



2012

# Toward a Unified Grading Vocabulary: Using Grading Rubrics to Set Student Expectations and Promote Consistency in Legal Writing Courses

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## Recommended Citation

Jessica L. Clark & Christy Hallam DeSanctis, Toward a Unified Grading Vocabulary: Using Grading Rubrics to Set Student Expectations and Promote Consistency in Legal Writing Courses, *J. of Legal. Edu.* (2012)

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**TOWARD A UNIFIED GRADING VOCABULARY:  
USING GRADING RUBRICS TO SET STUDENT EXPECTATIONS  
AND PROMOTE CONSISTENCY IN LEGAL WRITING COURSES**

Jessica Clark and Christy DeSanctis<sup>1</sup>

**I. Introduction**

“But, assessing writing is so *subjective* . . . .” This sentiment is a common, knee-jerk reaction to the notion that a legal writing class should be graded. It is also the sentiment underlying the charges that writing classes teach students to write for only one person and that nothing about grading writing can be standardized across sections taught by different professors, or across a spectrum that includes multiple classes, courses, or writing programs. Yet, a vast number of recent presentations at regional and national legal writing conferences consistently indicate that we are all walking to the beat of a drum that does not sound so very different to the multitude of writing professors’ ears. More broadly, conversations about assessment measures in law schools are already well upon us; in fact, on this topic the legal academy is behind the curve. If assessment in law schools was “knocking at the door of American legal education”<sup>2</sup> in 2000, it must be kicking that door down in 2011. There has been a recent trend in law school assessment scholarship<sup>3</sup> and assessment-themed conferences,<sup>4</sup> which is but one way to measure what law

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<sup>2</sup> GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 3 (2000).

<sup>3</sup> The Legal Writing Institute recently published an entire volume on assessment: LEGAL WRITING INST.: THE SECOND DRAFT, vol. 24, no. 3 (Fall 2010), [http://www.lwionline.org/the\\_second\\_draft.html](http://www.lwionline.org/the_second_draft.html) (last visited Feb. 14, 2011).

<sup>4</sup> “The University of Denver hosted the first law school conference dedicated to assessment of learning outcomes. Entitled Legal Education at the Crossroads v. 3: Assessment, this conference took place on September 11 - 13, 2009.” David I. C. Thompson, Presentation to AALS 2011 Conference – LWRR Section, <http://www.law.du.edu/thomson/AALS2011.htm> (last visited Feb. 15, 2011). More recently, the Institute for Law Teaching and Learning advertised its summer 2011 conference, “Engaging and Assessing Our Students,” as designed to provide “workshops on techniques for generating student engagement, and for improving assessment of

schools are actually doing about assessment criteria. With respect to writing, however, questions remain not only about how it should be assessed, but whether it can be measured with uniformity and consistency.<sup>5</sup>

In this article, we explain how writing expectations can be standardized within a law school's writing program. We also suggest that communicating those expectations explicitly at the outset of each assignment assists in combating the notion that writing assessment is an eternally subjective enterprise. In our six semesters' worth of overseeing a graded legal writing course,<sup>6</sup> we and our legal writing colleagues have used detailed grading rubrics to assess more than 6000 papers (predictive memoranda, trial briefs, and appellate briefs). Our thesis and analysis in this article are rooted in the data we have collected with these thousands of papers, associated scores and sub-scores, discussions with legal writing teachers about their application of the rubrics, and anecdotal student feedback about how the rubrics inform their understanding of achievement in the legal writing course. By explicitly setting writing and analysis standards, with narrative explanation of these standards, we have achieved a significant level of standardization—both in terms of writing expectations and assessment of student writing.

Our experience with the rubrics, including the critical thinking that informs the development and implementation of such assessment standards provides an example of what legal writing faculty can offer the larger legal academy in terms of establishing the kind of

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students to enhance their learning.” <http://lawteaching.org/conferences/> (last visited Feb. 15, 2011). Even more recently, Professor Lori Roberts of Western State University College of Law gave a presentation entitled “Assessing Student Learning Outcomes in a Legal Writing Course: A Simple, Efficient, and Valuable Process” at the 2011 Capital Area Legal Writing Conference in Washington, D.C. Professor Roberts has a related article forthcoming, *Assessing Ourselves: Confirming Assumptions and Improving Students Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457 (Spring 2011).

<sup>5</sup> The Institute for Law Teaching and Learning Conference in June 2011 was devoted to topics in assessment. A wealth of presentations focused on assessment measures for writing, including as part of a non-writing course. See, e.g., <http://lawteaching.org/conferences/2011/welcome/index.php> (last visited June 6, 2011).

<sup>6</sup> GW's Faculty voted to grade our two-semester legal writing course using traditional letter grades in February 2008. The policy took effect with the Fall 2008 semester.

outcome assessment measures promoted by the 2007 Carnegie Report.<sup>7</sup> This article contributes to the recent trend in scholarship on this subject by presenting a methodology for crafting rubrics specific enough to promote substantial consistency in writing assessment across different professors or classes, but flexible enough to accommodate comparisons between papers. The discussion below regarding our own experience establishing grading guidelines and implementing them across a large adjunct-based program is pertinent for any professor teaching writing or integrating a writing component into another course, as well as for any professor developing a rubric for an exam, skills exercise, or other course component requiring assessment. Before turning to specifics, we first establish a backdrop by explaining the key rationales for grading writing. We then address several significant considerations in crafting rubrics to promote predictability and flexibility. With this context, we suggest how to use rubrics as a feedback tool, and offer five primary and secondary benefits from employing rubrics in a grading scheme. We conclude that the advantages of using rubrics far outweigh the implementation challenges and provide ample reasons for further development and refinement of such assessment measures in legal writing courses.

## **II. Grading Writing: Not Why, but How**

Not surprisingly, employers and judges regularly report that a law student or graduate's writing skills are among the most important skills—if not *the* most important skill—that he or she could bring to the job. Underscoring that importance, most legal writing courses are graded

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<sup>7</sup> The Carnegie Foundation for the Advancement of Teaching issued its most recent report on legal education in 2007, entitled: *Educating Lawyers: Preparation for the Profession of Law*. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WAGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS (2007) [hereinafter Carnegie Report]. The Carnegie Report initiated widespread discussion among members of the legal academy, especially in its recommendations concerning experiential learning. While the report credits the work of legal writing professionals for their recognition of the importance of teaching that is interactive and experiential in nature, some commentators have suggested that for this segment of the legal academy, the report may not go far enough in recognizing its potential contributions to the larger enterprise of law teaching. See, e.g., [http://works.bepress.com/christine\\_coughlin/6/](http://works.bepress.com/christine_coughlin/6/) (article forthcoming in J. LEGAL WRITING INST. 2011, <http://www.journallegalwritinginstitute.org>).

on a traditional A to F scale. Of the law schools ranked in the top twenty-five by *U.S. News & World Report*,<sup>8</sup> sixteen grade LRW consistent with other first-year courses. Fifteen use traditional letter or numeric grades and calculate the LRW grade into the student's GPA: Boston University, Chicago, Cornell, Duke, Emory, Georgetown, George Washington, Northwestern, Notre Dame, Texas, UCLA, USC, Vanderbilt, Virginia, and Washington University–St. Louis. U.C. Berkeley uses modified grades for all first-year classes and thus does not treat LRW differently. Significantly, there are four adjunct-based programs on this list (BU, Notre Dame, GW, and USC), leaving only one other adjunct-based program in the top twenty-five that does not use traditional letter grades (University of Minnesota).<sup>9</sup> The 2011 Survey conducted by the Association of Legal Writing Directors and the Legal Writing Institute reveals even more extreme pro-grading statistics: 163 out of 188 responding schools (87%) grade LRW and include that grade in the student's GPA.<sup>10</sup>

If grading writing is the norm, it follows that there should be some set of standards on which students are assessed that can be reduced to a narrative that is both informative and transferrable. If not, then we are doing something wrong—because if we cannot point to specific reasons why one memorandum or brief is better than another one—if it is *solely* based on personal preference, then how can we or how *do* we teach what is expected in advance of simply

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<sup>8</sup> According to the most recent data, the top 25 schools are ranked as the top 22, with four schools tied for twenty-second. *U.S. News & World Report*, Best Law Schools, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Mar. 2, 2011).

<sup>9</sup> The practices of the schools not already mentioned are as follows: Yale has no separate legal writing program, and Michigan counts Legal Research and Writing (LRW) grades in the GPA if the grade is a C- or below. Columbia, Harvard, NYU, Stanford, University of Illinois, and University of Pennsylvania use modified pass/fail grades for LRW. Wisconsin, ranked at twenty-eight, is the next adjunct-based LRW program on the U.S. News list. There, like BU, Notre Dame, and USC, LRW is letter-graded and that grade counts in a student's GPA. In other words, four out of the five other top-tier law schools that employ adjunct professors to teach LRW use traditional grades and count those grades in the GPA.

<sup>10</sup> Association of Legal Writing Directors / Legal Writing Institute, Report of the Annual Legal Writing Survey, 2011, at iv, <http://www.lwionline.org/uploads/FileUpload/2011Survey.pdf> (last visited Oct. 10, 2011) [hereinafter 2011 ALWD/LWI Survey].

stating: “just do it first, and *then* I will explain”—an all-too-common charge for courses that teach practical skills, such as legal writing courses do.

Our assessment of students, after all, is not typically based on a multiple-choice exam that simply tests adherence to arcane rules of grammar. Attending to rules of grammar and punctuation, to font and formatting expectations, to appropriate citation format—certainly, these considerations are vital to the enterprise of good writing.<sup>11</sup> Yet, most legal writing professionals would doubtfully say that compliance with these details, as important and meaningful as they are, form the centerpiece of their classes or comprise the bulk of their grading expectations. Rather, legal writing courses teach legal *analysis*. There are points of agreement about how this legal analysis is done effectively—establishing and explaining rules, and drawing close analogies or making effective distinctions between present and former case facts. While different textbooks may use different vocabulary to explain these concepts, and assignments may vary in the percentage value accorded to their successful execution, there is more uniformity than difference in our approaches.<sup>12</sup> Given that factors such as these—articulating the crystallized legal issue and announcing the Rule that governs it—are identifiable factors and, moreover, present objective criteria for measuring the strengths of legal analysis, legal writing courses should employ rubrics along the lines that we advocate to communicate these qualities and

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<sup>11</sup> Fonts actually may be far more important than we realize. See Richard Neumann, Jr. & Ruth Anne Robbins, Presentation Materials for “Font Wars,” given at the 2011 Capital Area Legal Writing Conference, Feb. 26, 2011, Washington, D.C. (materials on file with the authors).

<sup>12</sup> In a useful, nuts-and-bolts essay to which we point our students in the early classes of the fall semester, Lurene Contento writes that:

Although most of the students have read about IRAC or at least heard of it, they come to the [beginner’s] workshop confused about how to use it. They also want to know why they should use it when friends in other classes are using SIREAD or CRuPAC or TREAT or some other funny-sounding acronym. . . . The students begin to see that while IRAC and kin have different names, their elements match up. . . . Because we all know what IRAC is, whether you call it Issue, Conclusion, Sub Issue, Topic, or Thesis, you have to tell your reader what the issue is before you write about it. . . . Then, you need to set out the general Rules [ ] so that the reader understands the law before you apply it. Lurene Contento, *Demystifying IRAC and Its Kin*, LEGAL WRITING INST.: THE SECOND DRAFT, vol. 21, no. 2 (Dec. 2006).

expectations in advance of grading. This should be true regardless of the size and structure of the program.

Indeed, legal writing programs vary in many ways, from number of credits devoted to them to the staffing models that they employ.<sup>13</sup> In most legal writing courses, a single professor is responsible for grading a student's writing throughout a semester or year-long course. But, given that writing is, as we teach, always audience-driven, the same sentiment translates to *grader*-driven. The issue remains whether there are any objective measures to which a writing professor can turn to assess a piece of writing and even while perhaps also giving weight to subjective interpretations of how the writing measures up to his or her standards. Even though personal or stylistic preferences may play *some* role in evaluating writing, these preferences are never the sole measure of assessment. Or, such preferences should not be. However, if grading legal writing is *not* a matter of pure preference, then what exactly is it? And, how do we as legal writing professors assess it fairly, consistently, and accurately?

### **III. Crafting Rubrics: Balancing Predictability and Flexibility**

When several years ago our institution proposed moving to a letter-graded, versus modified pass-fail system for legal writing,<sup>14</sup> one of the central concerns involved how to ensure that our cadre of 40+ writing professors would use the same standards for assessing papers.

Would it be possible for a professor to assign a B to a paper primarily because that professor

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<sup>13</sup> According to the 2011 ALWD/LWI Survey, “virtually all writing programs had required courses in both the first and second semester of the first year of law school. The average number of credit hours in Fall 2010 was 2.38 (down from an average of 2.41 credit hours in fall of the 2009-2010 academic year); the average in Spring 2011 was 2.31 credit hours (up minimally from an average of 2.30 credit hours in the spring of the 2009-2010 academic year).” 2011 ALWD/LWI Survey, *supra* note 10, at iv. As an example of the variations, 12 schools reported one credit in the fall semester; 92 reported two credits in the fall semester; 75 reported three credits in the fall semester, and 3 reported four credits in the fall semester. *Id.* at 7. The credit variations reported for the second semester of the first year were similar. *Id.* The Survey also reported that “most programs continued to use full-time non-tenure-track teachers (79 programs, or 42% of respondents), or a hybrid staffing model (69 respondents, or 36.72%).” *Id.* at iii; *see also id.* at 5-6.

<sup>14</sup> Our former grading system allowed four types of grades: a “High Pass,” for grades which would otherwise earn an A or A-; a “Pass” for a B-range grade; a “Low Pass,” for C-range grades; and “Fail.”

“over-valued,” for example, the Statement of Facts in a trial brief and thus attributed more points to that section than to any other section, and more points than another professor? Would the same brief score a B+ or A- in another section where the professor assigned fewer points to the Statement of Facts and more to effective use of point headings? Would a creative use of policy argument in an appellate brief stand out to one professor, but strike another as a throwaway argument?

Up against these concerns, we knew we needed to institute a system of detailed grading rubrics to set standards and create a methodology for consistent evaluation throughout the first-year class. A rubric is a set of detailed grading guidelines used to determine a numerical score or letter grade through application of articulated guidelines to the associated writing assignment.<sup>15</sup> Using categories of expectations and associated point or letter-grade values, rubrics break down an assignment into identifiable pieces that make up the whole. Rubrics give detailed descriptions of how points are earned, with explanations of the various levels of sophistication that determine a narrow point range. The point values and descriptions may vary by each assignment – by what is expected at each point in the semester, by what is emphasized and taught in contemplation of each assignment. The most critical elements of a rubric are that it is sufficiently detailed so as to announce expectations and, to some extent, circumscribe the number of points associated with each element, while at the same time providing enough flexibility to the professor to distinguish between and among papers at a level of nuance that is impossible to capture according to a purely objective methodology.<sup>16</sup>

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<sup>15</sup> For a more thorough description of rubrics, see Sophie M. Sparrow, *Describing the Ball: Improving Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. L. REV. 1, 7 (2004).

<sup>16</sup> The basis for the design of our grading rubrics stems from the grading guidelines that the University of Maryland uses for its freshman writing course, English 101.

Our legitimate concerns formed the bases for our approach to developing rubrics that would both satisfy legal writing professors' needs and fulfill student expectations. We crafted the rubrics with the goal of standardizing the valuation of components of legal analysis and writing, thus offering predictability to students, and at the same time, allowing flexibility where appropriate. With these goals in mind, our first step in overcoming anxiety about subjectivity in professors' grading of writing assignments was to demarcate what exactly it was that we were evaluating, which differs based on a particular assignment, and then to assign each piece of that puzzle a point value.<sup>17</sup> Whether that meant that a Statement of Facts was worth 5, 10, or 15 percent of the total score was itself of no particular relevance; the idea was to come to some uniform conclusion for each assignment about the value of each component given the time spent teaching it. For example, we might value the statement of facts as five percent in a predictive memorandum where the facts are largely given as a narrative in an assigning document, but we might value it as ten or fifteen percent in an assignment, such as a trial court brief, where we focused more on the importance of constructing an effective story, or factual presentation based on synthesis of several fact documents.

Next, we assigned a *narrative* assessment to a limited point spread designed both to describe to students and to graders what is excellent, versus mediocre, versus problematic and, as well, to tie the hands to some extent of graders such that there is only one possible point spread attributed to each category. Designed to announce to students in advance of grading what is expected, the narrative descriptions mirrored the material professors taught in classes leading up

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<sup>17</sup> Professors should evaluate assignments without knowing the author. Blind grading is fairly common, even in writing programs. The 2011 ALWD/LWI Survey Report data shows that 113 out of 188 programs grade at least one writing assignment anonymously. ALWD/LWI Survey, *supra* note 10, at iv. By this practice, a professor is protected from the perception of favoritism, and is also unable to award points for effort when effort is not part of the rubric. In other words, a student might earn 36 out of 40 on an assignment, and if the professor knew this student to be the same student who scored 25 out of 40 on the immediately prior assignment, the professor might want to reward the student's improvement. Though understandable, most legal writing courses do not award points for effort.

to completion of the particular writing assignment. Still, our goal was to give professors sufficient room to be able to distinguish between, for example, two or even three papers that met the criteria of a particular subcategory but nevertheless were distinguishable as more or less successful given those criteria. Based on the comparative success of the papers, we wanted professors to be able to assign different numerical scores related to the relative strength of the papers, but still identify the papers as within the top range of points. In other words, while we wanted to be specific and to impose some constraints, we recognized in advance that we could not associate a narrative with each individual point available, no matter what the total scale.<sup>18</sup> Rather, the idea was to develop narratives that could be associated with point total *ranges*.

*A. Effective Rubric Language: It's all in the Details.*

To illustrate how this works in crafting a rubric, consider our second assignment in the fall semester. Like many other two-semester legal writing courses, the second assignment is an open-research memorandum that asks students to predict the outcome of a legal quandary. It is worth 72 out of a total possible 160 points for the semester; the Statement of Facts for this memorandum is worth six points, or a little less than ten percent of the whole. The grading rubric for the Statement of Facts in the second memorandum provides as follows—note that our descriptions are directed to the professors as the primary target audience; however, we circulate

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<sup>18</sup> We recommend that in drafting rubrics for writing assignments, one consider making assignments worth a point total *other than 100*. In our first year of using grading rubrics, each assignment was scored on a 100-point scale, and then weighted according to the appropriate percentage assigned as contributing to the final end-of-semester score. In the 100-point rubrics, there were several categories with point ranges of 20, 30, and even 40 points. These rather large point ranges were divided into sub-ranges with guidelines for each category, but it proved impossible to write guidelines for each, or even every other, point in the range. We had some trouble determining, for example, given a range of 20-30 points for use of analogies and distinctions, whether a professor was using those ten points accurately or reliably. In that we recommended (and still do) first categorizing papers into a scoring range before assigning a score, we saw evidence of professors automatically going to the top of a ten-point category every time a paper met the criteria for that range, such that any paper that made it into the 20-30 point range received a 28, 29, or 30. That was not the intent, of course, as one would never articulate a ten-point range of possible scores and then artificially limit scoring to a three-point range within that. Yet we saw this tendency and thus had to make substantial modifications to our narratives and point totals to inspire more confidence in using the entire range of points available. Not only that, but the deep point-total ranges resulted in scores never reaching below a certain threshold. Students “earned” points to some extent just for submitting the document.

these guidelines in advance to all students, who thus form a secondary audience for this information:

**STATEMENT OF FACTS**

**6 points**

A detailed fact statement was provided in the assigning Memorandum. Here, you should consider how well the student excerpts and presents the necessary facts. Ask yourself whether you have enough information in the SOF to understand the situation if you had not had the assigning memorandum beforehand.

6 points                      Includes both sufficiently contextual background facts and the facts that are important to the analysis and conclusion. Is concise, yet without referring back to text of problem, reader has all necessary factual info. Is objective—meaning that SOF is free of legal argument, but narration of the facts is consistent with the legal conclusions.

4 points                      Follows these general guidelines but: includes legal conclusions or argumentative characterizations; includes factual inferences that are not supported. Generally, however, there are no key facts missing (that are important to the analysis). Style-wise, it may lack a sophisticated tone, and include some editorializing, but it is still readable and understandable.

2 points                      Lacks important substance, detail, or context: meaning that a reader would have trouble (without the fact pattern) understanding the relevant details (in anticipation of the Discussion section). The SOF uses argumentative language or editorializing, and/or exhibits stylistic deficiencies that render it difficult to follow (in tone or because it presents a confusing organization or rendition of events).

In contrast, our trial court brief, the first major writing assignment for the spring semester, which is worth 40 points out of a total of 160 points for the semester, reads as follows (note that given the smaller point spread for the overall assignment, we have combined for this particular rubric the “basic” elements of the trial court brief):

**BASIC COMPONENTS: CAPTION, INTRO, SOF, CONCLUSION**

**5 points**

5 points                      Assign 5 points if the caption, introduction, statement of facts, and conclusion are extremely well-executed by a second semester 1L. In particular, look for the following:

- The caption complies with GW Local Rule (LR) 11,<sup>19</sup> is error-free, and does not include any extraneous information or formatting mistakes;
- The introduction complies with LR 12, is brief and, if taught by the LRW Professor, includes a theme to the party’s overall position, but does not include any of the party’s specific arguments;
- The statement of facts complies with LRs 13 and 27, employs a clear organization method that works well with the facts and issues in the memo, and demonstrates the student’s ability to use persuasive techniques effectively by emphasizing favorable facts and deemphasizing unfavorable ones. The statement of facts may include inferences, as long as the given facts support the inferences. Characterizations of facts must be within the bounds of persuasiveness. Finally, a theme is evident in, or supported by, the statement of facts.
- The conclusion complies with LRs 15 and 30.

3 points Assign 3 points if either (1) the caption, introduction, statement of facts, and conclusion are all fairly well-executed but lack crispness, sophistication, or sufficient detail, or (2) some components are well-executed while others are deficient in places, but the quality of the components as a whole does not detract from the overall strength of the paper.

1 point Assign 1 point if the student included each of the components, but the quality of one or more detracts from the overall strength of the paper. Things to look for include:

- A caption with errors such as a misspelled court name or party name, formatting mistakes, and/or unnecessary information.
- An introduction that is missing one or more important elements, such as a brief summary of the nature of the case or the party’s desired outcome.
- A statement of facts that includes mischaracterizations, unsupported inferences, and/or legal conclusions throughout. Lack of persuasiveness in tone also warrants a score in this range, when combined with other weaknesses. Facts may be generalized and even inaccurate; as a whole, the student failed to demonstrate an understanding of the purpose of a persuasive SOF.
- A conclusion that could have better stated the relief sought or desired disposition of the case. The conclusion perhaps includes, or fails to include, content that indicates that the student did not understand the purpose of the conclusion and/or the guidelines set out by the LRW professor.

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<sup>19</sup> We issue “GW Local Rules” each semester so that students are acclimated to the fact that different courts have specific rules that govern the submission of written work product. Though GW rules are based *loosely* on those in use in the D.C. District and Circuit Courts, they also incorporate an amalgam of institutional considerations, such as compliance with GW’s Academic Integrity Code.

0 points            Assign 0 points if one or more of the basic components is missing from the memo.

As these examples indicate, grading guidelines can be written without specifying each individual point value for a given category; it seems artificial if not impossible to do so. These “in-between” points provide flexibility in assessing papers that fall somewhere in the middle of the narrative descriptions—for example, a 5 for the Statement of Facts for the open research memorandum can be assigned when a student does better than the description of a 4, but does not quite reach the description of a 6. As another built-in tool for flexibility, these in-between points can, and should, also be used for scoring papers against each other. For example, if two papers satisfy the language associated with five points in the second sample rubric above, but one has a theme that is better developed than the other, and both satisfy the requirement of “a theme is evident, or supported by;” instead of awarding a five to both papers which would suggest that both papers are equal, the paper with the better developed theme should be assigned a five and the other paper assigned a four or even a four and one-half, if half-points are allowed in the scheme.<sup>20</sup> This flexibility is often necessary to allow graders to differentiate among students who are at approximately the same level but their papers are nevertheless distinguishable from one another.

Additionally, as seen in the 5-point range description for the trial court brief in the above sample, allowing room for professors’ preferences is entirely manageable, using language such as “as taught by” in the grading guidelines. For example, there is no question that having a theme, or theory of the case, is part of a good trial brief, but the placement of the theme or the extent to which it is present throughout the brief may be open to preference. The rubric’s

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<sup>20</sup> Half-points allow additional differentiation among papers, though on a smaller scale. Quarter-or less than quarter points are not recommended because of the decimals necessarily involved in the points calculation.

specific language, therefore, might not be so precise as to suggest any one particular choice for something that *is* stylistic and should be taught as such. Rather, the concept of the rubrics as we use them is to identify whether a particular component or concept belongs in a brief or other piece of writing, articulate what is generally required for such component, and then leave it up to each individual professor to determine whether that component has been executed to her satisfaction.

Though a program's particular numbers of students-per-section may impose some institutional constraints on exactly how much pure relativity in scoring can be tolerated, there is no question that professors tend to prefer more flexibility rather than less. For example, multiple papers may fall into a particular category that spans a range of five total points. Ideally, a professor still will be able to differentiate at the margins among the papers. If three out of twelve seem to meet the standards for a top category worth, say, 5-10 points, one would expect that the professor could still assign different point totals where possible in that 5 point range among those top papers. In our experience, however, some professors reported always choosing the highest score in a given range, the logic being that if some aspect of a paper was "qualified" for a certain range, then the maximum number of points for that range must be warranted. Other professors reported always choosing the middle score, applying similar logic but reaching a different conclusion. And still other professors reported nuanced comparisons of the papers that fell within that range and assigning points according to the relative strengths of the papers. The latter is what we imagined, but the former examples were not isolated instances.

These relative inconsistencies in application were most problematic primarily where scoring categories were too wide. And, it was within these wider ranges where confusion and frustration for both students and professors tended to boil over. This experience with larger point

ranges thus contributed to our restructuring rubrics in narrower point ranges within a framework of less-than-100-points-total for the assignment, in large part because we wanted to infuse the process with some additional precision. Nevertheless, we remain skeptical that larger point ranges are always necessarily fraught with such issues. We therefore transition professors over the duration of our year-long course toward rubrics that entail greater flexibility and less exacting descriptions per category, which also tracks student progress from the beginning legal writer to the more sophisticated legal writer. When we transition to persuasive writing in the spring semester, for example, we have found that there must be some room in the rubrics to accommodate recognition of the *je ne sais quoi* that one advocate brings to the endeavor that another does not. Again, chaos is not the result. It always remains imperative that professors retain enough flexibility in a rubric-based regime to make these judgment calls. The idea is simply to limit the possible number of points that can be awarded for an individual's judgment, thus preserving a standard level of predictability.

Crafting rubrics with maximum predictability and flexibility where appropriate, we have been able to answer the questions presented at the outset. In terms of whether professors value different components of a paper in different ways, which would potentially create unpredictability for students, we have successfully avoided that in the grading scheme by setting up points-based categories for assessment. The rubric's limits on the range of value for a particular category does not stop professors from writing more qualitative feedback in balance with her own ideas about how important or valuable the component is to the paper, but the limits do stop professors from overvaluing one component in a way that is unbalanced with other professors. Including flexible language to account for what a professor has emphasized in class still achieves predictability because students know what the professor has emphasized in class,

and can even ask for clarification based on the language in the rubric to ensure understanding. Finally, we craft the rubrics in a way that captures all possibilities without setting false constraints. In describing what to assess for the content of an appellate brief argument, for example, the rubric delineates various types of arguments that may be included, such as rule-based, analogical reasoning, or policy, and asks the professor to assess the effective employment of those arguments. This comprehensive approach helps thwart professors from automatically discounting policy arguments and encourages an open-minded approach (with limits, of course, as set by the rubric) to evaluating a student's argument.

*B. Completed Rubrics as Feedback: That's Just the Beginning.*

In her 2004 article, Sophie Sparrow wrote that one advantage of rubrics is that professors can fill in and return the rubric to students as a way of providing detailed feedback on the students' work.<sup>21</sup> Providing completed rubrics can give students a good sense of where they missed points,<sup>22</sup> but there is a knee-jerk tendency for students to want to know exactly where they lost the half point. This is not only unproductive, but it is often impossible. If there are five points available for the Statement of Facts, and two students get a five, and two get a four, it may be hair-splitting to explain the reason for the difference—other than that the fives were “better than” the fours. The leeway that a professor has in determining “in-between” scores is not something that should fall by the wayside; rather, it speaks to the essence of grading writing. There inevitably will be some subjectivity at the margins, and that is neither surprising nor problematic. The goal is simply to articulate expectations and benchmarks against which any given aspect of a piece of legal writing can be evaluated.

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<sup>21</sup> Sparrow, *supra* note 15, at 8.

<sup>22</sup> *Id.* at 23-24 (showing how students used completed rubrics to self-identify their weaknesses in exams).

But students need more than a completed rubric alone, however specific it may be, to identify where they went wrong and how to improve their writing. In an exam course with an issue-spotting mandate, a rubric may list the twenty issues the professor anticipated as requiring discussion. The lack of checkmark or circle on one of the issues communicates “you missed this issue.” This is very tangible and sought-after information. Though students may learn how to perform better on future exams by reviewing the scoring metric for that exam, they are doubtfully able to learn how to specifically improve that exam’s answer—if only because they will never retake that same exam or course again. The same is not true for a legal writing course, which at its best attempts to teach skills that are transferable to any summer job or legal practice long term. In a writing course, students write multiple assignments, and generally assignments are intended to build upon each other. In most fall curricula, students learn the building blocks of a memo, such as how to structure a Question Presented and Brief Answer. They learn these pieces before writing an entire memorandum, and they learn how to write predictively before writing persuasively.<sup>23</sup> The mere idea that providing a completed score-sheet with subsection totals might be a substitute for, or the equivalent of, providing detailed written feedback on a draft or final version of an assignment, does not square with the practice of most legal writing professionals. A marked-up score-sheet *might* help (some) students understand where they lost points on a particular writing assignment, but what students really need is explicit and formative comments. Such comments, divorced from any associated score, should be designed to guide the student not only in understanding the strengths and weaknesses in his written work but, as well, how to improve the next major writing assignment based on those strengths and weaknesses. Such formative comments may be most important and useful in a legal writing course because of

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<sup>23</sup> Often, writing assignments are submitted in partial drafts on the way to a final complete document. According to the 2011 ALWD/LWI Survey, 173 legal writing programs “require rewrites of at least some major assignments, with 55 of those requiring rewrites on all major assignments[.]” 2011 ALWD/LWI Survey, *supra* note 10, at iv.

its nature; students write assignments throughout the year and the final grade is based on all of those assignments in total. The result may be radically different from the score earned for a class based solely on one three-hour exam.<sup>24</sup>

The all-too-common yet largely uninformative comments on a student's paper, such as "great job!," should become obsolete in a system that proffers a more informative vocabulary dependent on the specificity of an appropriate grading rubric. For example, in response to a statement of facts that falls just short of the grading guidelines for six points, a professor could provide useful information a student can use when drafting her next statement of facts.<sup>25</sup> Such a comment could look like this:

You have presented a smooth, organized narrative with the appropriate background and legally significant facts. The reader can easily understand factual context after reading your statement of facts, though there is a bit of non-objective presentation, especially related to the choice of clothing.

For a lower scoring paper, a rubric can provide essential help in deciding how to narrow comments in a way that will help students move forward, again by avoiding comments like, "Yikes!," or "???", or "You missed the boat here!"—all of which we have seen. Using the rubric as a guide in commenting, and even copying and pasting language from it, gives professors the ability to comment more effectively so students can see specific improvements to make in the next paper. Though students may be focused on how to earn more points the next time around, earning more points should translate to strengthened writing, the ultimate goal of using rubrics and providing comments. For example, a comment on a 3-scoring statement of facts could say,

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<sup>24</sup> The Carnegie Report recognized how important feedback is in legal writing courses: "students learn primarily by being led, coached, and given abundant feedback directed to improve their ability to practice legal reasoning in specific contexts." Carnegie Report, *supra* note 7, at 108. The Report also noted the importance of feedback, from the students' perspective: "One student's comment summed up many others. She noted, 'It is the feedback you receive from the teachers, as opposed to just so much reading' in her doctrinal courses that made the writing course so important for her in learning the law." *Id.* at 104. The Report concluded that "[f]ormative practices directed toward improved learning ought to be the primary means of assessment." *Id.* at 189.

<sup>25</sup> Written commenting on students' papers itself may not be ideal. See George Gopen's address at the 2011 Capital Area Legal Writing Conference, <http://128.164.132.16/wmvideo/watch2.asp?directory=public&filename=249615>.

Remember your reader. She will not review the fact documents or assigning memo before reading your memo. That means it is up to you to provide the complete contextual picture and all facts you will use in the discussion section. Here you are missing a few of the contextual facts, and the second half is confusingly organized.

Completed rubrics or subsection scores should not be the *sole* source of feedback on writing assignments; the qualitative comments professors write in response to students' work are by far more effective. Indeed, providing solely the completed rubrics is an invitation for over-reliance on the numbers themselves. Instead of requiring students to compare the rubric where they lost points to their papers to try to find out where exactly they lost the points, we train our professors to use the rubrics as a guide in writing feedback that does this for the students. The rubric is an efficient vehicle for identifying strengths and weaknesses, but the rubric alone is not enough.

#### **IV. Using Rubrics: Worth the Time and Effort**

Detailed grading guidelines at once offer productive vocabulary that our professor-graders can use in their substantive comments and, as well, they announce in advance to our student-writers exactly what elements are required in a given assignment, and on what basis each will be evaluated at a defined worth. Both aspects have proved to be as useful and productive as having implemented a standardized scoring system in the first instance. No doubt a decision to employ rubrics to grade writing assignments requires commitment to a time- and labor-intensive process. That process, though, will pay off. Rubrics lead to more effective teaching, more efficient grading, and improved opportunities for student learning.<sup>26</sup> And there are secondary benefits as well—rubrics can be used as a staffing tool and as an assessment tool, for both students and professors. There are, of course, also some constraints in a rubric-based grading system, which we address following our description of the benefits.

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<sup>26</sup> See Sparrow, *supra* note 15, at 27.

### *(1) Setting Expectations*

One of the primary benefits of implementing a system of grading that employs rubrics is that, communicated in advance, students have at their fingertips a checklist type document that announces the specific parameters according to which their paper will be assessed. Thus, if, for example, a student does not understand what an appropriate Question Presented should look like in an Office Memorandum, she can review the language in the rubric and determine whether to seek additional help. But a rubric also helps her make a strategic decision; if she knows that the Question Presented is only worth 4 points out of 40, she might decide not to spend as much energy crafting that section to perfection as she might on organizing her legal argument, which in this hypothetical situation might be worth 12 points out of 40. That is not to suggest that a lower points-earning section is unimportant, but simply that it is worth less to the student's grade than the more substantial components, which likely received greater focus in class.

Consulting a rubric in advance of completing an assignment, and especially while in the process of drafting an assignment can also help direct student questions. Students can prioritize their questions based on the relative values defined by the rubric. This means the language must be clear and understandable by a novice legal writer. Using language consistently and as specifically as possible are keys to an effective rubric. The rubric and classroom instruction reinforce each other when the professor uses common vocabulary, and students can better understand how to frame their questions using the vocabulary identified in the rubric (and used by the professor in the course).

Student expectations are only half of the equation here. Rubrics also give professors the advantage of setting expectations for writing assignments. In developing a rubric, professors are forced to articulate how points are earned; this can aid the professor in course development, and

lesson planning. Students often ask writing professors “what are you looking for” and rubrics provide detailed answers to those types of questions. Rubrics also force professors to think about course objectives and how to attain them, how to teach to them, and how to measure success.

*(2) Promoting Consistency*

Embedded in this question, of course, is a separate concern about grade “norming,” or, ensuring that professors are generally scoring the same paper the same way. This, too, is a concern that rubrics can address, but it is not the one that we suggest here. Whereas the consistency concern for our purposes is one of quality across all of a document’s sections, there is in the first instance the issue of standardizing what each section should be worth relative to other sections in the document. Should, for example, proofreading alone be a factor that could result in a C grade? Some professors might say yes and others would vehemently say no. This type of inconsistency—differences in value decisions—is worth avoiding in a first-year writing program whether taught by full-time faculty or part-time adjunct professors. Crafting and implementing a scoring system that would require graders to treat proofreading errors as errors of the same kind, worth the same value, is something that the rubrics easily address, and this type of consistency is exactly what makes rubrics so effective. Stated otherwise, rubrics can tie professors’ hands to some extent by imposing caps on what each category of a writing assignment is worth. If the Statement of Facts is worth 10 points out of 72, and grammar/style is worth 8 out of 72, then we can say for certain that no student is receiving a grade based on an under or over-valuation of any one component of the assignment. This consistency is essential to avoid an impression of a professor teaching only how to write for him instead of how to write good legal writing (good for any audience).

Of course, rubrics can and should be even more nuanced than simply stating that 10 points are available for the Statement of Facts. Instead, each approximately two points can be associated with a different qualitative performance assessment. For example “includes facts and inferences necessary to support arguments,” and “is organized in a meaningful way given the side for which it is written,” might be associated with a score of “10,” whereas “is well organized generally but perhaps too neutrally,” and “includes relevant facts but is not presented as most effective narrative,” might warrant an “8,” etc. In this respect, the grader’s hands are tied even more than simply by the caps per section and are held to the particular Program standards, goals, and expectations. This hand-tying can help the Professor deliver a consistent message throughout his course, and can help promote consistency among multiple professors teaching within the same program if all use the same rubrics. Familiarity with the rubric and using language of the rubric in class reinforces how the rubric will assess what students have learned in class. But it also gives professors a ready-made framework for teaching concepts and identifying strengths and weaknesses. Professors can use rubrics as an aid to identifying and describing advanced legal writing and analysis. On the continuum of legal writing projects, a less sophisticated analysis in the first memo is likely to earn more points than the same level of sophistication in a second memo. Crafting rubrics to identify these different levels of sophistication helps guide professors in their teaching because they are forced to articulate what makes a paper more advanced or sophisticated on the continuum of first-year legal writing, and then incorporate that into their lessons.

The specificity of the qualitative descriptions within rubrics can be tailored to particular assignments, and it can vary based on the timing of the assignment in a particular course. Here, we do not mean to suggest that the quality standards should not be varied—of course that will be

the case as the semester or year progresses and higher expectations are established. We also mean that, from the professor's standpoint, more flexibility might be incorporated. Perhaps the narrated descriptions associated with each point are reduced in length and in detail; perhaps a greater percentage of the description is attributed to the fallback "as the Professor taught." For example, if "effective use of point headings" was specifically associated with a three-point category maximum, and the description for the maximum total for the first memo assignment was explicit: "effective use means that the heading is a full sentence which announces the reason(s) for the given conclusion;" perhaps for the second memo assignment, the direction is that the maximum, say five points, is attributable to "the use of point headings in accordance with the professor's instruction." Thus, giving the professors flexibility with high levels of consistency in valuation.

### *(3) Consistency with a Twist*

The question of grade "norming," of course, is inexorably related to this micro-level discussion of consistency. The ultimate goal is for a program as a whole to be able to say that its Professors are not only valuing the same components the same, but that they are also making the same or similar judgments about what counts as strong versus weak. Subsection breakdowns along the lines of what we just discussed do some of this work. In other words, by defining that a Statement of Facts worth a "10" includes an organizational structure that is meaningful given the identity of the party on whose behalf it is constructed helps to ensure that this important feature of a Statement of Facts is valued. That the highest available point total for the Statement of Facts category is associated with this narrative underscores the importance of this factor to the students and to the professors. It also enables us to say that we are valuing the same thing in the same way. The only variable is one of interpretation—*how* a particular Statement of Facts

strikes a reader/grader is not something that the rubrics can control. Professor A might decide that a chronological organization of facts works well for the Plaintiff but that a thematic organization works better for the Defendant. Professor B might decide the opposite. Using grading rubrics, even ones that are as substantively specific as the ones we suggest, does not ensure that Professor A and Professor B are going to come to the same conclusion about what an “effective organization” looks like.

On this point, we have two, somewhat conflicting answers. One is that the rubrics alone do not teach the classes; they are not self-executing. So, for example, Professor A might spend more time in class emphasizing the merits of chronological factual organization, and Professor B might spend more time discussing how to veer from chronology for the purpose of frontloading thematics. Professor B might even say that a thematic approach is more useful for one side given the specific fact pattern on which the students are working. The imposition of grading rubrics does not necessarily capture these teaching differences, but nor should they. Indeed, the very nature of a writing class is *subjective*—but not in the sense that any one student’s Statement of Facts will determine her grade. Given the point limits on each component within a paper, that is not the reality. Yet, there nevertheless remains the possibility that one person’s style is another’s worst nightmare. In that we are ultimately teaching students how to make choices of their own when we, their writing professors, are only a memory, the primary concern here is to not embed in the rubrics purely stylistic choices. Rather, the goal is to devise a set of written expectations that limit value variations but accommodate both professor and student stylistic choices. Of course, that is not the same as saying that “anything goes.” And it is on this point that teacher training, or grade “norming,” is necessary. Grade norming is important to reinforce (or enforce) the idea that legal writing professors should be teaching legal writing for any audience. A

professor who teaches solely how to write for his personal preferences is doing his students a disservice.

#### *(4) Staffing Tool*

One of the secondary benefits of establishing uniform grading guidelines and documenting them in the form that we have discussed is that they can be used as tools to screen and hire professors and, as well, train new professors on grading expectations. They can also be used to refresh expectations for long-time professors. As we said at the outset, even though there are various models for teaching legal writing, and different acronyms for the basic legal writing paradigm, legal writing professors are all teaching the same basic skills and concepts: legal analysis meaningfully and effectively communicated in writing (and, later, in oral argument). In any staffing model, rubrics help ensure consistency and focus on teaching students legal writing and analysis more generally—not how to write for one professor’s predilections or idiosyncrasies, and no matter what a legal writing program looks like.

When it comes to grade training, one perhaps unsurprising data point is that newer writing professors—especially if they have spent any time in practice—will tend to grade on the lower side. Establishing a baseline is an important component of grade norming, and a unified, agreed-upon grading rubric can serve multiple ends. For example, a new professor can be presented with the established rubric and asked to grade a predetermined paper (or more than one paper) for the purpose of assessing where that professor falls in applying the rubric (*e.g.*, too harsh, too easy, or too flat). Asking the professor to both assign a score and provide formative written comments on the sample paper gives directors (or others responsible for hiring decisions) useful data. One common disconnect we have seen for first-time teachers is comments that suggest a mid-range paper, but sub-scores and a final score of a low-range paper. Through grade

training, we can discuss how to check the score by stepping back from the rubric and looking at the comments and the paper as a whole. For example, we often ask new hires to score on the rubric and also provide a letter grade they would assign (we use only numerical scoring for major writing assignments). The most common response was a grade higher than the score would merit. This is a discussion point we can unpack in teacher training, and also it helps us refine the language in the rubric to make sure there is room for professors to feel like they can fairly and accurately assess a paper under the rubric, in evaluating student work product versus the work product they see in practice. For example, adding language such as, “well-executed by a second semester 1L,” as seen in the portion from a trial brief rubric above, is a reminder to professors that they are not evaluating a piece of legal writing on a general scale informed by their own practice experience, but within the first-year student or novice legal writer construct.

New teachers also often struggle with providing written comments. They can fairly quickly identify weaknesses in a paper, but face the challenge of articulating the weakness and how to improve it. We train our professors to use the rubric as a starting point for drafting comments, and encourage them to copy and paste language from the rubric. We have seen this work—it gives professors a level of self-confidence knowing they are commenting on the “right” things or saying the “right” things because they use the rubric to track their comments. Writing rubric-based comments also helps professors avoid teaching their personal preferences, and instead focus on standardized good writing.<sup>27</sup> As a way to measure professors’ success in providing comments, we review the high, middle, and low papers for new professors. Using the rubric as a guide to our review of the comments is also informative in giving us direction for evaluating professors’ comments in terms of describing ways to improve.

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<sup>27</sup> Query whether there is such a thing as personal preference in legal writing. Sure, a professor may prefer a heading that is only one line of text, but surely that is not always good writing.

### *(5) Self-Assessment Tool*

Rubrics can also be used after students have completed their writing assignments—of course they are used afterward to grade the assignments, but students can use them, too, in a variety of ways. One way is as a conferencing tool on a draft: as preparation for a conference, a student can review his paper against the rubric and identify potential weaknesses. Discussing those weaknesses in a conference and relying on the rubric as the framework for the conversation, the student and professor can look for and discuss specific ways to improve a draft. And even after a student receives her score on an assignment, she can use the rubric to identify what she should focus on improving, giving her some strategy in approaching the next writing assignment. For example, if she lost points in the analysis section for using too few cases (a highly valued section of the rubric) but scored perfectly on citation of those cases (a minor portion of the overall score), she can make an informed decision to spend more time researching next time or just be more deliberate about choosing a variety of authorities.

Students could also employ rubrics as a peer review exercise, or a modified peer review exercise (using a sample drafted by the professor or a student not in the class) by scoring a writing assignment with the rubric. This exercise gives students the perspective of the professor—the reader—and may help students understand how small differences matter in terms of point assignment. A professor could manipulate this exercise to focus on particular weaknesses she has seen in her class.

Professors, too, can use rubrics as a self-assessment tool. After a semester of teaching, professors should review the overall scores, and the sub-scores on each set of writing assignments. Looking for patterns and outliers, professors can identify concepts that at least appear to have been more and less effectively taught. For example, if a set of scores reveals that

an entire class scored within the 3-4 point range of a 6-point total category, the professor may want to review her methods for teaching that concept. In this scenario, the fact that not a single student scored the maximum number of points, or even within the top sub-range suggests something is getting lost in the classroom.

Professors can also use rubric scores to identify effective teaching techniques. Using the same example of a 6-point category, if an entire class scored within the top range, 5-6 points, the professor should think about what methods he used to teach that concept. If the professor used a group exercise, for example, it may be that particular teaching technique is well-suited to his class. A professor may also notice that the textbook is uniquely good on this particular concept and pointing students to the text may have put all the students on the same page in terms of how to approach that part of the memo.

Reviewing the score data can also give the professor a sense of whether portions of the rubric need re-drafting. In either case described here—all scores in the mid-range or all scores in the highest range—the data may lead the professor to determine that the concept is difficult (the first example) and needs additional explanation in the rubric to help make the top range attainable. Or the data may lead the professor to decide a category is too easy; for example, if a point range on format resulted in all students scoring the top point value, perhaps there is a template floating around that the students are using (putting questions of academic integrity aside). Whatever the case, giving away points is not useful for students, nor is it a good use of the professor's time to cover something that is too obvious.

## **V. Conclusion**

Using rubrics in legal writing courses is the most effective way to grade writing assignments. Though any given system of rubrics may not be perfect, the benefits of

understanding expectations and standardization outweigh their constraints. In the legal writing community specifically, a move to rubric-based grading can contribute to the greater good. As we all work to teach good writing, we can also work to define good writing in rubrics. In the Appendix, we provide three complete sample rubrics, two for an open-research predictive memorandum and the third for an appellate brief. In providing these rubrics, we hope to encourage other legal writing professors to create their own rubrics—and copy ours freely—in their effort to join us in defining and teaching good writing.<sup>28</sup>

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<sup>28</sup> Terry Phelps said it best, “Good writing is good writing.” ALWD Scholars’ Forum, Capital Area Legal Writing Conference, Washington, D.C., Feb. 25, 2011.

## APPENDIX

### Open Research Predictive Memorandum Grading Guidelines

#### SAMPLE 1:

**72 points total**

#### **(1) Initial Memo Elements (QP, BA, SOF) total**

**18 points**

##### **a. The QUESTION PRESENTED**

**4 points**

- i. articulates the legal question,
- ii. includes legally significant facts,
- iii. excludes legal conclusions, and
- iv. uses an objective tone.

#### **Grading Guidelines:**

- 4 points            The QP is well-constructed; it articulates the legal question, includes legally significant facts, excludes legal conclusions, and uses an objective tone. Perfection is not required! A “4” is not what an experienced legal writer would produce; it is what a 1L on a second writing assignment can be expected to produce.
- 3 points            The QP articulates the legal question correctly and uses an objective tone; however, one or two legally significant facts are missing or could have been better stated (by a 1L). Still, the reader understands generally what is at stake and the QP gets the job done with some room for improvement even by a 1L.
- 2 points            The QP is overly conclusory and/or deficient in LSFs such that it isn’t just one fact that’s missing. Though confusing, it is still sensibly written such that the reader has a basic understanding of what is at stake. Similarly, a 2 should be assigned if the QP is simplistic and under-informative such that the reader cannot ascertain from the QP what is at stake in the memo.
- 1 point            A QP deserves a 1 if the student included a QP for the sake of discharging this memo requirement, but the QP does not do any part of the job for which it is designed.
- 0 points            There is no QP in the memo.

##### **b. The BRIEF ANSWER**

**6 points**

- i. answers the question/predicts the outcome,
- ii. contains a brief statement of the rule, and

- iii. explains reason for the expected outcome.

**Grading Guidelines:**

- |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 points   | The BA clearly and effectively answers the question/predicts the outcome. The BA contains a brief statement of the rule, and explains the reason(s) for the expected outcome using legally significant facts. The BA is overall objective in tone, and is useful and informative to the reader in providing a good preview of the Discussion section. Perfection is not required; as stated above, a 6 corresponds to excellence by a 1L on a second memo assignment. |
| 5 points   | The BA answers the question/predicts the outcome, but falls short in that it could have better explained the reasons for the expected outcome or been better articulated/more to the point. Look here for an overall well-written BA that perhaps leaves out a step, <i>e.g.</i> , the rule or rationale for the outcome needs better articulation.                                                                                                                   |
| 3-4 points | The BA is missing an important or significant component, such as a statement of the rule or its anticipated outcome, its key elements, or principles from controlling authority. Alternatively, even a substantively well-constructed BA warrants a 4 if it is confusingly written and a 3 if you have to work particularly hard to understand it.                                                                                                                    |
| 2 points   | The BA is missing one or more important components <i>and</i> is poorly or confusingly constructed. The student may not have understood the purpose of the BA.                                                                                                                                                                                                                                                                                                        |
| 1 point    | The BA is seriously deficient in style as well as substance. The student did not understand the purpose of the BA, and this is reflected in its deficiency of information.                                                                                                                                                                                                                                                                                            |
| 0 points   | There is no BA in the memo.                                                                                                                                                                                                                                                                                                                                                                                                                                           |

**c. The STATEMENT OF FACTS**

**8 points**

- |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8 points | Includes both sufficiently contextual background facts and the facts that are important to the analysis and conclusion. Is concise, yet without referring back to text of problem, reader has all necessary factual info. (Hard to envision that more than one page is necessary for this problem). Is objective – meaning that SOF is free of legal argument. However, a good SOF even for an office memo will match in tone and message the outcome ( <i>i.e.</i> , narration of facts is consistent with legal conclusions). |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

6 points	Follows these general guidelines but: includes legal conclusions or argumentative characterizations; includes factual inferences that are not supported. Generally, however, there are no key facts missing (that are important to the analysis). Style-wise, it may lack a sophisticated tone, and include some editorializing, but it is still readable and understandable.
4 points	Lacks important substance, detail, or context: meaning that a reader would have trouble (without the fact pattern and its relevant documents) understanding the relevant details (in anticipation of the Discussion section). The SOF is uses argumentative language or editorializing, and/or exhibits stylistic deficiencies that render it difficult to follow (in tone or b/c it presents a confusing organization or rendition of events).
2 points	There is no evidence of thoughtful selection or, importantly, presentation of legally significant facts, and key details are certainly missing. Facts appear to have been cut and pasted from the problem statement w/ no regard to meaningful organization.
0 points	No SOF is included.

**(2) Discussion Section – Structure of Argument; Case Synthesis 21 points total**

In this section, you are looking at the structure of the argument. As opposed to (2)(b) and (3), you are less concerned with substance here. You should consider primarily the following:

- a. Overall TREAT / IRAC (structure of argument) 6 points**
- i. An adequate thesis is in place for each issue.
  - ii. Rules are articulated where you expect them to be.
  - iii. Structurally, the student is following up Rule statements with a synthesized Explanation of cases, and then proceeding to Application.
  - iv. A conclusion is reached on each issue and sub-issue.

**Grading Guidelines:**

6 points	Each issue is well-organized (by issue and sub-issue), and follows the TREAT / IRAC formula. Thesis sentences are “in place,”* Rules are stated clearly and then Explained through selected cases. Applications demonstrate fact sensitivity, and a conclusion is reached on each issue and sub-issue. Perfection again is not necessary; you are looking for excellent production in a 1L memo.
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*\* Some of you teach that the Thesis sentence belongs (only) in the heading; some teach that it goes both places. Either*

*is fine (see page 143), and you should grade it as “in place” based on what you taught.*

- 5 points                      A concerted effort has been made at organization, and the TREAT / CREAC / IRAC paradigm is obviously attempted and generally followed. However, some issues/elements could be better placed, and there is an overall lack of crispness either between issues or between rule Explanation and Application (the two blur).
- 3-4 points                     The paper overall is confusingly structured. There may be sections of excessive rambling, and no clear pattern of organization is discernible in many sections or subsections. For example, there is likely no distinction among the Rule, Explanation, and Application sections throughout the paper.
- 2 points                        The student has not grasped the organizational paradigm at all; the paper thus is seriously deficient in its deployment of TREAT (repeatedly and more pervasively than noted above).
- 0-1 point                      The paper not only demonstrates a failure to follow TREAT but a distinct lack of effort to do so. (Failed efforts to follow the TREAT / IRAC paradigm should warrant a higher score than instances where there has been no such effort at organization at all.)

**b. Rule Statements, Synthesis, and Explanation**

**12 points**

In this section, we ask that you look more specifically at the quality of the students’ Rule statements and the associated Explanatory Synthesis – not just that they are doing it (covered above structurally), but the extent to which the student is synthesizing case law effectively. We realize that there is some natural overlap, but the points available here go directly to the substance of the synthesis, not just the structural fact of doing so. **You should evaluate the information contained in parentheticals where these are used to provide details that go to Explanation (and whether that info should be in the text instead).**

**Grading Guidelines**

- 12 points                      The paper contains accurate, effective, and well-articulated statements of the Rule on each issue or sub-issue. In addition, the Rule is Explained (illustrated or interpreted based on its use in prior cases), chiefly through the process of Explanatory Synthesis – *see Legal Writing and Analysis*,

*pages 151-167.* This means that the paper generally avoids paragraphs beginning with “In X case . . .” because the writer has done the work of digesting and synthesizing the cases so that the reader doesn’t have to. In addition, the synthesized Explanation is both well-reasoned and well-written (clearly presented in that the student moves from broader concepts to narrower ones effectively). Information contained in parentheticals is useful and appropriately placed (as a matter of substance (info is not so central as to be required elsewhere, in the RE or A).

10 points

Generally, Rules are stated correctly, though occasionally could be more crisply or more informatively written. Synthesis is obviously attempted but is *only sometimes successful* –because the student perhaps does not reconcile the cases as well as he might have, or misses opportunities to elucidate thematic connections or provide helpful points of interpretation (that likely would produce a more effective Application). *See the chart on page 157-58 for more info.* As well, you should note whether the student is perhaps “*over-reliant*” on case parentheticals at the expense of textual analysis – a determination that will certainly depend on the specifics of the cases and how you teach this skill. *See page 161 and “Good Use of Cases Tip Sheet” to which you can link from there.*

8 points

Synthesis is problematic or virtually non-existent; *i.e.*, “Explanation” of the Rule is accomplished by laundry listing cases. As a result, the Rule – though itself likely accurately albeit briefly stated – is not explained cohesively or coherently (look especially for seemingly conflicting propositions, which happens a lot when there is no synthesis). Alternatively, the Rule and Explanation are confusingly presented (in writing style or in substance) that it is difficult – but not impossible – to understand what is at issue.

6 points

The Rules are generally weakly *and* confusingly written and, as well, largely unsupported (you will notice this both because of skimpy Rule statements and lack of citation, or leaps in logic). As a result, the paper demonstrates a lack of understanding of what it means to state and explain a rule or controlling legal principle.

4 and below

Assign grades in these low ranges only where a student’s lack of effort produces seriously deficient (or erroneous) Rule statements, and the resulting presentation of the

controlling law in both the R and E would be near sanctionable, *i.e.*, the student has misrepresented the law (not just misunderstood the cases or how to synthesize a workable Rule).

**c. Headings**

**2 points**

Here, we ask that you evaluate the I, II and ABC (and other) headings whether you taught that they should repeat the first sentence or stand in place of it. Your goal is simply to assess the strength of the headings, and you are looking for clarity, concision, substance.

2 points	Headings are uniformly well written: informative, clear, (generally employ active voice), are full sentences and contain elements of the students conclusions on the issue.
1 point	One or more headings is substantially lacking in the above qualities and/or headings overall are accurate but underinformative.
0 points	Headings are missing or do not match the substance of the sections.

**d. (Final) Conclusion**

**1 point**

You should comment on this element and score it in accordance with how you taught it. If the student executes it to your satisfaction, assign the point (consider both what information is present, what is missing, and how the information is articulated).

**(3) Discussion Section – Substance (Content; Use of Cases)  
total**

**18 points**

You are looking for two things here. (a) The first is an evaluation of the student’s research results not in context of the written product. So, you are asked to evaluate whether the student has produced adequate research results (including, importantly: cases that are jurisdictionally appropriate; key / on point cases (not “magic” ones on the list but ones that get the job done); good cases for analogy and cases that inform the outcome as specifically as possible). (b) Second, you are assessing how well the cases are applied to the facts of the problem. As compared to (2), you are looking primarily at Application, and you are concerned with the substance of the cases and how they are used to analogize and distinguish. NOTE that you may end up with a well structured brief (high points in (2)) that falls short here, in application, or vice versa – *i.e.*, the numbers you assign in (2) and (3) need not be identical.

Look for how well the paper does the following:

- i. Shows evidence of thorough research
- ii. Makes good choices among cases that are available

- iii. Uses cases accurately (according to holdings, reasoning, policy, etc).
- iv. Cases are **analyzed** and not over-quoted (quotes are used to support the analysis, not as a replacement for it).
- v. Analogies and distinctions are made explicit and they are well-executed, meaning that fact-to-fact comparisons are made express in writing (versus hoped-for on the part of the reader); fact sensitivity thus is important.

**Grading Guidelines:**

**a. Production and Selection of Cases 4 points**

- 4 points            The memo displays solid research skills in that the student has selected key cases and cases that work well with the analysis. The critical point here is to look at effort in selecting cases that are jurisdictionally appropriate; that adequately present and explain the rule; and that are factually useful for drawing analogies and distinctions.
  
- 2 points            In contrast to above, identifiably better cases are available for supporting the rule components and their application. *I.e.*, while cases may be technically on point, they are not authoritative, or not as useful factually as other known or available cases. (You also may notice a tendency to rely *exclusively* on cases discussed in the Legal Research Series, Week 8 – we will post these for you).
  
- 0-1 point           The student’s selection of cases is substantially deficient in that a markedly limited number of cases are cited and those that are present are under-informative (of course this will affect analysis below). In short, there is no evidence of initiative to select supporting or useful cases.

**b. Use (Application ) of Cases 14 points**

- 14 points            The array of cases demonstrates the ability to discern (and work with) key facts. Quoted language and case citations are used as support for analysis, not as a replacement for it. Cases are used accurately (in defining, explaining, and applying the rule(s) and sub-rules). Fact sensitivity is apparent; *i.e.*, analogies and distinctions are made explicit *and* are well-executed (they are expressly compared and contrasted to the facts of the case in specific and helpful ways). Again, perfection is not required; you are looking instead for excellent execution by a 1L in a second memo assignment. *See Legal Writing and Analysis, pp. 172-176.*
  
- 12 points            Cases may be used accurately (meaning: appropriately given the propositions in question) but not as *effectively* as they might have been. *I.e.*, key cases are present and supportive of the propositions

stated, but: (1) they are quoted where analysis (or further explanation) would be more effective; and/or (2) factual analysis remains largely at the surface (whereas the cases could have been further pushed or probed). Similarly, analogies and distinctions are definitely made, but they could be more nuanced, fact-sensitive or explicit (making fact-to-fact comparisons and tying assertions to conclusions more directly).

10 points      The memo exhibits the same kind of deficiencies as noted above, but these deficiencies are more prevalent and/or egregious. The “A” section thus can be described by the following factors: (1) the student is just listing cases seriatim (and perhaps discussing a litany of facts therein); (2) analogies and distinctions between the case and the fact pattern under evaluation are not explicit (or are factually weak); (3) a student uses too few cases (despite a cohesive analysis) or misses a pivotal case; and (4) a student cites cases that do not support the stated propositions. (The more of these factors that apply, the lower the score).

8 points      The paper demonstrates serious issues with respect to employment of both cases and facts along all of lines described above. The student has likely missed key cases repeatedly and deployed others improperly. Fact sensitivity is especially problematic: analogies and distinctions are non-existent and/or uniformly weak. Overall, it seems that the student has not gotten her “hands dirty” with the cases at all. (Lack of effort should be judged more harshly than lack of understanding)

6 or below      Assign grades in these low ranges only where a student’s use of case law is noticeably incomplete and the answer to the memo question thus is so deficient that it would be near sanctionable, *i.e.*, the student has misrepresented (not just misunderstood) the cases.

**(4) Overall: Writing style, grammar, punctuation.**      7 points

Here, your focus should be on overall clarity, precision and conciseness. You also can use these points to judge paragraphing purely as a matter of writing style: do you generally see single-topic paragraphs with appropriate topic sentences? Yes, there is some natural overlap here with TREAT, which stresses these points, too, but that only means that there will be some correlation. In this category you’ve got points to award based on overall writing skills that are independent from TREAT and the legal analysis (though clarity and precision of course will affect it).

- i. The writing uses clarity and precision and avoids idioms/colloquialisms.
- ii. Sentences are well-structured, generally formulated with active voice and are clear and concise.

- iii. It uses paragraphs effectively, contains effective transitions between sentences and paragraphs; paragraphs are single-topic.
- iv. Shows evidence of meticulous proofreading.

**Grading Guidelines:**

7 points	The paper contains few, if any, errors in style, grammar or punctuation. This means that the writing uses clarity and precision and avoids idioms/colloquialisms. Sentences are well-structured, generally formulated with active voice and are clear and concise. It uses paragraphs effectively (includes topic sentences, single-topic paragraphs), contains effective transitions between sentences and paragraphs, and shows evidence of meticulous proofreading.
5 points	The memo generally adheres to the rules of good written English (including style, grammar, and punctuation). However, the paper may suffer from some clarity/precision issues in that points could be better articulated and writing overall could be more concise. Some idioms/colloquialisms may be used. There is evidence of proofreading, but the paper contains errors that would have been avoided with a more careful proofread. Some paragraphs seem disorganized, under-developed, or inappropriately placed, though overall organization is strong, and these deficiencies on the whole <i>do not detract from the overall substantive strength of the paper.</i>
3 points	The paper suffers from excessive use of idioms or colloquialisms, it does not employ paragraphs effectively, and/or it generally shows a lack of knowledge of rules of standard written English and/or lack of care in proofreading. These errors <i>detract from the substantive strength of the paper.</i>
0-2 points	The memo is almost unreadable in grammatical style and/or the typographical errors so overwhelm the end product that it is similarly rendered not understandable as a practical matter

**(5) Citation and Local Rules Compliance**

**8 points**

[provided separately based on different rubric]

**SAMPLE 2 (where Question Presented and Brief Answer are not part of the assignment):**

<b>Office Mem. Disc. Sec. SCORING RUBRIC</b>	<b>Highly Proficient</b>	<b>Proficient</b>	<b>Developing</b>	<b>Beginning</b>
<p><b>Organization of the Argument (overall TREAT); Use of Thesis Statements and Point Headings (T)</b></p> <p>7 points</p>	<p>Each issue and paragraph within each issue is well-organized: thesis statements are clear, paragraphing is effective, transitions are evident. Everything is in a well-chosen, logical place. Point headings are articulated extremely well and always used effectively.</p> <p><b>7</b></p>	<p>The argument overall is well-organized; however, some paragraphs or elements could be executed better organizationally. There is likely some blurring in the R, E, A such that crispness or sophistication is lacking. Headings are very well done but there is room for improvement.</p> <p><b>4-6</b></p>	<p>An argument structure is apparent; paragraphing is not on its own problematic, but: Ts are absent/unclear; R, E, A is more often than not blurry and confusing; elements may be missing; or headings are present but not always well crafted.</p> <p><b>2-3</b></p>	<p>The paper is uniformly deficient in its deployment of an organizational paradigm. There are other problems with paragraphing as well, including but not limited to use and articulation of point headings.</p> <p><b>1</b></p>
<p><b>RE: Rule Statements, Synthesis, and Rule Explanation</b></p> <p>14 points</p>	<p>Statements of the Rule on each issue (and sub-issue) are accurate, effective, and well-articulated. The statute is mentioned where relevant. Rules are crystallized and explained in a sophisticated manner through well-reasoned and written synthesis.</p> <p><b>12-14</b></p>	<p>While correct content-wise, at least some Rules or elements could be better written or explained. Synthesis is evident but meets with mixed success. Explanation may be lacking at times or over-reliant on string cites, quotes, or unnecessary facts.</p> <p><b>7-11</b></p>	<p>Rules may be technically correct but typically are not explained well (or are under-explained). Synthesis is attempted but problematic; cases are discussed seriatim, though cases are relevant and appropriate.</p> <p><b>3-6</b></p>	<p>The Rules are confusingly written, incorrect, missing pieces, or largely unsupported. (All of these things need not be true simultaneously).</p> <p><b>1-2</b></p>
<p><b>RA: Use of Source Material in Analysis (including statutory provisions, case law, secondary materials).</b></p> <p>18 points</p>	<p>Statutory interpretation is sophisticated and well supported. The paper demonstrates a sophisticated selection and placement of cases and other sources as well as the ability to work with key facts in those cases through well-drawn analogies or distinctions. Quoted language and case citations are used as support for analysis, not as a replacement for it. Excellent fact sensitivity is evident in application of facts to law.</p> <p><b>16-18</b></p>	<p>Stat. interp. is very strong but there is room to make more sophisticated analysis. Case selection is very strong but cases and other materials are not always used as effectively as possible. Analogies and distinctions are definitely present but could be more nuanced, fact-sensitive, or explicit. The application of the facts to the law is well done (clear, appropriate) but there is room for more sophisticated assertions or tighter conclusions.</p> <p><b>9-15</b></p>	<p>Paper suggests student did not get hands “dirty” enough with cases and/or fact pattern. So, cases are present and accurate, but under-used. Factual nuances were overlooked, though conclusions are supported.</p> <p><b>4-8</b></p>	<p>Application of facts to law is attempted but largely deficient. Too few cases are used or too few facts are drawn out of them. Analogies and distinctions are uniformly weak or overly conclusive.</p> <p><b>1-3</b></p>
<p><b>Writing Style and Polish</b></p> <p><i>Please also consider here the feedback your DF provides re: format, citations, etc.</i></p> <p>9 points</p>	<p>The writing is clear, concise, rhetorically effective, and meticulously proofread. For this category, technical accuracy is necessary but not sufficient: the writing also must be fluid and sophisticated.</p> <p><b>8-9</b></p>	<p>The writing contains few, if any, errors in style or mechanics; these errors do not detract from the overall substantive strength of the paper. Despite technical accuracy, the writing lacks some precision, fluidity, or sophistication (e.g., overuse of the passive voice, nominalizations, etc.).</p> <p><b>5-7</b></p>	<p>The writing lacks clarity or precision; substance is sometimes confused or obscured as a result. A more rigorous edit would have eliminated technical errors and mistakes. Use of colloquial or idiomatic speech is prevalent.</p> <p><b>3-4</b></p>	<p>The writing shows a distinct lack of care in proofreading and editing and/or evidences a need to work on the rules of standard written English, including but not limited to colloquialisms.</p> <p><b>1-2</b></p>

## Appellate Brief Grading Guidelines

**64 points total**

**(1) BASIC BRIEF COMPONENTS** **12 points**  
**total**

**STATEMENT OF THE ISSUES (SOI)** **2 points**

2 points      In accordance with LR 25, the SOI sets out the matters to be reviewed on appeal as one-sentence questions or statements. The questions use legally significant facts persuasively and do not include argumentation. The organizational choice of writing multiple statements reflects an understanding of the major issues in the brief, and the separation of the issues mirrors the Argument section.

1 point      The SOI falls short in that the questions could have presented the issues more persuasively. The questions may include some legal argument, leave out some legally significant facts, or lack clarity.

**STATEMENT OF THE CASE (SOC)** **1 point**

1 point      In accordance with LR 26, the SOC provides the reader with a clear understanding of the nature of the case, including both the proceedings and dispositions below.

0.5 points      The SOC is included in the brief, but omits part of the procedural history and/or shows poor organizational choices.

**STATEMENT OF FACTS (SOF)** **5 points**

4-5 points      In accordance with LR 27, the SOF sets out the party's view of the facts in as favorable a light as possible without omitting or mischaracterizing relevant facts (e.g., negative facts) or making legal arguments. The SOF is logical, accurate, well-organized, and persuasive; the SOF may include inferences, as long as the given facts support the inferences and characterizations of facts are within the bounds of persuasiveness. The SOF demonstrates the ability to use persuasive techniques effectively by emphasizing favorable facts and deemphasizing unfavorable facts. A theme is evident and supported by the student's SOF.

2-3 points      The SOF includes the legally significant facts and is persuasive in tone, but could have better described the information in the record to craft an effective narrative and could have better used persuasive techniques. A score in this range is warranted if the organization weakens the reader's ability to understand the facts, even when the

student included an accurate and persuasive description of the facts.

1 point The SOF deserves a score in this range when there are mischaracterizations, unsupported inferences, and/or legal conclusions throughout the SOF. Lack of persuasiveness in tone also warrants a score in this range, when combined with other weaknesses. Facts may be generalized and even inaccurate.

**☐ SUMMARY OF THE ARGUMENT (SOA) 3 points**

3 points In accordance with LR 28, the SOA succinctly lays out the arguments advanced by the brief. It includes the conclusions of the arguments and a brief explanation of the analysis supporting those conclusions. It is clear, well thought-out, themed, and persuasive

2 points The SOA satisfies the basic requirements, but merely restates the argument headings, includes citations, and/or provides too much detail of the analysis. It is adequately written but could have been executed more persuasively

1 point The SOA fails to provide a brief explanation of the analysis and/or contains errors or misstatements. The student may not have understood the purpose of the summary.

**☐ CONCLUSION 1 point**

1 point In accordance with LR 30, the Conclusion states only the relief sought or the desired disposition of the case. The conclusion does not restate or summarize the argument.

0.5 points The Conclusion is present but either does not ask for the appropriate relief or includes some restatement or summary of the argument.

**(2) TREATMENT OF DCT OPINION 1 point total**

1 point The brief appropriately incorporates the DCT opinion – meaning that it recognizes that *this is* the basis of the brief on appeal and references it as necessary in framing and organizing its arguments.

0.5 points The brief is appropriately appellate in stance, but the reader does not get the sense that the student understands or embraces the fact that there is a specific judicial determination on appeal. This may be evidenced by lack of any reference to the DCT opinion.

**(3) ARGUMENT: CONTENT / USE OF AUTHORITIES 21 points total**

**(a) Selection of Cases (note: *use* is evaluated in (b))**

**3 points**

*3 points*

- The brief demonstrates superior research ability in its selection of cases: the breadth of cases demonstrates ample command of the legal issues, and the selection of specific cases demonstrates a deep understanding of the key facts.
- The brief does not rely on persuasive authority as mandatory, but uses persuasive authority to support the logic of the arguments.

*2 points*

- A wide range of authorities, including key authorities, is selected, but there are better authorities available, for the major and more nuanced propositions.
- There may be an instance where persuasive authority is given more weight than it should be given.

*1 point*

- The brief does not include sufficiently productive or informative cases.
- Persuasive authority is generally presented as if it were mandatory.

**(b) Synthesis, Analogies, Distinctions**

**18 points**

*16-18 points*

- The authorities are analyzed and not over-quoted and are used accurately to define, explain, and apply the rule(s) and sub-rules.
- The authorities are synthesized to demonstrate an understanding of the legal arguments present in the brief.
- Analogies and distinctions are made explicit and are expressly compared and contrasted to the facts of the case in specific and helpful ways and are used to support the legal arguments/conclusions.
- Where appropriate, argument includes policy rationale and other non rule-based authority.
- Counter/alternative arguments are persuasively addressed and analyzed to further support the party's position.

*13-15 points*

- ❑ Authorities tend to be quoted rather than synthesized, though rules and sub-rules are explained to some degree (in that you do not feel like you have to read all the cases yourself).
- ❑ Analogies and distinctions are made, but they could be more explicit by tying directly to conclusions. Similarly, these comparisons may be overly-conclusive versus being analytical and nuanced.
- ❑ There is room for a more persuasive analysis of counter/alternative arguments.

*10-12 points*

- ❑ The primary thing separating a brief in this range versus the one above is how *well* the authorities are synthesized and applied to the facts of the problem.
- ❑ Factors that can result in a 10-12 score include many (but perhaps not all) of the following:
  - Student lists constitutional provisions and/or cases seriatim (and discusses a litany of facts therein), but makes the reader do most of the work to discern the synthesized rule;
  - Analogies and distinctions between a case and the fact pattern under evaluation are not explicit;
  - Student uses too few authorities (despite a cohesive analysis) or misses a particularly useful or pivotal case;
  - Student fails to identify or analyze one or more minor sub-arguments or elements.

*7-9 points*

- ❑ A brief in this range will demonstrate notable deficiency in use of authorities – most likely the result of an over-simplified view of the issues.
- ❑ Because of its deficiency, the brief will fail to fully analyze the issues presented.
- ❑ Unsynthesized rules will pervade the analysis.
- ❑ Factual comparisons and distinctions may be gestured toward but will be uniformly weak and operating only at the most surface level.
- ❑ Authorities present may be correct, but there will be evidence of the student not getting her hands dirty with the cases.
- ❑ Conclusory statements will pervade the analysis and generalizations will characterize the case comparisons.

*Below 7 points*

- ❑ A brief in this range will demonstrate notable deficiency in authorities – and evidence a lack of understanding of the central legal issues.
- ❑ Factual comparisons and distinctions are not even gestured toward; instead application sections are characterized by “fact summaries” of the brief problem followed by conclusions citing the cases, but no connections between the two are evident in the brief.
- ❑ Factual comparisons and contrasts are narrowly structured, meaning the student has not used the cases as broadly as possible. This narrow view of the facts in the precedent cases results in a shallow analysis.

**(4) ARGUMENT: STRUCTURE** **18 points**  
**total**

**(a) Umbrella Paragraphs / Roadmaps** **3 points**

*3 points*

- ❑ The Argument includes umbrella/introductory paragraphs where appropriate and the umbrella paragraphs are used effectively to introduce the subdivided arguments immediately following the umbrella paragraph.
- ❑ The umbrella paragraphs use roadmaps to identify which issues/elements are/are not at issue and outline the order in which they are analyzed.

*1-2 points*

- ❑ Umbrella/introductory paragraphs are obviously attempted, but lack clarity or fail to include a required roadmap.
- ❑ The paragraph introduces the following section, but the student fails to use the roadmap as another opportunity to state the argument(s).
- ❑ A score of 1 is justified if there is a weak attempt to include an umbrella paragraph (it is confusingly written and/or does not appreciate the value of this component).

**(b) Organization of Legal Arguments** **14 points**

*12-14 points*

- ❑ The Argument is overall well–organized; it generally (viewing it as a whole) follows the TREAT formula in that:
  - Rules are synthesized and explained;

- Lengthy factual recitations from cases are omitted from the rule explanation;
- No paragraphs begin with “In X case . . .”;
- Fact-sensitivity is evident in application, thought has gone into fact selection, and factual analogies and distinctions are clear;
- Rule and Explanation sentences/paragraphs are organized from general to specific;
- Application sections are organized into paragraphs mirroring the organized RE principles (rather than case by case or fact by fact);
- A conclusion is reached on each argument and sub-argument.
- **Any variations from the TREAT paradigm reflect strategic and persuasive rationale, and do not detract from the overall persuasive strength of the argument or sub-argument.**

*9-11 points*

- ❑ A concerted effort has been made at organization, and the TREAT paradigm as a whole is obviously attempted and generally followed.
- ❑ However, some arguments/elements could be better placed, and there is some blending among arguments (or sub-arguments) or between rule explanation and application. Some of the following factors are evident:
  - Rules could be better synthesized and explained;
  - Case comparisons are not as strong as they could be;
  - The application section puts the burden on the reader to discern the similarities and differences between and among the cases;
  - The application section is organized around facts or authorities, rather than by principle (following the RE); and/or
  - Conclusions are reached on some but not all arguments/sub-arguments.

*6-8 points*

- ❑ There is evidence of organizational awareness but nevertheless a repeated failure to follow a coherent organizational structure.
- ❑ Most or all of the factors listed above are evident.

*Below 6 points*

- There are sections of excessive rambling.
- No discernable pattern of organization is evident and none appears to have been attempted.

**(c) Point Headings**

**1 point**

- 1 point      Argument Point Headings and Sub-Headings employ a parallel, one-sentence format and provide a succinct statement of the party's position on the applicable argument or sub-argument. Headings follow "legal conclusion/argument – because – rationale" format and specifically refer to legally significant facts.
- 0.5 points      Headings are overall useful but vary in structure, fail to make positive assertions, or exclude key facts. (Assign 0 if these criteria are not met).

**(5) STYLE, GRAMMAR, AND PUNCTUATION**

**6 points total**

*6 points*

- The paper contains few, if any, errors in style, grammar, or punctuation.
- The writing is clear, precise, and avoids idioms/colloquialisms.
- Sentences are well-structured, generally formulated with active voice and are clear and concise. The student avoids first person.
- The student uses topic sentences and single-topic paragraphs that contain effective transitions between sentences and paragraphs.

*4 points*

- The brief generally adheres to the rules of good written English, including style, grammar, and punctuation.
- However, some sentences could be better articulated and the writing overall could be more concise.
- Some idioms/ colloquialisms are used.
- There is evidence of proofreading, but the paper contains errors that could have been avoided.
- Some paragraphs may seem disorganized, under-developed, or inappropriately placed, though overall organization is strong, and these deficiencies on the whole do not detract from the overall strength of the paper.

*2 points*

- The writing style detracts from the overall strength of the paper.
- The paper suffers from excessive use of idioms or colloquialisms; it fails to employ paragraphs effectively, and/or generally shows a lack of knowledge of rules of standard written English and/or detailed proofreading.

**(6) Citation and Rules Compliance**

**6 points total**

[provided separately based on different rubric]