigent circumstances warrant the extension. (These do not include tests or assignments for other classes.) If the circumstances arise before you can contact the professor, do so as soon as possible or contact the Associate Dean for Students. For every day your assignment is late, you could lose up to 25 percent of the grade per day. After four days, the score could be zero.

**Assignments.** A court or supervising attorney expects to read a complete work product, not an incomplete or draft attempt. Consequently, we expect you to complete the entire assigned reading and writing assignment before class. Failing to complete assignments could result in your disenrollment from the course. If you cannot complete an assignment due to exigent circumstances, contact the professor by e-mail or phone as soon as possible. Doing work for another class is not an exigent circumstance. Submitting a written assignment through another student without permission is not acceptable.

Very few of your students will likely lose professionalism points, but if they do, give them a warning so that they can have a chance to rectify the behavior. Learning from mistakes is critical skill

for students to learn and, by giving a warning for unprofessional conduct, you allow students to demonstrate the ability to learn from a mistake—hopefully!

Students should be fully informed about plagiarism. The opportunity for plagiarizing is greater in Legal Writing than in other first-year courses because of the number of assignments and the likelihood of student collaboration. You can spell out specific rules in your course information, or reiterate your school policy. You should also raise it in the first class as a reminder and be sure to invite students to ask you if they have any concerns. One method of reminding students of their obligations is to require a signed acknowledgment at the end of each assignment. For example:

I, [*insert your name*], certify that this assignment is not plagiarized, as defined by Rule \_\_\_ of the \_\_\_\_ Conduct Code, and complies with the collaboration policies of this course.

## **IX. Second Semester and Moot Court**

Preparing for your second semester is no different than what you have done for your first. Lay out ahead of time what the assignments will be, when they will be due, how many points each one will be worth, developing problems, and what the objectives for each assignment will be. Unless your school has a three-semester program where advocacy is taught in the third semester, chances are your spring semester will focus on persuasive writing and oral advocacy. In most schools, the spring course uses one problem that has several subissues and a longer record that includes documents such as depositions, interrogatories, hearing transcripts, lower court orders, and any other documents that are typical to a record in an appellate case or pretrial persuasive memo.

Just as you did in the first semester, it is helpful to break the second semester into three time periods.

<p>Mid-January to Mid-February</p>	<p>Research</p> <p>Skills</p> <ul style="list-style-type: none"> <li>• Thorough legal research</li> <li>• Using secondary sources</li> <li>• Using cost-effective search tools</li> <li>• Formulate overall issue and subissues</li> <li>• Identify key facts from record</li> <li>• Develop a theory of the case</li> <li>• Develop a list of effective authorities</li> </ul> <p>Outline</p> <p>Skills</p> <ul style="list-style-type: none"> <li>• Identify elements of law/legal issue</li> <li>• Create a logical structure</li> <li>• Identify how and where to use authorities</li> <li>• Create an effective outline that serves as a roadmap for the memo or brief</li> </ul> <p>Draft of one subissue</p> <p>Skills</p> <ul style="list-style-type: none"> <li>• Deconstructing and synthesizing case law to form a persuasive rule</li> <li>• Organizing paragraphs effectively that persuasively explain and apply the rule</li> <li>• Identifying and addressing weaknesses or counterarguments</li> <li>• Editing, proofing, and grammar</li> </ul> <p>Oral advocacy practice</p>
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<p>Mid-February to Mid-March</p>	<p>First draft of whole memo or brief</p> <p>Skills</p> <ul style="list-style-type: none"> <li>• Deconstructing and synthesizing case law to form a persuasive rule</li> <li>• Organizing subissues effectively, including showing interrelationship of subissue paragraphs effectively that persuasively explain and apply the rule</li> <li>• Identifying and addressing weaknesses or counterarguments</li> <li>• Constructing a whole memo or brief including all the necessary components</li> <li>• Editing, proofing, and grammar</li> <li>• Individual conferences with professor and teaching assistant</li> </ul> <p>Oral advocacy practice</p>
<p>Mid-March to Semester End</p>	<p>Revision</p> <p>Skills</p> <ul style="list-style-type: none"> <li>• Proofing</li> <li>• Editing excessive words</li> <li>• Rewriting</li> <li>• Using persuasive language and structure</li> </ul> <p>Oral advocacy</p> <p>Skills</p> <ul style="list-style-type: none"> <li>• Preparing for oral argument</li> <li>• Making persuasive oral argument</li> <li>• Answering judges' questions</li> </ul>

The second semester of a two-semester legal writing course should prepare students for oral advocacy along with persuasive writing. Begin very early in the semester with short exercises designed to get students on their feet. These exercises can take many forms. For example, you can have students give one-minute answers to specific questions based on the research they are doing, or introduce themselves and then give a short statement of the issues. The earlier and more often you have students advocating on their feet, the better they will feel when it comes time for the longer argument.

Traditionally, the spring semester moot court assignment is an appellate brief. Pedagogically, this makes sense. Students get an opportunity to experience working with a record and getting more deeply into a complex legal problem. However, considering that the vast majority of law graduates do not write many (if any) appellate briefs, you might want to explore assigning a trial-level memorandum to the court. Graduates are more likely to bring a motion to dismiss or a motion for summary judgment in practice. You can still create an extensive record of depositions, a complaint, and exhibits and require a memorandum of law to the court.

Many, if not most, schools arrange to have practitioners or real judges volunteer to serve as judges for students for their formal oral argument. Start organizing your volunteers at the beginning of the spring semester. Practitioners will need plenty of notice to set aside the time.

## **X. Using Technology: TWEN/Blackboard**

Most law students arrive knowing how to use online course Web pages. In legal writing, Web pages can be very helpful. Post all of your assignments and supplemental materials on your Web page. You can have students hand in their assignments through a Web site and return them using the same program. Both TWEN and Blackboard allow you to hold online discussions, and even live ones. Blackboard now has a program that allows you to check for plagiarism.

As you are preparing for the semester, set up your online course Web page. Students will need to sign up for it so it is a good idea to have it set up well in advance of your first class. If you are not familiar with either program, you will need to take some time to

learn all that the Web site has to offer. Once you have set up your course, you can “hide” it until you want students to sign up.

Law professors are beginning to take advantage of Facebook, podcasts, and Google Docs. These technologies can be particularly useful as a means to reach different types of learners.<sup>5</sup> For example, podcasts can be used to orally review a sample memorandum.<sup>6</sup> Google Docs is a handy tool for having students work on a document together. Do not be afraid to experiment with different technologies. Just be sure to “test drive” the implementation ahead of time so you can avoid glitches that might cause students to stumble.

## **XI. Selecting and Using Teaching Assistants**

You will want to have teaching assistants (TAs) that help you during class and outside the class. If your school allows doctrinal professors to have teaching assistants, you can probably persuade your dean to approve Legal Writing TAs. Upper level students can be a wealth of support and information for first-year writing students. They have recently been through the experience and consequently they can be particularly empathetic.

Probably the best way to select TAs is to ask Legal Writing professors to recommend rising 2Ls. You can also select rising 3Ls, but 3Ls tend to shift their focus to their job search fairly early in the year, and thus might not have the focus needed to serve as a Legal Writing TA. Although doing well in Legal Writing is certainly one selection criteria to use, effective TAs need to have good people skills, clear communication skills, and good collaborative work skills. A job description for a Legal Writing TA position might include the following:

The Legal Writing Teaching Assistant needs solid print and online research skills, analytical, organizational, citation, writing, and oral advocacy skills, as well as the ability to work well as part of a team of teaching assistants and professors, and with a diverse group of students individually and in a classroom setting. Students who can commit to two semesters are preferred. The duties of the Legal Writing Teaching Assistants are as follows:

- Attend and participate in class meetings, take attendance, possibly review students' class participation.

- Assist professors with in-class assignments and assist with technology.
- Review and comment on nongraded assignments.
- Attend professor/TA group meeting to coordinate work and prepare for following week.
- May conduct office hours for student questions.
- Meet individually with professors on an informal basis to report on class progress and discuss particular problems or concerns expressed by students.
- Conduct additional optional TA sessions on citation and other topics.
- Conduct practice moot court sessions second semester.
- May conduct individual conferences with students.

You might want to select TAs during the spring semester. Ask for recommendations based on first-semester performance and then ask for follow-up input during the spring semester. It is helpful to know who your TAs will be before the summer so you can work with them prior to school starting.

If you have several sections of Legal Writing and thus a number of TAs, you might want to consider holding a half-day TA orientation before the start of the year. This will get all of the TAs on the same page as far as what the professor's expectations are, if and how you want them to grade citations, and any professionalism standards by which they must abide.

Setting clear guidelines for your TAs is essential. They will be a great resource for grading citations. They can tutor students who are struggling individually. It can be tricky if your TAs give feedback or steer students in a direction that differs from your expectations as far as style and content. Setting clear limits on what they should be giving feedback on will help avoid the confusion that this type of mixed message can create.

## **XII. Combined Approach to Teaching Legal Research and Writing**

This guide follows an approach to teaching research and writing where the two courses are taught separately. This requires collaboration among research and writing faculty, but the syllabus,

materials, and classes are individual to each department. It is helpful to meet with the research faculty to assure consistency and proper timing of research projects. For example, if you have students using a secondary source for their first memo, it is useful to know that the research professors have covered secondary sources by the time your assignment is handed out. You should also be sure that the timing of the research class fits within what you are asking students to do. For example, you do not want to assign an “open universe” memo before students know how to research and find cases.

Most law schools combine research and writing into one (four- or five-semester) course—an arrangement that can be structured in a variety of ways. You can front load the research portion, teaching an entire research curriculum in the first six weeks of the semester. This “boot camp” structure prepares students so that they are ready to conduct their own research projects once they begin the writing portion of the course. One advantage to the integrated structure is that it mirrors real practice. For example, a case usually begins when a client comes to a lawyer with a legal problem. Once the initial interview is complete, the next step is to do research. Putting together an analysis and writing usually comes after research. It makes sense to sequence a research and writing course so that it simulates this time line. With each new case file, more extensive research will be needed, but students will learn it in the context of a legal problem rather than in the abstract.

Typically, a combined approach weaves research into the curriculum. The structure can be centered around case files, but the project starts with researching the issue, rather than with the writing. Starting with secondary sources and basic Web-based searching, such as Westlaw and Lexis, students handle the problem much like they would in practice. The benefit to this course design is obvious—students mirror what they will do in practice.

Whether combining research and writing, or teaching them as separate courses, you will need to ensure that students understand that the two subjects go hand-in-hand in practice. Careful coordination among the research and writing faculty is thus critical if the classes are taught separately.

One final note on teaching research is in order. In today’s economy, students must leave law school with solid training on how to conduct low- or no-cost research. Your program should include training on Google and Wikipedia searches as well as other free Web-based



information resources. In addition, given that more legal research is becoming interdisciplinary, students should also be introduced to using resources from the social sciences.

## **XIII. Professional Development**

There are numerous resources for new Legal Writing professors. Included in this guide is a bibliography of readings that are helpful. In addition, LWI hosts a biennial conference and many law schools host regional writing conferences that include presentations for new teachers.

Although there is dispute in the academy over learning theory and the role it should play in guiding our teaching, varying teaching methods is effective regardless of whether the strong proponents of using learning theory are correct or not.<sup>7</sup> Although how students learn best is a subject with which every law professor should be familiar, teaching legal writing is an area where knowing about different learning styles is critical. Students can be visual, aural, or tactile learners. If you know what types of teaching are most effective for each of these styles and vary your techniques to reach all learning styles, you will maximize student learning.

You will want to consider how you vary feedback (written or oral) or classroom exercises so that you are teaching to all types of learners. The bibliography at the end of this guide has suggested readings on learning styles. You do not need to become an expert in this field, but some knowledge will be very helpful.

Take notes on your classes right after the class is over to remind yourself of what worked and what did not. At the end of the semester, either on your own, or with colleagues, consider some new goals you want to articulate for the next time you teach the class. Ask colleagues to watch your classes and give you feedback, and take the time yourself to watch other professors' classes. You will find inspiration in the approaches taken by others, including doctrinal professors.

Study your student evaluations, looking for trends in the feedback. Your evaluations will probably not all be glowing—in fact, if they are, you might not be challenging your students enough. But, aside from outliers, students will note ways to improve the class and this is a great resource for you to take advantage of.

Keep in mind that student evaluations might be lower than in doctrinal classes. Students might realize before the deadline for submitting the course evaluation that their struggles with the material will be reflected in their final course grade. Human nature being what it is, that realization could lead to evaluations more critical than in courses in which, by reason of the absence of a significant number of feedback events, struggling students might maintain, at the time of completion of the course evaluation, an overly optimistic estimation of their progress, and a correlatively generous estimation of the instructor's performance. The flip side of this is that students frequently report that once they are in the real world they realize just how valuable their Legal Writing course was.

## **XIV. Keeping in Touch with Current Trends in Practice**

You should adopt specific measures to better understand and meet the actual expectations awaiting students after their first year. Legal Writing courses have long been in the forefront of preparing “practice-ready” students. To maintain connections to current trends, you can take steps such as these:

- Establish ongoing relationships with practitioners who can regularly advise Legal Writing faculty.
- Ask practitioners to “grade” and comment on samples of student work to compare teacher feedback with real practice expectations.
- Surveying students after summer jobs and after graduation.
- Invite practitioners to panels and classes.
- Communicate with your career services staff to understand hiring trends.

## **XV. Students: Navigating a Tricky Relationship**

You will quickly realize that the relationships you have with your students are different from those they have with most of their doctrinal professors. Your classes will be smaller than the first-year doctrinal classes and you are likely to get to know your students individually. You will also give feedback on student work well before the doctrinal professors. Although students need feedback, they don't

always want it. Going to law school is nerve-racking. Even the most confident of incoming first-year students will experience trepidation. They might anticipate challenge in their doctrinal courses, but be thinking that at least in their writing class, they will have no problem. After all, they made it through college and perhaps a professional life with their writing skills. So, it can be a blow for students to realize that they must learn a new way of writing—almost like learning a new language. They might turn in their first assignment with great confidence only to be deflated after learning that they did not do as well as they anticipated.

Add to this the fact that usually Legal Writing is allotted only two credits in the fall as opposed to the three (or four) typically allotted the doctrinal classes. In terms of hours spent, though, students often perceive that Legal Writing takes far more time than their other courses. It is hard to gauge, but it is more likely that students tend to put off their Legal Writing assignments and so they become overwhelmed when they realize that the process of writing takes much longer than they anticipated. This can foster resentment toward the Legal Writing professors—hence the “tricky” relationships.

Tackling student resentment is no easy task. Be sure to coordinate with the first-year professor to assure that your due dates do not coincide with midterms or other big projects. Although students might not follow your advice, it is nevertheless a good idea to go over the whole fall calendar—showing them where their midterms are, as well as their Legal Writing assignments. This way they can see the “lay of the land” and anticipate where the semester is likely to be intense. This could inspire them not to wait until the last minute to complete their Legal Writing assignments. Law students, particularly those who have come right from college, might not have yet mastered the skill of calendaring. Spending time on this is well worth it.

Getting to know your students and truly assuming a “coach” role will also go a long way toward building positive relationships.

## **XVI. Conclusion**

Please consider this guide as a beginning point. There is a world of resources out there for you to take advantage of. The legal writing community is collaborative, supportive, and fun. If you haven’t done so already, get yourself signed on the legal writing listserv (lrwprof-l@

listserv.iupui.edu). There is no shortage of practitioners who are willing to provide the feedback you need to keep your teaching closely connected to what is going on in the “real world.” Listen to your students, present and past, as they will be a good gauge of what you need to do differently. Most of all, have fun. Teaching writing is hard because you are meeting your students at their most vulnerable point. But the flip side of that is that you have a wonderful opportunity to make a real difference in their lives. You are uniquely situated as a first-year writing professor to connect with your students and be a strong support and influence for them. And, you will be instrumental in making them better lawyers.

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## Endnotes

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- <sup>5</sup> See Tracy McGaugh, Sample Facebook Course Page, Millennial Law Prof (June 12, 2008, 7:12 a.m.), <http://www.themillennials.org/2008/06/sample-facebook-course-page.html>.
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