TECHNIQUES FOR TEACHING LAW

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Techniques for Teaching Law

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Chapter 9

Writing Exercises

Good assignments elicit good work; bad assignments, bad work. —Elbe

A. Why Use Writing Exercises?

Writing assignments have been championed by many individual teachers as well as a national movement in higher education, Writing Across the Curriculum. This movement encourages teachers in all disciplines to incorporate a wide variety of writing experiences in their courses. Underlying this movement is a considerable body of research documenting the benefits of writing.

Writing exercises, whether done in or out of class, whether graded or not, whether formal or informal, help to develop thinking skills. As students explain or explore an idea in writing, their understanding and misunderstanding of concepts become clearer. For example, when students draft legal documents such as a will or a complaint, they discover the limits of their knowledge and they develop a deeper understanding as they apply abstract principles to a life-like situation.

Writing in class gets students actively involved in learning the subject matter and skills of a course and can focus students' attention. For example, at the beginning of class, students could write for several minutes on the essence of a major topic to be covered in class that day. Likewise, writing briefly at the end of class can help students to solidify the major points from that day's class. Writing exercises also help generate thoughtful class discussion. By writing on a topic for several minutes, students have time to organize and develop their thoughts much more thoroughly than when responding immediately to teachers' questions in class.

Writing not only helps students learn content and skills, it is an excellent vehicle for students to explore and articulate their values. Through writing exercises such as journals or reflective essays, students take abstract principles and give them personal meaning. By exploring how concepts fit into their own lives, students develop a deeper understanding of their own perspectives and are better able to apply ideas in new personal and professional situations.

Writing exercises provide teachers with a window into their students' thought processes and into the students' levels of understanding. Teachers can use the information they get about their students' learning to refocus and revise their instruction to meet students' needs.

Writing assignments are often used as all or most of the means of determining students' grades. Those assignments are addressed in Chapter 11—Evaluation of Students.

B. Types of Writing Exercises

The types of appropriate writing exercises in legal education are limited only by the creativity of legal educators. The examples of writing exercises briefly described below only scratch the surface of the productive written work teachers can devise for their students. The examples are organized in two categories: (1) Out-of-Class Writing and (2) In-Class Writing.

1. Out-of-Class Writing

- Term Papers, Seminar Papers, and Law Review Articles, Comments, and Notes. These are formal, lengthy, extensively researched, and carefully revised. They usually represent a significant portion of the grade for a course.
- Legal Memoranda, Briefs, Letters, and Documents. Examples include the office memo, trial and appellate arguments, settlement and demand letters, motions, discovery papers, wills, and pleadings.
- Admit Slips. These are short pieces of writing that students turn in at the beginning of class. Examples include responses to problems, answers to questions raised at the end of class, and questions about the material covered during the previous class.
- Dialogues. Students can create imaginary conversations on course concepts between two people; for example, Justice Brennan and Justice Scalia on judicial activism.
- Outlines, Timelines, and Flow Charts. These devices can help students organize concepts and explore the connections between ideas.
- Journals. These can include students' reflections on course material, class discussion, clinical experiences, field trips, etc.
- Book Reviews and Letters to Authors. These projects can require students to evaluate strengths and weaknesses of texts.

2. In-Class Writing

- Focus Pieces. Short writing at the beginning of class can focus students' attention on a major topic for that day's class. Or, writing during class can concentrate on analysis, argument, or values.
- Discussion Previews. Students can write for several minutes in response to questions, hypotheticals, or problems raised in class. Then the class as a whole or in small groups can discuss the responses.
- Exit Slips. Short pieces of writing collected at the end of class. Examples include a summary of the three important points from that class session, analysis of a hypothetical, and questions about the material covered that day.

C. Planning Writing Assignments

One key to enhancing student performance is to focus the writing assignment sufficiently so that students know what teachers expect of them. To provide that focus, teachers must first articulate for themselves the objectives they hope to achieve with the writing assignment. Then, teachers should expressly inform the students of those objectives. For example, "Students will use the elements of statutory analysis (list the elements here) to make an argument in favor of the plaintiff in problem __." or "Students will describe the operation and evaluate the effectiveness of (identify a legal doctrine here) in a real-life dispute."

Teachers must determine the size and number of the writing assignments. Several short papers provide more opportunities for students to develop their skills, provided they receive useful feedback. Thus several short papers are often appropriate for first-year students. Many students find several short writing assignments less stressful than one large writing assignment because the stakes are so high with one large assignment. However, multiple writing assignments can increase the teacher's grading and feedback burden. Longer papers allow students to develop more sophisticated, higher-level thinking skills such as analysis, synthesis, and evaluation. Hence, longer, more traditional term papers work well in upper-level courses.

Writing exercises can take place inside or outside of class. Traditional term papers and written responses to homework problems are typical of writing assignments outside of class. These assignments give students the time to do research and to refine their thinking before writing. Writing exer-

cises in class help students learn concepts as they actively work on them. For example, by spending three minutes outlining their analysis of a problem, students may clarify their understanding of the applicable concepts.

Teachers need to decide whether and how the writing assignment will be graded. Grading schemes run the gamut from formal (A,B,C), to informal (+, OK, –), to ungraded. Students tend to feel more stress and exert more effort on writing assignments that are graded formally and constitute a significant percentage of their grade in the course. Ungraded writing assignments, on the other hand, can help students understand content, practice skills, and prepare for later formal evaluation.

If the written assignment is to be graded, students need to know the grading criteria. Teachers must decide the extent to which writing quality and content matter in the evaluation of the students' written work. Teachers should provide students with clear grading criteria in writing at the time the assignment is given. The more specific the criteria communicated to the students, the more likely that the students will be able to meet the criteria. Then, teachers should spend a few minutes in class answering questions about the assignment and the criteria to maximize the students' understanding of the teacher's expectations.

For writing exercises that students will complete outside of class, teachers should distribute a handout that contains all of the essential information for the assignment. The handout can help ensure that the teacher has thoroughly thought through the assignment and can minimize later misunderstandings. Although the precise contents of the handout will vary depending on the assignment, it should include the following:

- The objectives of the asignment,
- The type of paper (memo, brief, letter, article),
- The specific task (compare and contrast, argue, analyze),
- The audience (law firm partner, judge, legislative committee),
- The contents (issues, cases, statutes, policy, analysis),
- Format (paper size, spacing, type size, margins, stapled, exam number),
- Length restrictions (words, pages),
- Sources (limited, unlimited),
- Grading criteria if applicable (see discussion above),
- Deadline (due date, time, and place; consequences of missing the deadline),
- Collaboration policy.

D. Feedback to Students on Their Writing

Students need specific, concrete feedback on the strengths and weaknesses of their written work. The burden of providing individualized feedback to each student deters many teachers from using writing exercises. While teachers can respond to individual students on their writing, it is not the only way for students to get valuable feedback. Teachers can provide feedback to the class as a whole and students can provide useful feedback to one another and to themselves.

One way for teachers to provide feedback to individual students is through written comments and questions on their papers. It is important for teachers to remember how invested many students are in their writing, which communicates who they are and what they think. Teachers need to help students understand that the feedback is on the students' performance, not on their personal worth. Comments that are a good balance between encouragement and criticism are most likely to help students understand their strengths and weaknesses and to motivate students to try their best next time.

Another way for teachers to provide feedback to individual students is to meet with them to review their written work. Individual conferences are an excellent venue for teachers to answer students' questions, to reinforce what students did well, to provide detailed guidance for improvement, and to get to know students better. Individual conferences are often a required part of a writing course or a seminar. In other courses, teachers can reduce significantly the burden of providing individual feedback on student writing by offering to meet with any student, but not requiring conferences. Although only a small percentage of students are likely to make an appointment for a conference, most will appreciate the offer.

After reviewing a set of student papers, teachers can take a few minutes in class to let the class know in general terms the strengths and weaknesses of the papers. A dramatic way to give excellent feedback to the class is for the teacher to put a sample paper on the overhead projector and grade it in front of the students, speaking aloud the teacher's thoughts and comments about the paper. This feedback not only helps students to understand the assignment being reviewed, it demystifies the grading process as well.

Students can provide each other with valuable feedback on their writing. For example, after students spend several minutes in class drafting a response to a problem, they can trade papers and discuss the strengths and weaknesses of each other's analysis. Students can meet in small groups to review first drafts of short writing assignments prepared outside of class. Students can use a checklist prepared by the teacher to provide consistency

in peer edits of each other's work. For example, when examining a draft of a research paper or law review article, the following instructions could guide the peer review:

- State the main point of the paper in a single sentence;
- List the major subtopics;
- Identify any word, phrase, sentence, paragraph, or section that is unclear;
- Evaluate whether each subtopic is supported with sufficient research, evidence, and discussion;
- Identify the major strengths and weaknesses of the paper.

With a bit of guidance from their teachers, students can evaluate much of their own writing. For example, after students complete short writing exercises in class, they can assess their own performance by comparing their work to the analysis developed in class. Teachers can facilitate students' self-evaluation of writing completed in class by listing the critical points on the board or an overhead projector during class. For writing completed outside of class, many students benefit from comparing their papers to model answers or scoring checklists. Another way for students to gather their own feedback is to review samples of other students' papers. This type of review is most helpful if students can compare copies of excellent, average, and below-average papers.

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Specific Writing Exercises

#1: Short Writing Assignments in Large Classes

I was determined to make short writing assignments work in large classes. My goals were to have a way of individually evaluating each student, in addition to the final examination, and to get more feedback on the student's progress. I also wanted to give the students a response to their individual work during the semester. Another benefit, I discovered, was that overall the students did learn the concepts more thoroughly when they wrote about them. My reading on learning lead me to expect this and it was gratifying.

For Wyoming, a big law school class is 70 to 80 students. A problem, of course, is the time and effort involved in grading this many papers. In the spring of 1994, I assigned six one-page papers to the students in Contracts II. I picked my first-year course, believing the regular feedback throughout the semester was most important to the first-year students. I graded each paper "+", "√", or "-". I found this was a relatively easy grading method. It took me about one day to grade each set of papers and I was able to work this reasonably into my other responsibilities for the semester. I created a curve with the grades on the papers, and the resulting grade was 20% of each student's course grade. I pointed out to the students that the paper could easily determine the difference between a "B" and "C". (Wyoming did not have "+" or "-" letter grades at that time.)

Each assignment asked a question, and limited the authority to be used in the answer to a case, statute, restatement, and/or text note. I chose the subject of each assignment so that we were discussing it in class soon after the papers were turned in. This timing improved the class discussion, particularly because many of the reticent students then participated. Also, reviewing papers allowed me to see where the students were having problems with a particular principle, and I used that information to plan the class on the subject.

For the assignments, I often used fact patterns in the text. Most textbooks contain plenty of fodder for short writing assignments. For one of the assignments, I asked the students to use the facts of an old case in the text and apply the holding of more recent cases in the text to those facts. (The instructions for this assignment are reproduced below.)

I was persuaded to allow the students to discuss with each other the issue presented by the assignment, because of the learning value of the discussions themselves. However, I required that each student work alone when writing the paper. This structure worked well for all but one assignment. In that assignment, I had them calculate the allowable damages

in a case and explain their result. The students discussed the assignment extensively among themselves. We had an excellent class discussion about it, and the students were not reluctant to challenge my conclusions. However, many of the papers were virtually identical.

Overall, I felt I achieved my goals with the paper assignments. I heard no complaints from other faculty teaching first-year classes that students were not attending class, or being unprepared, when my class had an assignment due. I think this bonus in faculty relations was due to the one-page limit on the assignments and the narrow focus of authority to be used for them.

One caveat—I got annoyed and frustrated with all the issues that came up about fonts and lines per page, with a one-page limit. No matter how specific the instructions were, a nuance or ambiguity was raised. In retrospect, providing samples of excellent student papers that did not reach the one-page limit might have helped.

ASSIGNMENT 1
CONTRACTS II

Question for legal analysis: If the *Laidlaw* case (Note 1, pg. 640–41) arose today, would the seller have a supportable claim to rescind the contract because of nondisclosure?

Authority: For the current law, use the law as stated in the *Hill* case and in Restatement (Second) of Contracts § 161. For legal analysis, remember that primary authority is better than secondary authority, and that Restatements are usually viewed as a more significant form of secondary authority than general commentary. Use only the material about the Restatement that appears in your textbook and rules supplement. Use only the facts about *Laidlaw* that appear in the note. (I realize that in our electronic age, it is unlikely that both parties would not know that a war had ended, but try to ignore that.)

Length: If your answer is typewritten, it must be double-spaced and no longer than one page. The page must have no more than 26 lines and no more than 12 characters per inch, or 27 lines and no more than 11 characters per inch. If you turn in a handwritten answer, it must have no more than an equivalent number of words to the typewritten limits just stated. All answers must have right and left margins of at least one inch. You need to reach a conclusion, and defend it. You do not need a question presented or other formalities of a memo. Do not use abbreviations. The answer needs to be in narrative form, with complete sentences and paragraphs.

Due: The answers are due at the beginning of class on Friday, January 21. If you do not attend class, your answer needs to be in my box in the front office before class. You need to make arrangements with me in advance if you are not going to meet the deadline. Otherwise, you will receive no credit for the exercise.

Evaluation: The criteria that I will use to evaluate your answer are:
1. Is it clearly stated and focussed?
2. Is your conclusion adequately supported, including authority for the principles applied and all of the steps in your reasoning?
3. Is it persuasive?

Other general instructions appear in the course outline.

Please retain this as it contains the instructions for length, missing deadlines, use of authority, and basis for evaluation, that will be used in future assignments.

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#2: Writing to Analyze Facts

At bottom, the work of a practicing attorney consists in applying relevant legal rules to a specific set of facts. Yet this is a skill that we often take for granted and fail to teach in law school. Over and over again I see students struggling to tease from an appellate opinion a tidy rule of law that can be memorized with ease. The facts of the case are recited as mere background material; and if the instructor varies the operative facts, this is usually seen as a way of clarifying the all-important rule of law. Unless coerced, students do not focus on facts. They do not understand that the facts recited in an opinion may not comprise all the important factual information relating to the case.

On exam day, of course, application of the rules may be required. "Issue spotting" we call it. We evaluate students on the basis of their ability to apply legal principles in real-life settings, but what training have we provided to prepare our students for this awesome task? In the typical Socratic classroom we teach our students to analyze the law but rarely to analyze the facts.

Clinical courses try to remedy this shortcoming, and they seem to do so with very considerable success. But clinics are time consuming and expensive, and they have limited enrollments. By using fiction—that is, by creating facts that simulate the real world—we can help a larger number of students to acquire essential fact-analysis skills. Drafting problems present an ideal opportunity to assist students in working with facts. Drafting projects are appropriate in many different types of classes: e.g., contracts, property, civil procedure, trusts and estates, domestic relations, professional responsibility, and the like. Preparing "necessary instruments" for a client is real lawyer work, and most students love doing it.

Two factors may discourage instructors from using simulation projects in the classroom. First, giving adequate feedback in a large-class setting may be difficult; and second, creating a relevant imaginary world may prove challenging. One approach to the feedback problem is to devote enough class time to give a detailed group critique of the problem. In a large class, I use "Good," "Pass," or "Redraft" as grades for drafting projects and give individualized comments only if requested (which is usually not necessary after the class discussion). Group projects are also valuable, as they provide peer teaching and cut down on the instructor's burden.

Simulation projects are most successful if the fictional world is colorful, apropos, and reasonably true to life. How does one create interesting lifelike situations? Garrison Keillor, one of America's finest story tellers, suggests that you start with people you know and love and then tell lies about them. If you begin with real people—your friends, neighbors, family members, or actual clients—the reality of their humanity will survive whatever alterations you must impose to illustrate important legal issues. Newspaper clippings, also, can be wonderful sources for fact analysis. I encourage students to bring in real-world stories that are related to our course.

Many kinds of stories make good teaching tools: stories buried deep in an appellate opinion, stories headlined in news magazines, stories invented by fiction-writing law professors. A good set of facts provides an excellent basis for comprehending, as well as applying, abstract rules of law. My students tell me that they understand "the rules" much better after making practical use of them. In addition, rules are more memorable when presented in a dramatic setting. Why do you suppose the Bible is a book of stories?

Joan Ellsworth
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#3: Editing On An Overhead Projector

In large classes, I am often concerned about how to give personalized feedback. I commonly assign hypotheticals to be resolved in writing and brought to class for a group discussion. While I review the hypotheticals in class, this did not always serve to "correct" common errors. I tried having students turn in the essays and then marked them with a plus, check, or minus. While that gave students some sense of where they stood, it was still not a concrete and directed critique. So, I turned to the overhead projector.

I assign a short writing project that can fit on one page (typed). A letter to a client, an introductory paragraph to an essay, and a short answer

to an exam question all work well. I usually try to do this as a way of summarizing or reviewing a substantive unit we have just completed. Sometimes, I have students do this project in pairs. Then, students hand in the written assignment to my office several days before class. I ask them to identify their papers by name. I then read through a sample of the responses to get a sense of the common strengths and weaknesses. That usually involves reading 30 out of 110 papers. I then pick three or four papers which contain the types of mistakes (and good points) I want to emphasize. These papers are then duplicated directly onto transparency paper for immediate use on an overhead projector. I always delete the student names. I correct nothing beforehand. The transparencies are a replica of what the students produced.

I come to class with my transparencies and several overhead projector pens. I then put the first transparency up on the screen, and I begin editing with my special colored pens. I discuss as I edit. I pause and ask for suggestions. I change colors for different kinds of edits—language (spelling, sentence structure), organization, legal analysis. By the end, the single sheet is filled with color and significantly marked up. Then, we proceed to the next transparency. (For those professors with laptop in-class capability, one can use the computer screen for this (projecting it onto a screen or into each student's computer) but editing would be done using the keyboard without the benefit of handwritten notations.) After class, I give students copies of what was up on the overhead projector so they can fiddle with the writing on their own.

The overhead projector approach has certain benefits. First, since I've picked papers with common errors and strengths, each student feels some personalized benefit. Second, the students actually get to *see* my thought process. The questions I ask about what is written alert them to what they should think about when they write. Third, the feedback on the writing is almost immediate—several days after the project has been completed. Fourth and finally, the exercise emphasizes the importance of good writing in a substantive class as opposed to leaving writing to writing courses.

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#4: In- and Pre-Class Writing Assignments in Property

In my first-year Property class I use some informal written assignments to get students to consider reasons behind rules, to consider alternative approaches to problems, to be prepared for questions I may ask, to look

at things other than cases, to consolidate an area, and to consider the broader implications of a rule of law. Briefly the assignments are:

1. Abolish Adverse Possession—Students are asked to complete the following: "Adverse possession should/should not be abolished because..."
2. Cave Law—Students are asked to evaluate and choose among three approaches to the ownership of caves.
3. What is this?—Students consider a document that might be either a lease or a license and think about the choices the drafter of the document may have made consciously or unconsciously.
4. Eviction or Abandonment—Based on a case in the text the students consider alternative approaches to explaining the result and think about why the court chose the approach(es) it did.
5. Residential Landlord Tenant—The students read cases and an article on residential landlord tenant law and then talk in small groups about changes that could be made and the results of those changes. The assignment ends with a general discussion of the effect of changes they may suggest.
6. In-class Covenants—Students are asked to explain why some covenants "run" and others don't and then to formulate a test and apply it to new situations.

I use these assignments for different purposes:

1 and 6 are used in-class to let students look at the reasons behind the rules they have developed and perhaps modify the rules in light of the reasons they have for them. They are used to end a particular unit of study and give some closure to the area. I usually ask the students to do the writing in class and then work in pairs or triples to discuss the answers they have before we begin a more general class discussion. These are not turned in.

2 and 5 are specific to particular cases that I have in the textbook I use. Cave law is *Edwards v. Sims*, 232 Ky. 791, 24 S.W. 2d 619 (1929); Eviction or Abandonment is *Kulawitz v. Pacific Woodenware & Paper Co.*, 25 Ca.2d 664, 155 P.2d 24 (1945). I designed these because I had a particular question I wanted to ask in each case and when I just gave the question in class students hadn't really thought about it. So I handed the question out and told them to write an answer and turn it in. The class discussion has been much better since then.

3 and 5 are designed to add something different to the usual first-year case discussions. What is this? is designed to get them to begin with a document, not with a court's analysis. In the process of dissecting the document I also try to make some points about drafting. Residential Landlord Tenant is intended to let students see case law and statutes as different ways to solve problems and to see that some problems may be more difficult to solve. I have since added another (not necessarily writing exercise—though I may add some writing to it) involving interpretation of a

residential landlord tenant statute as applied to a person who is operating a business in residential rental property.

I don't grade the assignments, though with 2 and 4 I require that they be turned in. I do try to ask a question on my final exam that has some attributes of one of the exercises. I think of it as a thought question rather than a traditional fact-pattern question.

I have found that perhaps the most difficult task in preparing these short writing problems is framing questions that are narrow enough to focus student responses, yet admit of some discussion. I think forced choices (always including "none of the above") and requiring an explanation of the choice have served well.

I think the student response has generally been good and I think that some students are more willing to participate if they have had a chance to write out something before the class discussion begins and in some cases perhaps test it out in a smaller group. I have found that some students who haven't previously participated are more willing to volunteer after we've used some small-group exercises.

I'd like to share experiences with others who are working on these sorts of exercises. I can be reached at Seattle University School of Law or at jwweaver@seattleu.edu.

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#5: Graded Problems: Benefits and Burdens

Grading is not fun. However, I recently decided that it might be worth some extra work to improve students' preparation for class and to give them some feedback before the final exam, so I began experimenting with using graded assignments in my classes.

Although I have tried various methods to improve class preparation, I decided that I needed to try something new last spring when I taught the Basic Federal Tax class to first-year students. I decided to have the students turn in homework assignments which I would then grade and return to them.

During the first week of class, I announced that I would adjust a student's grade on the final exam a maximum of one grade step up or down (for example, from a B to a B+) based on the student's class participation, preparation, and attendance. In order to evaluate the students' preparation, I graded their answers to the problems.

The students wrote out their answers to the assigned problems, as if they were writing exam answers. A day or two before we covered a given problem in class, I collected the students' answers to the problem, graded

them, and returned them before the class in which we discussed the problem. The students prepared their answers without knowing whether I would ask them to turn them in on the day they were due. I asked the students to turn in their answers about two-thirds of the time.

I evaluated the answers using a "no credit," "check minus," "check," or "check plus" standard. Using this format, the grading was much quicker than exam grading, although I did take time to write comments on papers when they were warranted.

Not surprisingly, giving the students feedback seemed to greatly facilitate their learning. The students' attempts to analyze statutes, regulations, cases, administrative pronouncements, and policy considerations progressed dramatically over the course of the term. At the end of the semester, the students wrote terrific exams.

Although I had anticipated that the students would benefit from receiving feedback throughout the term, I failed to anticipate the benefit to me of reading the students' answers before we discussed a problem in class. Usually, we teachers have little idea of what goes on in the heads of most of our students until the final exam. For the most part, we are forced to read the faces of our silent students, like tea leaves, for signs that they either understand or are lost.

Although I have, in the past, thought that I was a pretty good judge of the level of comprehension in a class, I will never again trust my view of what is going on in my students' heads unless I read what each one thinks. Reading the students' answers was an eye-opener, and frequently led me to add material to my class notes that I never would have thought to add without the feedback from students. I know that I taught my students better as a result of receiving feedback from them throughout the term.

In addition, using graded assignments fostered a good student-teacher rapport. I admired the students for their consistent and considerable efforts to master the material. They appreciated the fact that I took the time to give them feedback on their work.

Using graded assignments also improved class participation. Having already attempted to answer an assigned problem on their own, the students were quite enthusiastic about solving the problem in class. Although class participation improved overall, I especially noticed increased participation by women in the class. Research indicates that male students are more likely to speak in class than female students, especially if the student is unsure of the answer. Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 141–143 (1988). Perhaps having a prepared answer to the problem boosted the confidence of the women students in my class, prompting them to speak more often.

Requiring advance preparation of the problem also encouraged the students to learn actively. They were forced to learn the material as best they could on their own, in order to answer the problem. This active preparation allowed the students to understand and retain more of what went on in class. Several students remarked that tax was surprisingly easy to review because they had learned the material the first time they had studied it.

In addition, requiring advance preparation of the problems helped to mitigate any differences in intellectual ability in the class. Some students no doubt had to work harder than other students to prepare the answers before class, but by the time we began to discuss a topic, everyone had achieved a basic level of understanding of the topic at hand. Instead of feeling as though I had to choose between boring some students or proceeding too quickly for others, we all proceeded together from a common starting point.

What are the potential drawbacks of using graded problems, other than the obvious one of needing to write the problems and grade the assignments? Using graded problems raises certain ethical issues. If students may not work together on the problems, how do you enforce that rule? Do you treat violation of this rule as an instance of cheating? If students are allowed to work together, how do you know that an answer is a student's own work? I allow my students to discuss the problem in a group, but each student must individually draft his or her own answer. Several students told me that they had enjoyed discussing problems with a group of students and had benefitted academically from the experience.

Using graded assignments produced many more benefits than I had anticipated. Although I share your distaste for grading, in my view the benefits far outweigh the burden of grading assignments.

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#6: Book Critique Assignment

From time to time, law professors have been encouraged to use writing assignments in their teaching. *See, e.g.*, Kathleen Bean, *The Use of Writing Assignments in Law School*, 37 J. LEGAL EDUC. 276 (1987). We have had good success in using a twelve- to fifteen-page book critique as a writing assignment in small classes for law students.

Law students are expected to digest an incredible number of appellate opinions, a fair number of substantive notes, and small dollops of law review articles in the typical law school course. They are almost never expected

to read entire books, and certainly never given the opportunity to relate such reading to their core assignments. The book critique is useful as a guided exercise, which enables the students to focus their thoughts about a subject through the prism of describing and reacting to an author's complete presentation in a book.

In our teaching, we have handed out a list of "approved" readings from which the students may choose a book for this exercise. Of course, we have also allowed the students to select their own book, with permission. We hand out a critique guide with the list of books. In order to enable students to benefit from the reading that others in the class have done, we require students to turn in the critiques about one month before the end of the term. We find that students then refer to their particular books in class discussions.

A Guide for the Writing of Critiques

A critical book review should be an evaluative assessment of a book. The following list provides a framework for such a critique. You should cover these points in a clear, interesting expository style. You may find it helpful to read book reviews in several law journals first.

Remember, you are always writing for the next reader. Books are an important part of the "tools of the trade." How good is this tool? That is the overall question you attempt to answer with a critique.

1. *Bibliographic information.** What book is under discussion? The reader may want to locate the book and will need complete information.
2. *Author's qualifications.* With what authority does the author speak? What is the author's institutional affiliation?
3. *The sponsorship of the study.* In what ways does the sponsorship influence the study? E.g., does it influence the *kind* of questions, or *how* they are asked? Does it influence the findings or conclusions? Be aware of the possible influences on the author.
4. *The overall purpose of the study.* What are the major themes? Examples: To study appellate opinions related to mental illness. To examine the dissenting opinions of one Supreme Court Justice.
5. *Major questions for examination or research.* Examples: Are judges capable of analyzing scientific testimony related to mental illness? How do dissenting opinions affect the development of the law?
6. *Specific hypotheses being tested.* Examples: Judges do not make appropriate use of inferential statistics as proof in employment discrimination cases. The original intent of the

framers of the Fourteenth Amendment was not to apply the Bill of Rights to the states.

7. *Method.* How was the study done? How was the information or data collected? Who collected it? For instance: Are people answering questionnaires? Are researchers observing behavior or reading records? Is the author analyzing Supreme Court opinions or legislative debates?
8. *The unit of study.* Who or what is being studied? Examples: 75 seniors in suburban high schools; 14 medium-sized communities; 7 important school desegregation suits.
9. *The findings.* What was discovered? If there are many themes or questions, focus on the one or two most important and summarize the others. Guide the reader through your discussion of the book by referring to specific page numbers.
10. *The author's conclusions.* This is the point where the author goes beyond the descriptive level. The author might offer an explanation, make inferences from data, answer the original major questions, suggest further research, or offer a new synthesis of the case law.
11. *Your discussion.*
    a. *Did the author fulfill the purpose of the book?* Base your decision on an examination of points 1–10. For example, consider the following:
        - do the interpretations or explanations seem reasonable to you?
        - do the inferences follow from the data or the case analysis?
        - were the specific hypotheses confirmed or not?
        - were the methods reasonable ones in terms of the questions under consideration?
        - was it possible to derive the necessary information by the methods used and from the sources studied?
        - do the auspices of the book, or the author's qualifications, or the time the study was done make you doubt the soundness of the research and/or conclusions?

    b. *"Place" the book generally.* Of what use is this book to others? Consider:
        - who would benefit from reading this book? (Scholars, lawyers, judges?)
        - where does it fit into the area of study as far as you can tell?
        - what particular information is found here?
        - what is unique about the book?

- is there anything particularly useful or detrimental about the presentation, writing style, footnoting, bibliography, etc.?

c. *"Place" the book specifically.* How does the book fit in with the themes presented in this course?
- does the book illuminate, support, contradict, or disprove particular themes?
- what would various authors and judges we have read for this course say about the book?

In the discussion portion of the critique, don't just say "yes" or "no" in response to the questions. Illustrate your points with analysis based upon specific examples from the book. Empty phrases such as "It is interesting," "I like the book," etc. should not be used. You wouldn't bother to say "I like using a tape measure" or "I like using a tape measure because it is green." However, you could say "I liked using the tape measure because I could measure more precisely than by using my thumb" or "The green color of the tape measure made the numbers stand out clearly." That is, make pertinent comments.

12. *Citations.* The problem of describing the source of ideas is always important. *First* of all, you must use complete footnotes as indicated above to enable the next reader to refer to specific matters which may be of interest. *Second,* when you are describing major ideas, such as the methods, the findings, and the author's conclusions, indicate precisely where the concepts are coming from. For instance, at the end of a paragraph in which you describe the author's chief findings, you can put a citation within parentheses indicating the general area of the book: e.g., (Chapter II) or (pp. 23–45). *Third,* if you use the author's exact words you MUST put them in quotation marks, and you MUST follow the quote with a footnote indicating the source or with a citation indicating the source. It is strongly recommended that you try *not* to use quotations at all, but rather put the ideas in your own words (and cite the author). Generally, there are only two times when quotations are useful in this type of writing. One is when the author says something in such a way that you cannot capture the spirit, the flavor, unless you use the precise words. The second time is when you want to specify that *this* person said the words, no matter what the words are. These events ought to occur rarely. Relying upon the author's words often prevents you from thinking through your own paper.

13. *Other References.* If you refer only to the book being critiqued, one full footnote will suffice. If you use other references, follow the rules of the BLUE BOOK. References to course material should be footnoted or put in the text parenthetically.
14. *Style.* Type double-spaced. Number your pages. Absolutely correct grammar and spelling are essential. Dot-matrix computer printing is *not* acceptable, unless your machine prints in "correspondence" or "letter" quality. If you have any doubt, show the professor a sample of the print quality well in advance of the due date of the critique.

* Author, *Title* (City: Publisher, Edition, Publication Date).

This full footnote should appear at the bottom of page 1, or the full information should appear on a bibliography page at the end. If you use but *one* book, you can simply refer to various pages, by putting the page number(s) in parentheses at the conclusion of the appropriate sentence or phrase in the body of the paper.

David I. Levine
University of California Hastings College of the Law

Adeline G. Levine
(Emeritus Professor of Sociology)
State University of New York at Buffalo

#7: Scrambled Sentences

Midway through the first semester of Legal Methods, my students seemed overwhelmed. I was demanding corrections on a closed-universe memo and a start on the open memo; other professors had accelerated the pace of classes to make up for holidays; exams loomed in students' peripheral vision.

We needed a respite. We had worked earlier in the semester on a "Lisa-Lenny" annulment problem, which I had used to teach case briefing, synthesis, and client counseling. Now I called on the "Lisa-Lenny" problem again. I wrote a 12-sentence paragraph. Then I scrambled the sentences, putting a number 1 through 12 next to each sentence and leaving space between the sentences. I then copied these scrambled sentences for each member of the class. I also took four copies and cut them apart, separating each sentence. I put each cut-up copy in an envelope labeled Group 1, 2, 3, or 4.

When students arrived, I divided them into four groups and explained that they were going to solve a puzzle. I reminded them of Lisa and Lenny. After giving each student a copy of the scrambled sentences, I gave one en-

velope to each group. The assignment was to take the cut-up sentences and put them in order. As a further incentive, I told the students that if their group succeeded in laying out the cut-up sentences in the correct order before class ended, that group could leave.

As I moved among the groups, my modest expectations grew. One group reviewed the substantive material, trying to find the elements necessary for an annulment. Another group searched for the topic sentence of the paragraph. Yet another argued which sentences comprised the middle of the paragraph. I critiqued as I moved from group to group. If, for example, two sentences were in the correct order or the topic sentence and conclusion were correct, I would tell the group. If a group foundered or meandered, I gave support or directions.

With about seven minutes left, one group solved the puzzle. With gleeful smiles the group members swung their backpacks onto their shoulders and departed. The other groups continued to shift the sentences, calling me to check whether they had solved the puzzle. When class ended, the other groups continued to work until finally they had to go to their next class.

"Scrambled sentences" was a big hit. It provided a respite, and much more: a review of substantive material and the opportunity for heated discussions on paragraph organization, logic, flow, transitions. It even lingered; in the next class, students argued that the order I had created in the puzzle was flawed.

I used the exercise again the next semester, but for a different purpose. I used substantive material from a brief we were writing. This time, I numbered the sentences in their correct order and cut them apart. What students received, therefore, was a copied sheet with a paragraph "correctly" ordered and numbered and a cut-up sheet for the groups to reassemble. Only one small group concluded early that the order was correct. Other students thought the order might be correct, but did not argue their convictions or yielded to assurances by more vocal classmates that I could not possibly have given them the correct order.

Part of what I had hoped to demonstrate this second time was that while collaboration could be very helpful, students must ultimately make their own decisions and must believe in their own theories and research. It was a gamble. I knew some students might be angry and feel "tricked," but I was bothered by the wholesale acceptance of theories expounded by some of the more boisterous members of my class. Although a few students muttered, others felt validated. Because the material provided insights into the brief required at the end of the semester, I believe all students forgave me for "tricking" them.

I used scrambled sentences again when teaching the summary of an argument for a brief. I wrote two summaries of fifteen sentences each, one for each side. Then I divided the class into petitioner and respondent groups

and made each group unscramble the summary for the opposing side. I had several purposes in mind:

1) to force students to anticipate the opponent's argument and to prepare strong counter-arguments
2) to help struggling students with the substance of the problem
3) to model a summary related to their problem

The technique worked well, as it has every time I've used it.

This "scrambled sentences" exercise could be helpful in teaching thesis paragraphs, rule proof, elements analysis, and exam answers. Or perhaps it could simply provide that needed respite for shell-shocked students.

Brannon Heath
Touro College Jacob D. Fuchsberg Law Center

#8: Giving Students an Appreciation of Real-World Issues and a Global View of the Law in First-Year Courses

It is important to mix teaching basic legal knowledge and skills with an understanding of real-world issues. Students need to develop an appreciation of the real-world context in which the law is practiced. This is particularly true of first-year students who spend a large percentage of their time learning basic legal rules.

In our first-year legal writing program at Gonzaga we assign a complex memorandum at the end of the spring semester. I gave my students a complicated political asylum problem involving a woman facing serious discrimination and hardship in her native nation. Students found themselves confronted with a difficult dilemma in which U.S. law left the desperate asylee in a gray area, probably unable to obtain asylum.

The students had to deal with the socioeconomic, political, and emotional aspects of a difficult asylum case along with the legal issues. Many students commented that resolving the frustration of dealing with the political and emotional realities of the problem was an eye-opening experience for them.

The asylum problem also allowed students to utilize virtually every research resource in the library including international law materials. Student reaction to the asylum problem was very positive. Students enjoyed the challenge of working on a research problem that encompassed a multitude of legal, socioeconomic, political, and emotional issues. Students also found it interesting to work with international legal materials and issues in the first year of law school. The growing interdependence of na-

tions makes it important to teach some international law early in the law school curriculum. The mixture of a challenging problem and the opportunity to work with an international problem made this an interesting and enjoyable experience for students. This was reflected in the intense amount of time and energy students spent on the problem and the good quality of the final memorandums.

Jared Levinson
Gonzaga University School of Law

#9: Reading Aloud to Illustrate Excellent Writing

I have used the following technique in a legal method and writing course to counteract boredom, provide context, and expose students to a different, and often finer, discourse than many casebooks provide.

I read out loud for up to five minutes at the beginning, or sometimes at the close, of many (but not all) classes from a fine piece of writing (fiction, non-fiction, or journalism) on a topic relevant to that day's lesson. In addition to your favorite op-ed pages and magazines for choice bits, law and literature bibliographies can be a wonderful source of ideas. See Gemmette, *Law and Literature: Joining the Class Action*, 29 VALPARAISO L. REV. 665, 795–895 (Spring 1995) and Gemmette, 20 LEGAL STUDIES FORUM 421–439 (Fall 1996), for a huge list of fiction ideas.

After a few demos on my side, I invite students to bring their favorite short works to read. Students can become very engaged in this activity, and it can get out of control, so I have explained that we only have time for one reading per class, and I ask students to give me a copy of what they propose to read at least one hour before class. I follow a first-come, first-read policy, with the exception that students who have already read must cede to those who have not. I put copies of readings for which we lack time on reserve in the library.

This exercise is fun and interesting (probably justification enough for doing it) but, in addition, it seems to have two practical effects. It enriches students' legal analysis by exposing them to data and reasoning freed from the confines of appellate opinions. It particularly benefits students in the first year of law school who have difficulty perceiving "issues" or critiquing arguments. In addition, it helps students grasp, through contrast with different rhetorical forms, the particular qualities (and limitations) of effective "legal" writing. In particular, it sensitizes students to the differences between arguments grounded in fact, reason, or emotion and arguments grounded in appeals to authority.

Kate O'Neill
University of Washington School of Law

#10: Peer Editing

Peer editing can improve your life. Additionally, it increases your students' learning. No matter what courses you teach, peer editing can work for you and those in your classes.

You know from your reading that students learn more when they personally apply principles, rather than just take notes on them. But you're a busy person. Do you want to take the time to read a set of assignments, knowing that commenting on and evaluating them will take you many hours? Or should you just rely on your usual semester exam? Or maybe you already have the students do an assignment for you, but you're less than happy with the work product you receive.

The common writing process without peer editing goes something like this: you outline the relevant law, explain the assignment, perhaps give the students a model, and set a deadline. Students individually prepare a written document: a trust indenture, a complaint, a settlement agreement, a will, an opinion letter, an appellate brief, an independent contractor agreement, a lien—whatever falls within your course. You evaluate the final product. It takes a lot of time, and you find that while some of the students did an excellent job, many students did only mediocre work, and some handed in an embarrassingly poor product.

When you add peer editing to the process, you and the students will both benefit. The process is inherently simple: students give each other structured, detailed feedback before an assignment reaches you for evaluation. (More on the specific process in a moment.)

One benefit for the faculty member is obvious: the work product you evaluate is nearly always much improved, so it takes you less time to read it, and you get to write more positive comments on each paper. Additionally, since the goal is that your course will encourage student learning, you are much closer to achieving that end.

The students' benefits are several, and apply to "real life." First, they learn the specific legal concepts sufficiently so they can recognize a problem and correct it. Second, they learn to give and receive constructive criticism. (I discuss this specifically in class, giving examples of comments attorneys may use in practice, some constructive and explanatory, others too general or purely pejorative. I also stress the importance of making at least one specific positive comment on each paper edited.) Next, they benefit from hearing other students' viewpoints and questions on issues they might not have considered or thoroughly understood. (This occurs more comfortably and openly in small groups, especially if students become used to working in such groups over the course of the entire semester, as opposed to the dynamic of discussions involving the entire class.)

Additionally, students improve their organizational skills with feedback. Finally, they begin to recognize the importance of process: outlining, drafting, and redrafting important documents, rather than cranking everything out in one sitting.

Comments from students about the peer editing process are almost uniformly very positive, assuming you take the time to structure it well and prepare students for the process. Their work product is indeed improved, and their understanding of the legal issues greater.

Fine. You think this sounds like an okay idea. But how do you get your students to succeed at peer editing?

Students' complaints are the same every year when confronted with this process for the first time: How can I edit something when I don't know anything about it? Are we doing this just to save you work? Why don't *you* read the first draft and the final draft? Can't I just do it myself? (Implication: I don't trust anyone else and don't want anyone else to have the benefit of my work.)

My answers are consistent each year, too: I will give you the tools with which to edit. Yes, this saves me some work because the product I eventually read will be better than if you did it all by yourself. I don't read both drafts because I don't have time to evaluate the assignment twice; instead, I will be available to answer your questions as you peer edit. Everyone must participate; I don't want to see any new concepts in the final product that you haven't discussed when peer editing (in other words, no holding out). My goal is to have everyone learn to do this particular thing well, and if everyone succeeds, I am happy to give everyone good grades, so competition shouldn't come into play here. (Unfortunately, not everyone gets great grades even when I use peer editing. However, it is rare that anyone receives grades as low as I end up giving when students work independently. For substantive courses, assignments which use peer editing may constitute only a small portion of the final grade, allowing the professor to maintain a curve, if necessary, when computing final grades.)

Peer editing is great; however, for its success you must put in some advance effort. Presenting peer editing as a part of your course by listing it in your syllabus gives the students notice of its value as a planned event. I list the specific dates on which peer editing will occur in class, and include a statement of exactly what work product, and how many copies, the students must bring to class for editing. By planning this in advance, I can also make sure the students will have time following the editing process to mull over the comments, react to them, and revise their drafts before the final deadline.

When you are planning, the particulars of the process you decide you will use are variable, but should include at least the following details: (1) the size of the student groups (I have tried pairs, triads, and groups of four and five; my sense is that students have the best experience with triads.);

(2) whether the students will self-select their groups (Allowing students to arrange their own peer editing groups may result in disparity in abilities among the groups, but allows for potentially greater comfort in working together.) or you assign them to groups (You might group students to include a mix of men and women, a variety of ages, a range of abilities, and a blend of other characteristics, but be aware of the potential concerns of isolating any person by making him or her the "token X" in the group.); (3) whether students will work within the same group the entire semester; (4) the tools you give your students, whether written or oral; and (5) the format of the peer editing process. (One option is to have everyone trade papers, so that A reads B's, while B reads C's, and C reads A's; A then discusses with B what she thought of B's paper. This seems to be less efficient, as A won't hear B's comments about C's paper and learn from them. Additionally, A can't listen to C and talk to B at the same time, requiring more time for feedback. A better alternative is to have everyone read A's paper simultaneously, then talk about it together, then move on to B's paper. I explain this process to the students before they embark on reading.)

Students' first inclination in peer editing is to look only for grammar and spelling errors, rather than confronting larger issues of organization, development, and substance. To prepare students to be effective peer editors, I provide a formal checklist and go over it in class in detail, giving examples. Sometimes, early in the semester, the checklists are more detailed. I explain in class that this checklist is closely correlated with the evaluation of the product. (In fact, I also give the students the evaluation sheet I use for the project prior to the assignment. They can see how the checklist mirrors the evaluation sheet yet develops the individual criteria in greater detail.) In the checklist, I break down what I want to see in each part of the document, and how it generally should be presented. The students use the checklist to go over the work product of their peers, using the format and structure you have chosen and explained to them. (One sample checklist is provided below.)

While the students engage in the editing process, the room is sometimes silent while everyone reads and makes written comments. At other points, the noise level is high, while different groups discuss the work products of individual students. While this uproar initially caused me some discomfort, I now recognize it as a sign of mental activity. As I circulate around the room, listening to different groups, I have found that nearly everyone stays on task the entire time, and everyone contributes comments in writing and orally. (This is especially true when everyone in a group reads the same person's work simultaneously. Then, when they are done reading and making written comments, A will discuss her concerns and questions, then B, then C. This way everyone has a chance to both give input and respond to that of others.) As the students discuss an individual product,

they sometimes struggle painfully to express themselves, but gain conviction in their understanding as they communicate their thoughts to others.

Following the editing process, students in my classes must then work alone on the final product without commentary from others. This limitation provides them incentive to use the editing time wisely.

That's peer editing in brief. For more information, talk with me or any legal writing teacher!

LEGAL RESEARCH & WRITING
Professor Magone
MEMO REVISION CHECKLIST

		OK	Rev. Nec.
Overall Appearance			
1.	Does the memo include all necessary sections? (Heading, Question Presented, Brief Answer, Statement of Facts, Discussion, Conclusion)	___	___
2.	Are the typing and physical presentation neat?	___	___
3.	Did the writer number the pages?	___	___
4.	Did the writer use appropriate font, double spacing, and 1" margins?	___	___
5.	Did the writer de-justify the right margin?	___	___
Other:			
Question Presented			
6.	Does the writer ask a question that can be answered yes or no?	___	___
7.	Does the question identify the legal theory upon which the suit is based?	___	___
8.	Does the question focus on the narrow problem(s) within this general legal area?	___	___
9.	Did the writer include legally significant facts which show the case's unique character?	___	___
10.	Did the writer use descriptive terms such as "purchase," "employer," or "minor," rather than terms such as "client," "defendant," or "appellant," or proper names such as "Mrs. Jones"?	___	___
11.	Did the writer use active, rather than passive, and positive, rather than negative, language?	___	___
12.	Did the writer state the question as clearly and simply as possible?	___	___
Other:			
Brief Answer			
13.	Does the brief answer cogently and concisely respond to the question(s) presented?	___	___
14.	Does the brief answer set out the standards, tests, elements, or issue relevant to the question presented?	___	___
15.	Does the writer "plug in" specific facts for the tests/elements/issues in responding?	___	___
16.	Does the brief answer provide a road map for the discussion?	___	___
Other:			

	OK	Rev. Nec.
Statement of Facts		
17. Does the writer identify the parties and the nature of the dispute?	___	___
18. Has the writer included all legally significant facts, including all facts on which the writer relies in the discussion?	___	___
19. Does the writer include background facts?	___	___
20. Does the writer indicate the location of the incident at issue so the reader can determine the appropriate jurisdiction?	___	___
21. Can the writer omit any facts in this section without confusing the reader?	___	___
22. Can the writer omit any facts which, if they had not occurred, would not have changed the result in this case?	___	___
Other:		
Discussion		
Organization		
23. Can the reader use the first sentence of each paragraph to prepare an easily understood formal outline of the paper?	___	___
24. Does such a formal outline make sense logically? If not, how would you revise it?	___	___
Other:		
Development		
25. Does each paragraph have a topic sentence?	___	___
26. Do the remaining sentences in each paragraph "prove," illustrate, or help explain the topic?	___	___
If not, can the writer omit that sentence?	___	___
Should the writer place the information elsewhere in the paper?	___	___
Could the writer add transitional words to the beginning of the sentence or otherwise change the sentence to make it more relevant to the topic?	___	___
27. Did the writer say enough about the topic to convince the reader that his attitude about the topic is correct?	___	___
28. Are the paragraphs too long (three-quarters of a page or longer)?	___	___
If so, can the writer divide any of them into two paragraphs?	___	___
If split into two paragraphs, does each have a topic sentence?	___	___
Other:		
Analysis		
29. Does the writer analyze the problem completely and thoroughly, with no loose ends or unanswered questions?	___	___
30. Does the writer support every legal statement with a citation to legal authority?	___	___
31. Does the writer include all relevant legal authority in the discussion?	___	___
32. Does the writer compare specific case facts to the specific facts of the problem?	___	___
33. Does the writer use the IRAC method consistently and completely, setting forth rules, applying the rules, and coming to a conclusion for each issue?	___	___
Other:		

	OK	Rev. Nec.
Style		
34. Does the writer usually use short- and medium-length sentences?	___	___
35. Does the writer use active voice, unless he uses the passive for a specific reason?	___	___
36. Does the writer use strong verbs?	___	___
37. Does the writer usually place the subject and verb together near the beginning of the sentence?	___	___
38. Does the writer use simple, familiar words rather than archaic legalisms? (Could your mother understand?)	___	___
39. Did the writer review the paper for spelling, grammar, and typing errors?	___	___
Other:		
Citation		
40. Did the writer begin any sentences with citations?	___	___
41. If so, can the writer shift the cite to the end of the sentence?	___	___
42. Are the citations correct according to the blue book?	___	___
43. Does the writer cite to authority whenever necessary?	___	___
Other:		
Conclusion		
44. Does the writer in the conclusion answer all question presented clearly and succinctly by outlining the elements/tests/issues and explaining our specific facts in relation to each?	___	___
45. Does the writer set forth questions and recommendations, if any, for the senior partner or the client?	___	___
Other:		

LEGAL RESEARCH & WRITING
Professor Magone
MOTION AND SIMPLE BRIEF REVISION CHECKLIST

	Good	OK	Rev. Nec.
MOTION			
Format			
1. Does the motion include all necessary sections (attorney's address and phone number, court caption and cause number, date, attorney's signature, certificate of service) and use the format specified by the Uniform District Court Rules?	___	___	___
2. Are the typing and physical presentation neat?	___	___	___
3. Did the writer number the pages at the bottom?	___	___	___
4. Did the writer use appropriate font, double spacing, and 1" margins?	___	___	___
5. Did the writer de-justify the right margin?	___	___	___
Other:			

	Good	OK	Rev. Nec.
Content			
6. Does the writer clearly identify the relief sought? (Order stating/precluding/limiting...)	___	___	___
7. Does the writer identify the legal basis for the relief sought? (i.e., rule of civil procedure X, rule of evidence Y)	___	___	___
Other:			
Writing			
8. Does the writer avoid legalese and the passive voice?	___	___	___
9. Does the writer use simple sentences?	___	___	___
10. Has the writer edited for spelling, punctuation, and grammar?	___	___	___
Other:			
BRIEF			
Format			
11. Does the brief include all necessary sections (attorney's address and phone number, court caption and cause number, introduction, argument, conclusion, date, attorney's signature, certificate of service) and use the format specified by the Uniform District Court Rules?	___	___	___
12. Does the writer use point headings and subheadings persuasively and appropriately, including law and relevant facts?	___	___	___
13. Could the writer use more point headings and subheadings to keep the reader on track?	___	___	___
14. Are the typing and physical presentation neat?	___	___	___
15. Did the writer number the pages at the bottom?	___	___	___
16. Did the writer use appropriate font, double spacing, and 1" margins?	___	___	___
17. Did the writer de-justify the right margin?	___	___	___
Other:			
Content			
Introduction			
18. Does the writer include legally significant facts for this particular issue?	___	___	___
19. Does the writer cite to the record after each factual statement?	___	___	___
20. Does the writer present the facts in chronological order?	___	___	___
21. Does the writer include procedurally significant facts?	___	___	___
22. Does the writer specify the relief sought?	___	___	___
Other:			
Argument			
23. Does the writer set out the standards, test, elements, or issues relevant to the issue?	___	___	___
24. Does the writer discuss the issue completely and thoroughly, with no loose ends or unanswered questions?	___	___	___

	Good	OK	Rev. Nec.
25. Does the writer support every legal statement with a citation to legal authority?	___	___	___
26. Does the writer include all relevant legal authority in the discussion?	___	___	___
27. Does the writer compare specific case facts to the specific facts of the problem, and apply the reasoning of each case as appropriate?	___	___	___
28. Does the writer use the CRAC method consistently and completely, setting forth a persuasive statement and the rules, applying the rules, and coming to a mini-conclusion for each issue?	___	___	___
Other:			
Conclusion			
29. Does the conclusion include a recap of each mini-conclusion made in the brief, integrating facts and law?	___	___	___
30. Does the conclusion include a specific request for the Court to act upon?	___	___	___
Other:			
Writing			
Organization			
31. Can the reader use the first sentence of each paragraph to prepare an easily understood formal outline of the paper?	___	___	___
32. Does such a formal outline make sense logically? If not, how would you revise it?	___	___	___
Other:			
Development			
33. Does each paragraph have a topic sentence?	___	___	___
34. Do the remaining sentences in each paragraph "prove,"illustrate, or help explain the topic?	___	___	___
If not, can the writer omit that sentence?	___	___	___
Should the writer place the information elsewhere in the paper?	___	___	___
Could the writer add transitional words to the beginning of the sentence or otherwise change the sentence to make it more relevant to the topic?	___	___	___
35. Did the writer say enough about the topic to convince the reader that his attitude about the topic is correct?	___	___	___
36. Are the paragraphs too long (three-quarters of a page or longer)?	___	___	___
If so, can the writer divide any of them into two paragraphs?	___	___	___
If split into two paragraphs, does each have a topic sentence?	___	___	___
Other:			
Style			
37. Does the writer usually use short- and medium-length sentences?	___	___	___
38. Does the writer use active voice, unless he uses the passive for a specific reason?	___	___	___
39. Does the writer use strong verbs?	___	___	___

	Good	OK	Rev. Nec.
40. Does the writer usually place the subject and verb together near the beginning of the sentence?	___	___	___
41. Does the writer use simple, familiar words rather than archaic legalisms? (Could your mother understand?)	___	___	___
42. Did the writer review the paper for spelling, grammar, and typing errors?	___	___	___
Other:			

Citation

	Good	OK	Rev. Nec.
43. Did the writer begin any sentences with citations?	___	___	___
44. If so, can the writer shift the cite to the end of the sentence?	___	___	___
45. Are the citations correct according to the blue book?	___	___	___
46. Does the writer cite to authority whenever necessary?	___	___	___
Other:			

ORDER

Format

	Good	OK	Rev. Nec.
47. Does the order have the proper format (no attorney's name in the upper left corner) and caption, including a date and signature line for the judge?	___	___	___
Other:			

Content

	Good	OK	Rev. Nec.
48. Does the order refer to the motion and its basis, the appearances of the parties, and the hearing?	___	___	___
49. Does the order, in its body, specifically grant or deny the motion?	___	___	___
50. Does the order provide a legal basis for the decision (the court's rationale)?	___	___	___
51. Does the document conclude with a specific sentence ordering the motion granted or denied, including a specific time for a party to act, if appropriate?	___	___	___

Kathleen Magone
University of Montana School of Law

#11: The Use of Journals

I recently incorporated a service-learning component into my Women and the Law course. Twenty-six students were placed as volunteers in 15 different agencies that provided services to women or girls. The primary purpose for the volunteer activity was to heighten student awareness of women's issues generally and the problems faced by women in transition and low-income women in particular. I had planned to use questionnaires to the students and to their agency supervisors to get feedback at the end of the semester. But I was uncertain how to monitor student involvement on an on-going basis. Journaling seemed a natural way to receive periodic input.

To formalize the project and differentiate student journaling from the keeping of a personal diary (and stave off the inevitability of my getting bifocals), I requested that the journal entries be typewritten. In addition, I asked the students initially to address three basic questions: (1) What new information have you acquired as a result of your volunteer experience? (2) How do you feel about your volunteer experience? (3) Have you had any specific problems in your placement? (I added the third question so I could make adjustments if needed.) For the final submission I asked students: "What changes would you make in the availability of services or the way services are delivered to the specific population with whom you are working?" The journal entries were not submitted anonymously, although students used exam numbers on the other two graded papers.

Students submitted their journals for my review every three weeks. The first submissions varied greatly in terms of format, content, and length. Because I did not dictate the use of a particular format, some submissions read like stream-of-consciousness musings; others resembled legal briefs. The individual personalities of the students emerged in a way that is uncommon in the law school setting. I would urge others to be loose about format requirements to allow student creativity to surface. At the same time, content—apart from the manner of presentation—was important to me. I received a detailed log of activities from some students that really did not speak to any of the questions I asked. It was difficult for some students to get in touch with their feelings about their experience, while others emoted on each page. I hoped for a balance and indicated such in my comments. Although I had heard some horror stories about teachers receiving 400-page journals, I did not set a page limit. Most students wrote about 10 pages, although I did receive a few in excess of 20 pages, and a couple of students wrote four or five pages the first time. In retrospect, it seems reasonable to set limits on length from the very start. I did provide comments at the end of each submission that ranged from making suggestions about ways the student could better answer my questions to brainstorming about how the students might handle a difficult situation.

Due in part to the nature of the student placements, I encountered a few problems. Two of the agencies were concerned about confidentiality issues. I assured them that the journals would be read only by me and that students would not reveal anything that would compromise client confidentiality. Other agencies experienced changes in personnel between the time the placement was established and the time students began volunteering. As a result, a handful of students did not get started in a timely fashion, so adjustments had to be made in the due dates for their journal submissions.

The other dilemma I faced was how to handle writing problems such as poor grammar, sentence structure, and the like. I was apprehensive about

correcting these mistakes, particularly where the content was good. I mentioned specific writing problems in a brief comment at the end of each student's work. I indicated my willingness to assist, but I decided to allow the student to make the call whether additional input from me was desired. Only one student took me up on my offer.

The overall journaling experience seemed to work well, both for me and for the students. For me, it was a welcome change from reading the same hastily-scribbled exam response for the 125th time. For them, it was a rare opportunity to escape from the IRAC format in a time-pressured exam setting or from obsessing about proper citation form. Most of the submissions I received were thoughtful and reflective. Some were quite amusing. Many were extremely heartfelt and touching. I would definitely do it again.

Mary Pat Treuthart
Gonzaga University School of Law

#12: Memoranda Reveal Bias

Criminal Law at Emory is a first-year course. In addition to teaching substantive criminal law, I want students to understand that our criminal justice system is a series of decisions by individuals which greatly affects the lives of other individuals. I also want students to begin to recognize their own biases, and in turn to recognize how biases affect the development of law. After a couple classes on sentencing, I pass out the following assignment. In half of the papers I name the defendant Sam Johnson and in half I name the defendant Sandra Johnson. I calculate the average sentence imposed on each, first by the whole class and then looking separately at sentences imposed by women and sentences imposed by men. The results prompt substantial discussion.

Sentencing Memorandum

If you were the judge in the following case, what sentence would you impose and why? Write a brief (one-page) memo stating your sentence and explaining your reasons.

United States v. Johnson

Sam Johnson was convicted of possession with intent to distribute 900 grams of cocaine in powder form in Washington, D.C., on January 19, 1995. On that date, officers of the Washington, D.C., task force watched passengers leaving the Amtrak train which had just arrived from New York. Officers noticed Mr. Johnson because he looked nervous, had no luggage other than a large tote bag, and proceeded immediately to a pay

phone. A plain-clothes officer stood at the next phone and heard Mr. Johnson describing his own clothing and agreeing to meet someone just outside the station in thirty minutes. The officer identified himself to Mr. Johnson and asked to search his bag. Mr. Johnson began trembling, but handed the officer the bag. The officer opened the bag and found the 900 grams of cocaine.

The officer placed Mr. Johnson under arrest. When asked to cooperate in an ongoing investigation, Mr. Johnson gave the officers two nicknames of persons he had picked the cocaine up from in New York. He said he could provide no other information. Mr. Johnson is twenty years old. He is not married. He has a one-year-old son and a three-year-old daughter. He completed the eleventh grade. From June 1994 until November 1994, Mr. Johnson was employed as a waiter.

After losing a motion to suppress the physical evidence, Mr. Johnson pleaded guilty to one count of possession with intent to distribute 900 grams of cocaine. The statutory mandatory minimum penalty is five years in prison. The maximum penalty is twenty years in prison. A judge can sentence a defendant to less than the statutory minimum only if the court finds that the defendant gave substantial assistance to government authorities to aid a criminal investigation.

Deborah Young
Samford University Cumberland School of Law

#13: Writing Under Pressure

I have recently developed a course designed to prepare students for the shock of the real world by compelling them to write for ninety minutes during twelve classes. They thus write for eighteen hours under pressure.

I develop problems based upon Illinois Civil Procedure. I write up the problems in memo form as if from a partner to a young associate. The students then receive the problem plus a statute plus several cases. Using these materials they are to write letters of opinion, objective memoranda of law, and argumentative memoranda of law.

This technique is especially useful because the twelve writing problems provide a means of repeatedly reviewing the students' work. This increased feedback helps them considerably.

I recently have had quite a continent of students stop in to say their exams in other courses are easier to take, but, most heartening were the visits from those who are clerking and claim to feel much more self-confident about writing under pressure.

Corinne Morrissey
The John Marshall Law School

#14: Fiction Draws Students Into the Culture of Law

While teaching a required course that students did not want to take, I began a little experiment that seems to be working. I required my American Legal History students to read some outside materials they would find entertaining. The students then had to write book reviews of the material. Initially shocked to get an assignment like ones they had learned to dread in high school, they eventually learned the reviews could be a useful part of their law school experience.

Several years ago, the faculty at the School of Law, University of Louisville, decided our students were not being sufficiently exposed to materials outside of the core, rules-oriented courses. The school instituted a requirement that the students take a course from a list of alternatives that included American Legal History. The students were not pleased. None of the law firms that regularly recruited on campus appeared to do very much legal history work. None of the students could recall ever hearing one of our former graduates wax eloquently about a million-dollar legal history case currently in legislation.

I supported the unpopular requirement because I believe law is a reflection of the culture that produces it, and students should have some understanding of that culture. I agreed to teach a section of American Legal History and to let students learn about the culture of law by reading fictional works. To insure they accomplished the reading in a studious manner, I required and graded book reviews.

My first task was selecting the fictional works from which the students could choose. I had several criteria. The works should reflect something about the way in which our culture views law, should present those ideas in a stimulating or thought-provoking manner, and should be exciting to read. In addition, I wanted to find a variety of fictional formats—novels, short stories, and plays. Each student had to select two works, and only one could be a short story.

Naturally, *Billy Budd* by Herman Melville was easy to place at the top of the list. As a short novel that appears in every law and literature discussion, it provided a simple starting place. *To Kill a Mockingbird* by Harper Lee was also an easy choice. Those two items allowed the students to see discussions of right, justice, prejudice, and breakdowns in the judicial process. For the adventurous students, I added *The Trial* by Franz Kafka. Obviously that work does not relate to the American experience, but I felt it was sufficiently universal to be appropriate. That has been a difficult work for students who have tried it.

I selected some shorter works to add a variety of interesting topics. *The Lottery* by Shirley Jackson was a horrifying tale that many students had

read when they were younger. When they read it in law school, however, the strict, traditional legal procedure that produced the meaningless execution took on a new meaning. I also added *The Hack Driver* by Sinclair Lewis. It is a delightful short story about the experiences of a new law firm associate. The students enjoyed the work and saw it as a prediction of things to come.

I offered a few plays. Because the course spends a little time on the Salem Witch Trials, *The Crucible* by Arthur Miller was a natural. *Inherit the Wind* and *The Night Thoreau Spent in Jail*, both by Jerome Lawrence and Robert E. Lee, also provided a fictional account of issues that are raised in the course. For the student who wanted a more classical offering, I allowed students to select either *The Taming of the Shrew* or *The Merchant of Venice*. Both of these Shakespeare plays raise issues of the role and rights of women, justice, mercy, and blatant bigotry.

The next problem was to set some limits on the format of the reviews. I wanted the reviews to accomplish a few simple goals. Of course, I had to check to see if the students had actually read the works. And I wanted the students to think and analyze the relationship between law and culture. Finally, in the interest of efficient grading, I wanted the reviews to be short and direct.

The reviews were limited to no more than five pages each. The first page had to contain the name of the work and the author, and it had to answer the question: "Did the student think that other students would benefit from reading the work? Please explain." There were several reasons for this instruction. The first page of every review was removed from the student's work and placed in a ring binder on reserve in the library. This allowed other students to have a quick source as they were selecting the works they would read. I have reused the better ones each year. In addition, the question directs the students to think about why the work may have some relevance to the study of law.

The rest of the review also had specific requirements:

- A brief summary of the work that should extend no more than one paragraph.
- A description of what the student felt was the most interesting part of the work.
- A discussion of what the work revealed about the nature of law or the nature of society.
- An explanation of whether the presentation of the nature of law or society was consistent or inconsistent with the student's own view of that subject.

Using that format, I was able to make some comparisons of the quality of the consideration and analysis that the students had brought to their

reading. The summaries of the works and the discussions of the most interesting parts allowed me to determine whether the students had seriously read the material. The discussions of the nature of law or society forced the students to think about the relationship between law and the culture of law.

I continue to teach the course on American Legal History and want to continue the experiment with the book reviews. Both the students and I enjoy this break from the typical law school reading assignment. I have a long reading list of fiction and non-fiction, law-related materials that I have prepared over twenty years of teaching. I intend to select different items from this list as alternatives for the book reviews. In addition, I want to continue to experiment with the format of the reviews.

I also have one additional future experiment in mind. Since today's students are video intensive, and there are a substantial number of excellent law-related movies available, I would like to add movie reviews to the course. I could imagine students writing reviews of the movies *To Kill a Mockingbird, Twelve Angry Men,* or *Inherit the Wind.*

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