

United States Senate
Committee on the Judiciary

Questionnaire for Judicial Nominees
Attachments to Question 19

JUSTIN WALKER
Nominee to be United States Circuit Judge
for the District of Columbia Circuit

LAWYERING SKILLS - FALL 2015
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

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Office phone: 502-852-6638

E-mail address: justinreed.walker@louisville.edu

E-mail address only for turning in assignments: LS.Fall.2015@gmail.com

Office hours: Wednesdays 4:15-5:15; or by appointment; or just drop by

Course Website: Locate through <http://blackboard.louisville.edu>

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills.

For more information about the course, please see the first-day memo from me to you.

COURSE LEARNING OUTCOMES

By the end of this school year, I hope you will have improved your ability to:

- Identify and apply concepts related to the legal system of the United States
- Use research effectively when writing about a legal problem
- Analyze facts, issues, and legal authorities
- Find a variety of sources by topic and citation
- Organize a written analysis of a legal problem
- Use clear and concise prose when writing about a legal issue
- Recognize and use standard legal citation form
- Understand professionalism as it relates to legal writing

REQUIRED BOOKS

- Judith Fischer, *Course Supplement**
- Bryan A. Garner, *Legal Writing in Plain English* (2d ed. 2013)*
- *The Bluebook: A Uniform System of Citation* (20th ed. 2015)**

*You will also use this book in the spring semester.

**You will (unfortunately) use this book long after the spring semester.

WEBSITE AND EMAIL

At times I may need to distribute information to you outside of class meetings. Please be sure to regularly check the course website, which can be found when you log on to <http://blackboard.louisville.edu>. You are expected to be aware of all information posted on the website.

More often, I will distribute information via email. You are expected to be aware of all information emailed to you.

HONOR CODE

This class follows all of the rules found in the Brandeis School of Law Honor Code, located at <http://www.law.louisville.edu/academics/selected-university-offices>, and the University's Code of Student Rights and Responsibilities, located at <http://louisville.edu/dos/policiesprocedures/student-rights-and-responsibilities-1-1.html>. These rules require that all students submit only their own individual work, unless collaboration is specifically authorized by your professor. Plagiarism, or the submission of someone else's work as your own without proper attribution, is unethical and is in violation of the Honor Code. The Honor Code also prohibits students from taking unfair advantage of other students and from doing anything that would impede another student's progress in his or her law school training. This includes the stealing, hiding, or defacing of library books.

Additionally, discussion with your classmates and lawyers about the details of your writing assignments prior to submitting that work is prohibited, unless such discussion is specifically authorized by your professor. Any incidences of sharing information regarding writing assignments, irrespective of motive or amount of disclosure, may be reported to the Honor Council in the professor's sole discretion. On the other hand, discussion with your professor, teaching assistants, and the school librarians is encouraged. In addition, the university Writing Center in the Ekstrom Library is a good resource to help you with organization and grammar (but cannot assist with legal analysis). You can make an appointment with the Writing Center by calling (502) 852-2173.

CLASSROOM ETIQUITE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria will affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will significantly affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are "excused" or not. It is my understanding that the school will drop you from the course after three absences.

Laptops are permitted in class under limited circumstances. Most of the time, open laptops are not permitted.

GRADING

Lawyering Skills is a full-year course that is divided into two semesters. For the Fall Semester, your grade will be based on the following:

Class Participation and Short-Term Assignments ¹	35%
Memo #1	25%
Memo #2	40%

All assignments are to be turned in on or before the day and time identified by your professor. If no time is designated, the assignment is due at the beginning of class. For every written assignment, including assignments due before the morning of class, please email the assignment to LS.Fall.2015@gmail.com and bring a hard copy to class.

Late assignments are subject to a reduction in credit, which is typically one letter grade per 24-hour period (or portion thereof) following the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems, family problems, or traffic.

ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Any student who may need academic accommodations or access accommodations based on the impact of a documented disability must register with the University's Disability Resource Center (DRC) at the beginning of each semester. DRC is the official office to assist students through the process of disability verification and coordination of appropriate and reasonable accommodations. If you have a disability for which you are or may be requesting an accommodation, you must contact DRC (Cathy Patus, Director), in Stevenson Hall, or at (502) 852-6938, cathy.patus@louisville.edu. You must also advise Assistant Dean Jennifer DiSanza in room 216 (or at j.disanza@louisville.edu or 852-8956) that you are seeking an accommodation from DRC in order for the Law School and DRC to more effectively coordinate any assistance provided. For more information regarding disability services, see <http://louisville.edu/disability/>. Please also review the Law School's Handbook for Applicants and Students with Disabilities, available at <http://www.law.louisville.edu/sites/www.law.louisville.edu/files/Handbook%20for%20Disability%202012.pdf>.

TITLE IX/CLERY ACT NOTIFICATION

Sexual misconduct (including sexual harassment, sexual assault, and any other nonconsensual behavior of a sexual nature) and sex discrimination violate University

¹ In addition to including traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – this grade also includes short-term homework exercises, your simulated associate-partner meeting, your attendance in class and at required conferences, and your effort toward the outline and first draft of Memo #1.

policies. Students experiencing such behavior may obtain **confidential** support from the PEACC Program (852-2663), Counseling Center (852-6585), and Campus Health Services (852-6479). To report sexual misconduct or sex discrimination, contact the Dean of Students (852-5787) or University of Louisville Police (852-6111). Disclosure to **University faculty or instructors** of sexual misconduct, domestic violence, dating violence, or sex discrimination occurring on campus, in a University-sponsored program, or involving a campus visitor or University student or employee (whether current or former) is **not confidential** under Title IX. Faculty and instructors must forward such reports, including names and circumstances, to the University's Title IX officer. For more information, see the Sexual Misconduct Resource Guide (<http://louisville.edu/hr/employeerelations/sexual-misconduct-brochure>).

STYLE FOR WRITING ASSIGNMENTS AND RESEARCH EXERCISES

Legal writing includes proper formatting of written work. Please format your Writing Assignments and Research Exercises in the following way:

Student Information: A separate title page should be included with each assignment, including short-term assignments. The title page should have the following information towards the bottom center of the page:

- Assignment Title
- Student's Name or (for anonymous grading) Number
- Date
- Professor's Name
- Class Name and Section Number

Paper: 8 1/2" x 11" white paper. Staple in upper left-hand corner. Print on only one side of the page.

Margins: The printed material on each page must be left justified, with one-inch margins on all four sides.

Type: Typewritten, Times New Roman, 12 point. Double-spaced, except block quotes

Pagination: Number each page of text except for the cover page. Numbers should be centered at the bottom margin. The cover page should not count in the numbering. (In other words, the first page after the cover page is page one.)

BE SURE TO RETAIN A COPY OF YOUR ASSIGNMENTS. IF ANY WORK IS LOST, YOU WILL BE RESPONSIBLE FOR PROVIDING AN ADDITIONAL COPY.

READING AND WRITING ASSIGNMENT SCHEDULE

Note: In addition to the assignments below, there will be other reading assignments, including readings from *The Bluebook* and, for many classes, examples of legal writing.

Class	Date	Reading	Short-term Assignment	Long-term Assignment
1	8/17	David Foster Wallace, "Tense Present"		
2	8/19	JF p. 11 (jargon); JF p. 24 (court system); BG pp. 173-190 (punctuation) ²		
3	8/24	JF p. 25 (hierarchy of authority); Steven Pinker, "The Source of Bad Writing" ³		
4	8/26	JF pp. 6-8 (plagiarism); JF p. 26 (precedent); JF p. 31 (first half of page); BG #1 ("Have Something to Say") ⁴	JF pp. 28-29 (email to me before morning of class; we will discuss in conferences)	
5	8/31		Garner #1, p. 9, Basic Exercise (case to brief TBD) (email to me before morning of class)	
6	9/2	BG #21 ("Plan All Three Parts") (read only); BG #22 ("Deep Issue"); BG Sample Memo pp. 193-201; Other Sample Memo (I will email it to you)	Schedule a Conference for this week or next week.	
	9/7	No Class (Labor Day)		

² These pages on punctuation do not need to be read by 8/19. The reading is a list of rules that you should know and apply throughout the semester. I would recommend reading it before your first conference with me, so that we can discuss any rules that you're unsure about.

³ <http://www.wsj.com/articles/the-cause-of-bad-writing-1411660188>

⁴ You are not required to do the exercises in BG, unless you are expressly assigned an exercise in the "Assignment" column.

7	9/9	JF pp. 40-44 (Discussion Section of Memo; IRAC)	BG #22, p. 77, Basic Exercise (case to use TBD) (email to me before morning of class)	
8	FRI- DAY 9/11⁵	Anne Lamott, “First Drafts” ⁶ ; Richard Posner, “Bluebook Blues” ⁷	Rule Synthesis Exercise #1 (email to me before morning of class)	
9	9/14	JF pp. 31-32 (start after first half of p. 31) (applying precedent); JF p. 44-45 (begin with “Application” section)	Schedule a conference for this week or next week. Rule Synthesis Exercise #2 (email to me before morning of class)	
10	9/16⁸	BG #17 (“Refer to People and Companies by Name”); BG #18 (“Parenthetical Shorthand Names”)	Rule Application Exercise #1 (email to me before morning of class)	
11	9/21	JF p. 38 (statement of facts)	Bring four different colors of highlighters to class. Rule Application Exercise #2 (email to me before morning of class)	
12	9/23	BG #27 (“Signposts”); BG #30 (“Counterarguments”)	JF p. 39 (statement of facts) (email to me before morning of class) Rule Application Exercise #3 (email to me before morning of class)	
13	9/28			Memo #1

⁵ Later in the semester, two classes are canceled (10/14 and 10/28). One of those days is being made up through all the conferences we’ll be having. The second of those days is being made up early in the semester on Friday, 9/11, at the same time as our section normally meets on Monday and Wednesday.

⁶ *** <https://wrd.as.uky.edu/sites/default/files/1-Shitty%20First%20Drafts.pdf>

⁷

http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5159&context=journal_articles

⁸ **Both sections – 22 and 32 – will meet today from 12:45 to 2:00.**

14	9/30			
15	10/5	No Class (Fall Break)	Schedule a conference for this week. It will include a brief simulated law firm meeting; review of Memo #1; review of Rule Synthesis/Application exercises; and discussion of your ongoing research.	
16	10/7	BG #2 (“Outlining”)		
17	10/12	BG #49 (“Gauge ... Readers”); BG #50 (“Makes the Reader’s Job Easy”)		Outline for Memo #2
	10/14	No Class; Conferences	Schedule a Conference for 10/13 or 10/14	
18	10/19	Tips on Paragraphs and Transitions (I will email to you); JF pp. 47-48 (organization)		
19	10/21	BG #4 (“Headings”); JF pp. 63-65 (quoting)		
20	10/26			Draft for Memo #2
	10/28	No Class; Conferences	Schedule a Conference for 10/30	
21	11/2	JF pp. 66-67		
22	11/4			
23	11/9			Memo #2

LAWYERING SKILLS - FALL 2016
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Justin Walker

Office: Room 286

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Cell phone: 502-396-0020

Office phone: 502-852-6638

E-mail address: justinreed.walker@louisville.edu

E-mail address only for turning in assignments: LS.Fall.2016@gmail.com

Course Website: Locate through <http://blackboard.louisville.edu>

REQUIRED BOOKS

- Judith Fischer, Course Supplement
- Bryan A. Garner, *Legal Writing in Plain English* (2nd ed. 2013)
- *The Bluebook: A Uniform System of Citation* (20th ed. 2015)
- Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (5th ed. 2015) (spring semester)

COURSE OVERVIEW

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills. For more information about the course, please see the first-day memo from me to you.

OBJECTIVES

By the end of this school year, I hope you will have improved your ability to:

- Use clear and concise prose when writing about a legal issue;
- Analyze facts, issues, and legal authorities;
- Use research effectively when writing about a legal problem.

ATTENDENCE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria may affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are “excused” or not. It is my understanding that the school will drop you from the course after three absences.

GRADING

Your final grade is a combination of the letter grades you receive and your class participation.

I. Letter Grades

- Memo #1 40%
- Memo #2 60%

II. Class Participation

Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your drafts, outlines, short-term homework exercises, simulations, and attendance in class and at required conferences.

Extraordinary participation will result in a half-grade increase. For example, if your grade on the memos is a B, your final grade for the semester will be a B+ if your participation is extraordinary.

Instances of poor participation will result in a half-grade decrease. For example, if your grade on the memos is a B, your final grade for the semester will be a B- if you had one instance of poor participation; it will be a C+ if you had two instances of poor participation; etc. Instances of poor participation include:

- Coming to class unprepared, without having read the assigned reading;
- Missing class without emailing me before class to explain why;
- Having more than one unexcused absence;
- Inappropriate use of your laptop during class;
- Missing a scheduled conference without emailing me beforehand to reschedule; and
- Turning in multiple short-term assignments late.

READING AND WRITING ASSIGNMENT SCHEDULE

- In addition to the assignments below, there will be other reading assignments, including readings from *The Bluebook* and, for many classes, examples of legal writing.
- At times I may need to distribute information to you outside of class meetings. You are expected to be aware of all information posted on <http://blackboard.louisville.edu>. More often, I will distribute information via email. You are expected to be aware of all information emailed to you.
- For all assigned Bryan Garner readings, you do not have to do any exercises unless indicated below or in class.
- Be sure to retain a copy of your assignments. If any work is lost, you will be responsible for providing an additional copy.
- All assignments are to be turned in on or before the day and time identified by me. If no time is designated, the assignment is due at the beginning of class. For every written assignment except your final memos, please email the assignment to LS.Fall.2016@gmail.com and bring a hard copy to class.
- If either one of your final memos is late, it is subject to a reduction in credit, which is one letter grade per 24-hour period (or portion thereof) following the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems, family problems, or traffic.

Class 1, August 15:

Reading: David Foster Wallace, "Tense Present"

Class 2, August 17

Reading: JF pg. 11 (jargon); JF pg. 24 (court system); BG pgs.173-190 (punctuation)

Note - These pages on punctuation do not need to be read by 8/17. The reading is a list of rules that you should know and apply throughout the semester. I would recommend reading it before your first conference with me, so that we can discuss any rules that you're unsure about.

Class 3, August 22:

Reading: JF pg. 25 (hierarchy of authority); Steven Pinker, "The Source of Bad Writing"

Note – The Pinker article can be found at <http://www.wsj.com/articles/the-cause-of-bad-writing-1411660188>

Class 4, August 24:

Reading: JF pgs. 6-8 (plagiarism); JF pg. 26 (precedent); JF pg. 31 (first half of page); BG #1 (Have Something to Say)

Due: JF pgs. 28-29 (email to me by 11:59 PM on 8/23; we will discuss in conferences)

Class 5, August 29:

Due: Garner #1, pg. 9, Basic Exercise (case to brief TBD) (email to me by 11:59 PM on 8/28)

Class 6, August 31:

Reading: BG #21 (Plan All Three Parts); BG #22 (Deep Issue); BG Sample Memo pgs. 193-201; Other Sample Memo (I will email this to you)

September 5: No Class (Labor Day)

Class 7, September 7:

Reading: JF pgs. 40-44 (discussion section of memo; IRAC)

Due: BG #22 pg. 77, Basic Exercise (case to use TBD) (email to me by 11:59 PM on 9/6)

Class 8, September 12:

Reading: Anne Lamott, “First Drafts”; Richard Posner, “Bluebook Blues”; Bluebook pgs. 10-14 (stop at parallel citation)

Note – The Lamott article can be found at <https://wrd.as.uky.edu/sites/default/files/1-Shitty%20First%20Drafts.pdf> and the Posner article can be found at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5159&context=journal_articles

Class 9, September 14:

Reading: JF pgs. 31-32 (start reading after the first half of pg. 31 “Applying Precedent”); JF pgs. 44-45 (begin with the “Application” section)

Due: Rule Synthesis Exercise (email to me by 11:59 PM on 9/13); **schedule a conference for this week or next week**

Class 10, September 19:

Reading: BG #17 (Refer to People and Companies by Name); BG #18 (Parenthetical Shorthand Names); Read briefs on memo assignment

Due: Rule Application Exercise #1 (email to me by 11:59 PM on 9/18)

Class 11, September 21:

Reading: JF pg. 38 (statement of facts); BG #3 (chronology)

Due: Rule Application Exercise #2 (email to me by 11:59 PM on 9/20)

Note – Bring four different colors of highlighters to class.

Class 12, September 26:

Reading: BG #27 (signposts); BG #30 (counterarguments)

Due: JF pg. (statement of facts) (email to me by 11:59 PM on 9/25) and Rule Application Exercise #3 (email to me by 11:59 PM on 9/25)

Class 13, September 28:

Due: Memo #1

Class 14, October 3:

Due: **Schedule a conference for next week.** It will include a brief simulated law firm meeting; review of Memo #1; review of Rule Synthesis/Application exercises; and discussion of your ongoing research.

Class 15, October 5:

Class 16, October 10:

Reading: BG #2 (outlining)

Due: **Schedule a conference for next week.**

Class 17, October 12:

Reading: BG #49 (gauge readers); BG #50 (makes the reader's job easy)

Due: Outline for Memo #2

October 17: No class; conferences this week

Class 18, October 19:

Reading: Tips on Paragraphs and Transitions (I will email this to you); JF pgs. 47-48 (organization)

Class 19, October 24:

Reading: BG #4 (headings); JF pgs. 63-65 (quoting)

Due: **Schedule a conference for next week.**

Class 20, October 26:

Due: Draft for Memo #2

October 31: No class; conferences this week

Class 21, November 7:

Reading: JF pgs. 66-67

Class 22, November 9:

Class 23, November 14:

Due: Memo #2

ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

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OBJECTIVES

By the end of this class, you should be able to do the following:

- Identify and apply concepts related to the legal system of the United States
- Use research effectively when writing about a legal problem
- Analyze facts, issues, and legal authorities
- Find a variety of sources of primary and secondary law by topic and citation
- Organize a written analysis of a legal problem
- Use clear and concise prose when writing about a legal issue
- Recognize and use standard legal citation form
- Understand professionalism as it relates to legal writing

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GRADING

Your final grade is a combination of the letter grades you receive and your class participation.

I. Letter Grades

- Memo #1 25%*
- Memo #2 75%

*If your Memo #1 grade is (a) passing but (b) lower than your Memo #2 grade, I will not count it against you. In other words, so long as your Memo #1 is a passing grade, it can only help your semester grade.

II. Class Participation

Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your drafts, outlines, short-term homework exercises, simulations, and attendance in class and at required conferences.

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- Coming to class unprepared, without having read the assigned reading;
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- Be sure to retain a copy of your assignments. If any work is lost, you will be responsible for providing an additional copy.
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Class 1, August 14:

Reading: David Foster Wallace, “Tense Present”

Class 2, August 16:

Reading: JF pg. 11 (jargon); JF pg. 24 (court system); BG pgs.173-190 (punctuation)

Note - These pages on punctuation do not need to be read by 8/17. The reading is a list of rules that you should know and apply throughout the semester. I would recommend reading it before your first conference with me, so that we can discuss any rules that you’re unsure about.

Class 3, August 21:

Reading: JF pg. 25 (hierarchy of authority); Steven Pinker, “The Source of Bad Writing”; register for Lexis

Note – The Pinker article can be found at <http://www.wsj.com/articles/the-cause-of-bad-writing-1411660188>

Class 4, August 23:

Reading: JF pgs. 6-8 (plagiarism); JF pg. 26 (precedent); JF pg. 31 (first half of page); BG #1 (Have Something to Say); BG #8

Due: JF pgs. 28-29 (email to me by 11:59 PM on 8/27; bring hard copy to class)

Class 5, August 28:

Reading: BG #9

Class 6, August 30:

Reading: BG #21 (Plan All Three Parts); BG Sample Memo pgs. 193-201; Other Sample Memo (I will email this to you)

September 4: No Class (Labor Day)

Class 7, September 6:

Reading: BG #22; JF pgs. 40-44 (discussion section of memo; IRAC)

Due: BG #22 pg. 77, Basic Exercise (case to use TBD) (email to me by 11:59 PM on 9/6; bring hard copy to class)

Class 8, September 11:

Reading: Anne Lamott, “First Drafts”; Richard Posner, “Bluebook Blues”; Bluebook pgs. 10-15 (stop at Weight of Authority)

Note – The Lamott article can be found at <https://wrd.as.uky.edu/sites/default/files/1-Shitty%20First%20Drafts.pdf> and the Posner article can be found at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5159&context=journal_articles

Class 9, September 13:

Reading: BG #11; JF pgs. 31-32 (start reading after the first half of pg. 31 “Applying Precedent”); JF pgs. 44-45 (begin with the “Application” section)

Due: Rule Synthesis Exercise (email to me by 11:59 PM on 9/13; bring hard copy to class)

Class 10, September 18:

Reading: BG #17 (Refer to People and Companies by Name); BG #18 (Parenthetical Shorthand Names); JF pg. 38 (statement of facts); BG #3 (chronology)

Due: Rule Application Exercise (email to me by 11:59 PM on 9/18; bring hard copy to class)

Note – Bring four different colors of highlighters to class.

Class 11, September 20:

Reading: BG #27 (signposts); BG #30 (counterarguments)

Due: JF pg. 39 (statement of facts) (email to me by 11:59 PM on 9/25; bring hard copy to class)

Class 12, September 25:

Due: Memo #1 (don't email; just bring hard copy to class)

Class 13, September 27:

Reading: Bluebook 16-17

Class 14, October 2:

Reading: BG #2 (outlining); BG #7 (subject, verb, object together)

Due: Short research assignment; schedule a conference for this week

Class 15, October 4:

Reading: Bluebook 18-19, 78-79, 120

October 9: → We do not have class today

Due this week: Schedule a conference for this week; if your conference is Tuesday, email your outline to me the night before your conference; if your conference is Wednesday, Thursday, or Friday, email outline to me by 11:59 Tuesday October 10 and bring a hard copy to class on Wednesday October 11.

Class 16, October 11:

Reading: BG #49 (gauge readers); BG #50 (makes the reader's job easy)

Class 17, October 16:

Reading: JF pgs. 47-48 (organization); Bluebook 14-15, 22-24, 159

Class 18, October 18:

Reading: BG #13; BG #15; BG #24; JF 63-65;

Class 19, October 23:

Reading: Tips on Paragraphs and Transitions (I will email this to you)

Due: Draft for Memo #2 (email by 11:59 night before; bring hard copy to class)

Class 20: October 25: no class today → schedule a conference for Friday, Oct. 27

Class 21, October 30:

Reading: JF pgs. 66-67; JF 12-16; BG #16; sample of legal writing

Class 22, November 1:

Reading: The Very Bad Memo (I will email)

Class 23, November 6:

Due: Memo #2

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HONOR CODE

This class follows all of the rules found in the Brandeis School of Law Honor Code, located at <http://www.law.louisville.edu/academics/selected-university-offices>, and the University's Code of Student Rights and Responsibilities, located at <http://louisville.edu/dos/policiesprocedures/student-rights-and-responsibilities-1-1.html>. These rules require that all students submit only their own individual work, unless collaboration is specifically authorized by your professor. Plagiarism, or the submission of someone else's work as your own without proper attribution, is unethical and is in violation of the Honor Code. The Honor Code also prohibits students from taking unfair advantage of other students and from doing anything that would impede another student's progress in his or her law school training. This includes the stealing, hiding, or defacing of library books.

Additionally, discussion with your classmates and lawyers about the details of your writing assignments prior to submitting that work is prohibited, unless such discussion is specifically authorized by your professor. Any incidences of sharing information regarding writing assignments, irrespective of motive or amount of disclosure, may be reported to the Honor Council in the professor's sole discretion. On the other hand, discussion with your professor, teaching assistants, and the school librarians is encouraged. In addition, the university Writing Center in the Ekstrom Library is a good resource to help you with

organization and grammar (but cannot assist with legal analysis). You can make an appointment with the Writing Center by calling (502) 852-2173.

TITLE IX/CLERY ACT NOTIFICATION

Sexual misconduct (including sexual harassment, sexual assault, and any other nonconsensual behavior of a sexual nature) and sex discrimination violate University policies. Students experiencing such behavior may obtain **confidential** support from the PEACC Program (852-2663), Counseling Center (852-6585), and Campus Health Services (852-6479). To report sexual misconduct or sex discrimination, contact the Dean of Students (852-5787) or University of Louisville Police (852-6111). Disclosure to **University faculty or instructors** of sexual misconduct, domestic violence, dating violence, or sex discrimination occurring on campus, in a University-sponsored program, or involving a campus visitor or University student or employee (whether current or former) is **not confidential** under Title IX. Faculty and instructors must forward such reports, including names and circumstances, to the University's Title IX officer. For more information, see the Sexual Misconduct Resource Guide (<http://louisville.edu/hr/employeerelations/sexual-misconduct-brochure>).

LAWYERING SKILLS - FALL 2018
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

Office: Room 286

Office hours: Mondays 12:00-1:00; or by appointment; or just drop by

Cell phone: 502-396-0020

Office phone: 502-852-6638

E-mail address: justinreed.walker@louisville.edu

E-mail address only for turning in assignments: LS.Fall.2018@gmail.com

Course Website: Locate through <http://blackboard.louisville.edu>

REQUIRED BOOKS

- Judith Fischer, Course Supplement
- Bryan A. Garner, *Legal Writing in Plain English* (2nd ed. 2013)
- *The Bluebook: A Uniform System of Citation* (20th ed. 2015)

COURSE OVERVIEW

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills. For more information about the course, please see the first-day memo from me to you.

OBJECTIVES

By the end of this class, you should be able to do the following:

- Identify and apply concepts related to the legal system of the United States
- Use research effectively when writing about a legal problem
- Analyze facts, issues, and legal authorities
- Find a variety of sources of primary and secondary law by topic and citation
- Organize a written analysis of a legal problem
- Use clear and concise prose when writing about a legal issue
- Recognize and use standard legal citation form
- Understand professionalism as it relates to legal writing

ATTENDENCE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria may affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are “excused” or not. It is my understanding that the school will drop you from the course after three absences.

GRADING

Your final grade is a combination of the letter grades you receive and your class participation.

I. Letter Grades

- Memo #1 25%*
- Memo #2 75%

*If your Memo #1 (a) is turned in on time, (b) receives a passing grade, and (c) receives a grade lower than your Memo #2 grade, I will not count your Memo #1 grade against you. In other words, so long as your Memo #1 is on time and passing, it can only help your semester grade.

II. Class Participation

Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your drafts, outlines, short-term homework exercises, simulations, and attendance in class and at required conferences.

Extraordinary participation will result in a half-grade increase. For example, if your grade on the memos is a B, your final grade for the semester will be a B+ if your participation is extraordinary.

Instances of poor participation will result in a half-grade decrease. For example, if your grade on the memos is a B, your final grade for the semester will be a B- if you had one instance of poor participation; it will be a C+ if you had two instances of poor participation; etc. Instances of poor participation include:

- Coming to class unprepared, without having read the assigned reading;

- Having more than one unexcused absence (for an absence to be excused, you must email me the reason BEFORE the absence);
- Inappropriate use of your laptop during class;
- Missing a scheduled conference without emailing me beforehand to reschedule; and
- Turning in a short-term assignment late on more than one occasion.

READING AND WRITING ASSIGNMENT SCHEDULE

- In addition to the assignments below, there will be other reading assignments, including readings from *The Bluebook* and, for many classes, examples of legal writing.
- At times I may need to distribute information to you outside of class meetings. You are expected to be aware of all information posted on <http://blackboard.louisville.edu>. More often, I will distribute information via email. You are expected to be aware of all information emailed to you.
- For all assigned Bryan Garner readings, you do not have to do any exercises unless indicated below or in class.
- Be sure to retain a copy of your assignments. If any work is lost, you will be responsible for providing an additional copy.
- All assignments are to be turned in on or before the day and time identified by me. If no time is designated, the assignment is due at the beginning of class. **For every written assignment except your final memos, please email the assignment to LS.Fall.2018@gmail.com AND bring a hard copy to class.**
- If either one of your final memos is late, it is subject to a reduction in credit, which is one letter grade per 24-hour period (or portion thereof) following the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems, family problems, or traffic.

Class 1, August 15:

Reading: David Foster Wallace, "Tense Present" (excerpt)

Class 2, August 17:

Reading: JF pg. 11 (jargon); JF pg. 24 (court system); BG pgs.173-190 (punctuation)

Note - These pages on punctuation do not need to be read by 8/17. The reading is a list of rules that you should know and apply throughout the semester. I would recommend

reading it before your first conference with me, so that we can discuss any rules that you're unsure about.

Class 3, August 22:

Reading: JF pg. 25 (hierarchy of authority); Steven Pinker, "The Source of Bad Writing"; register for Lexis

Note – The Pinker article can be found at <http://www.wsj.com/articles/the-cause-of-bad-writing-1411660188>

Class 4, August 24:

Reading: JF pgs. 6-8 (plagiarism); JF pg. 26 (precedent); JF pg. 31 (first half of page); BG #1 (Have Something to Say); BG #8

Due: JF pgs. 28-29

Class 5, August 29:

Reading: BG #9

Class 6, August 31:

Reading: BG #21 (Plan All Three Parts); BG Sample Memo pgs. 193-201; Other Sample Memo (I will email this to you)

Class 7, September 5:

Reading: BG #22; JF pgs. 40-44 (discussion section of memo; IRAC)

Due: BG #22 pg. 77, Basic Exercise (case to use TBD)

Class 8, September 7:

Reading: Anne Lamott, "First Drafts"; Richard Posner, "Bluebook Blues"; Bluebook pgs. 10-15 (stop at Weight of Authority)

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Class 9, September 12:

Reading: BG #11; JF pgs. 31-32 (start reading after the first half of pg. 31 "Applying Precedent"); JF pgs. 44-45 (begin with the "Application" section)

Due: Rule Explanation/Synthesis Exercise

Class 10, September 14:

Reading: BG #17 (Refer to People and Companies by Name); BG #18 (Parenthetical Shorthand Names); JF pg. 38 (statement of facts); BG #3 (chronology); Bluebook 16-17

Due: Rule Application Exercise

Note – Bring four different colors of highlighters to class.

Class 11, September 19:

Reading: BG #27 (signposts); BG #30 (counterarguments)

Due: JF pg. 39 (statement of facts)

Class 12, September 21:

Class 13, September 26:

Due: Memo #1 (don't email; just bring hard copy to class)

September 28 → Lexis Day

Due: Short research assignment

Class 14, October 3:

Reading: BG #2 (outlining); BG #7 (subject, verb, object together)

Due: Schedule a conference for the future; email me your outline (gmail) by the night before your conference and bring a hard copy to the conference.

Class 15, October 5:

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Reading: BG #49 (gauge readers); BG #50 (makes the reader's job easy)

October 12: → We do not have class today

Class 17, October 17:

Reading: JF pgs. 47-48 (organization); Bluebook 14-15, 22-24, 159

Class 18, October 19:

Reading: BG #13; BG #15; BG #24; JF 63-65;

Class 19, October 24:

Reading: Tips on Paragraphs and Transitions (I will email this to you)

Due: Draft for Memo #2

Class 20: October 26: no class today → schedule a conference for yesterday or today

Class 21, October 31:

Reading: JF pgs. 66-67; JF 12-16; BG #16; sample of legal writing

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Reading: The Very Bad Memo (I will email)

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Due: Memo #2

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LAWYERING SKILLS - FALL 2019
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

Office: Room 286

Office hours: Thursdays 12:00-1:00; or by appointment; or just drop by

Cell phone: 502-396-0020

Office phone: 502-852-6638

E-mail address: justinreed.walker@louisville.edu

E-mail address only for turning in assignments: LS.Fall.2019@gmail.com

Course Website: Locate through <http://blackboard.louisville.edu>

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COURSE OVERVIEW

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills. For more information about the course, please see the first-day memo from me to you.

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Class 9, September 10:

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Reading: BG #17 (Refer to People and Companies by Name); BG #18 (Parenthetical Shorthand Names); JF pg. 38 (statement of facts); BG #3 (chronology); Bluebook 16-17

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Note – Bring four different colors of highlighters to class.

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Reading: BG #27 (signposts); BG #30 (counterarguments)

Due: JF pg. 39 (statement of facts)

September 19 → Lexis Day

MONDAY SEPTEMBER 23, 8:50AM, MEMO #1 DUE (don't email; just bring hard copy to the LRC)

Class 12, September 24:

Class 13, September 26:

Due: Short research assignment

Class 14, October 1:

Reading: BG #2 (outlining); BG #7 (subject, verb, object together)

Due: Schedule a conference for the future; email me your outline (gmail) by the night before your conference and bring a hard copy to the conference.

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Reading: BG #49 (gauge readers); BG #50 (makes the reader's job easy)

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Reading: JF pgs. 47-48 (organization); Bluebook 14-15, 22-24, 159

Class 18, October 17:

Reading: BG #13; BG #15; BG #24; JF 63-65;

Class 19, October 22:

Reading: Tips on Paragraphs and Transitions (I will email this to you)

Due: Draft for Memo #2

Class 20: October 24: no class today → schedule a conference

Class 21, October 29:

Reading: JF pgs. 66-67; JF 12-16; BG #16; sample of legal writing

Class 22, October 31:

Reading: The Very Bad Memo (I will email)

MONDAY NOVEMBER 4, 8:50AM, MEMO #2 DUE (don't email; just bring hard copy to the LRC)

Class 23, November 5:

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LAWERING SKILLS – SPRING 2016
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

Office: Room 286

Cell phone: 502-396-0020

Office phone: 502-852-6638

E-mail address: justinreed.walker@louisville.edu

E-mail address only for turning in assignments: LS.Spring.2016@gmail.com

Office hours: Tuesdays 11:45-12:45; or by appointment; or just drop by

Course Website: Locate through <http://blackboard.louisville.edu>

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills.

For more information about the course, please see the first-day memo from me to you.

COURSE LEARNING OUTCOMES

By the end of this school year, I hope you will have improved your ability to:

- Identify and apply concepts related to the legal system of the United States
- Use research effectively when writing about a legal problem
- Analyze facts, issues, and legal authorities
- Find a variety of sources by topic and citation
- Organize a written analysis of a legal problem
- Use clear and concise prose when writing about a legal issue
- Recognize and use standard legal citation form
- Understand professionalism as it relates to legal writing

REQUIRED BOOKS

- Judith Fischer, Course Supplement (Spring Semester Version)
- Supplement II: Selected Briefs and Opinions
- Bryan A. Garner, *Legal Writing in Plain English* (2d ed. 2013)
- *The Bluebook: A Uniform System of Citation* (20th ed. 2015)**

WEBSITE AND EMAIL

At times I may need to distribute information to you outside of class meetings. Please be sure to regularly check the course website, which can be found when you log on to <http://blackboard.louisville.edu>. You are expected to be aware of all information posted on the website.

More often, I will distribute information via email. You are expected to be aware of all information emailed to you.

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CLASSROOM ETIQUITE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria will affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will significantly affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are "excused" or not. It is my understanding that the school will drop you from the course after three absences.

Laptops are permitted in class under limited circumstances. Most of the time, open laptops are not permitted.

GRADING

Lawyering Skills is a full-year course that is divided into two semesters. For the Spring Semester, your final grade will be the same as the grade you receive for your appellate brief, *unless* your participation assessment alters that final grade. Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your oral argument, short-term homework exercises, attendance in class and at required conferences, and your effort toward preparation for the brief and oral argument. Extraordinary participation will result in a half-grade increase. For example, if you receive a B on your appellate brief, your final grade for the semester will be a B+ if your participation is extraordinary. Instances of poor participation will result in a half-grade decrease. For example, if you receive a B on your appellate brief, your final grade for the semester will be a B- if you had one instance of poor participation; it will be a C+ if you had two instances of poor participation; etc. Instances of poor participation include:

- Coming to class unprepared, without having read the assigned reading;
- Missing class without emailing before class to explain why;
- Having more than one unexcused absence;
- Missing a scheduled conference without emailing me beforehand to reschedule; and
- Turning in multiple short-term assignments late.

All assignments are to be turned in on or before the day and time identified by your professor. If no time is designated, the assignment is due at the beginning of class. For every written assignment except your final appellate brief, please email the assignment to LS.Spring.2016@gmail.com and bring a hard copy to class.

If your final brief is late, it is subject to a reduction in credit, which is one letter grade per 24-hour period (or portion thereof) following the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems, family problems, or traffic.

ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

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DRC to more effectively coordinate any assistance provided. For more information regarding disability services, see <http://louisville.edu/disability/>. Please also review the Law School's Handbook for Applicants and Students with Disabilities, available at <http://www.law.louisville.edu/sites/www.louisville.edu/files/Handbook%20for%20Disability%202012.pdf>.

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STYLE FOR WRITING ASSIGNMENTS AND RESEARCH EXERCISES

Legal writing includes proper formatting of written work. Please format your Seventh Circuit appellate brief according to the rules of the Seventh Circuit, unless you are otherwise instructed. Please format your other assignments in the following way:

Student Information: A separate title page should be included with each assignment, including short-term assignments. The title page should have the following information towards the bottom center of the page:

- Assignment Title
- Student's Name or (for anonymous grading) Number
- Date
- Professor's Name
- Class Name and Section Number

Paper: 8 1/2" x 11" white paper. Staple in upper left-hand corner. Print on only one side of the page.

Margins: The printed material on each page must be left justified, with one-inch margins on all four sides.

Type: Typewritten, Times New Roman, 12 point. Double-spaced, except block quotes

Pagination: Number each page of text except for the cover page. Numbers should be centered at the bottom margin. The cover page should not count in the numbering. (In other words, the first page after the cover page is page one.)

BE SURE TO RETAIN A COPY OF YOUR ASSIGNMENTS. IF ANY WORK IS LOST, YOU WILL BE RESPONSIBLE FOR PROVIDING AN ADDITIONAL COPY.

READING AND WRITING ASSIGNMENT SCHEDULE

Note: In addition to the assignments below, there will be other reading assignments, including readings from *The Bluebook* and, for many classes, examples of legal writing.

Class	Date		Short-term Assignments	Long-term Assignments
1	Friday 1/8			
2	Tuesday 1/12	Lexis		
3	Friday 1/15		Title page for brief; 26.1 Disclosure Statement	
	1/19-1/22	Required meetings to discuss research; bring research notes to meeting		
4	Tuesday 1/19			
5	Friday 1/22		Statement of Jurisdiction	
6	Tuesday 1/26			
7	Friday 1/29		Statement of the Issue	
8	Tuesday 2/2			
9	Friday 2/5		Certificate of Service; Statement Regarding Oral Argument	
10	Tuesday 2/9			
11	Friday 2/12		Draft of Argument Section	
12	2/16	Lexis		
	2/19	No class (will make up through meetings)		
	2/22-2/26	Required meetings to discuss draft of argument section		
13	Tuesday 2/23		Statement of Facts	

14	Friday 2/26		Summary of Argument; Introduction	
15	Tuesday 3/1			
16	Friday 3/4			
	MONDAY 3/7			Brief, including each of the sections listed under Short-term Assignments, as well as a Table of Contents, a Table of Authorities, a Conclusion, and a Certificate of Compliance
17	Tuesday 3/8			
18	Friday 3/11			
	3/15	No class (Spring Break)		
	3/18	No class (Spring Break)		
19	Tuesday 3/22			
20	Friday 3/25			
	SATURDAY 3/26			Oral Argument
21	Tuesday 3/29			

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REQUIRED BOOKS

- Judith Fischer, Course Supplement
- Supplement II: Selected Briefs and Opinions
- Bryan A. Garner, *Legal Writing in Plain English* (2nd ed. 2013)
- *The Bluebook: A Uniform System of Citation* (20th ed. 2015)
- Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (5th ed. 2015) (spring semester)

COURSE OVERVIEW

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills. For more information about the course, please see the first-day memo from me to you.

OBJECTIVES

By the end of this school year, I hope you will have improved your ability to:

- Use clear and concise prose when writing about a legal issue;
- Analyze facts, issues, and legal authorities;
- Use research effectively when writing about a legal problem;
- Introduce skills of client counseling and collaboration.

ATTENDANCE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria may affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are “excused” or not. It is my understanding that the school will drop you from the course after three absences.

GRADING

Your final grade is a combination of the letter grade you receive on your final brief and your class participation.

I. Letter Grades

- Brief 100%

II. Class Participation

Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your drafts, outlines, short-term homework exercises, simulations, and attendance in class and at required conferences.

Extraordinary participation will result in a half-grade increase. For example, if your grade on the brief is a B, your final grade for the semester will be a B+ if your participation is extraordinary.

Instances of poor participation will result in a half-grade decrease. For example, if your grade on the brief is a B, your final grade for the semester will be a B- if you had one instance of poor participation; it will be a C+ if you had two instances of poor participation; etc. Instances of poor participation include:

- Coming to class unprepared, without having read the assigned reading;
- Missing class without emailing me before class to explain why;
- Having more than one unexcused absence;
- Inappropriate use of your laptop during class;
- Missing a scheduled conference without emailing me beforehand to reschedule; and
- Turning in multiple short-term assignments late.

READING AND WRITING ASSIGNMENT SCHEDULE

- In addition to the assignments below, there will be other reading assignments, including readings from *The Bluebook* and, for many classes, examples of legal writing.
- At times I may need to distribute information to you outside of class meetings. You are expected to be aware of all information posted on <http://blackboard.louisville.edu>. More often, I will distribute information via email. You are expected to be aware of all information emailed to you.
- For all assigned Bryan Garner readings, you do not have to do any exercises unless indicated below or in class.
- Be sure to retain a copy of your assignments. If any work is lost, you will be responsible for providing an additional copy.
- All assignments are to be turned in on or before the day and time identified by me. If no time is designated, the assignment is due at the beginning of class. For every written assignment except your final brief, please email the assignment to LawyeringSkills.Spring.2017@gmail.com and bring a hard copy to class.
- For almost every class, I will ask you to identify a writing principle that the reading exemplifies. This email is due by 11:59 PM the night before class. You do not need to bring a hard copy to class. Once you have used a writing principle, do not re-use that writing principle for future emails.
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	1/17-1/20	Required meetings to discuss research;		

		bring research notes to meeting		
4	Tuesday 1/17			
5	Thursday 1/19		Statement of Jurisdiction	
6	Tuesday 1/24			
7	Thursday 1/26		Statement of the Issue	
8	Tuesday 1/31			
9	Thursday 2/2			
10	Tuesday 2/7			
11	Thursday 2/9		Draft of Argument Section	
12	Tuesday 2/14	Lexis		
	Thursday 2/16	No class (will make up through meetings)		
	2/20-2/24	Required meetings to discuss draft of argument section		
13	Tuesday 2/21		Statement of Facts	
14	Thursday 2/23		Summary of Argument; Introduction	
15	Tuesday 2/28			
16	Thursday 3/2			
	MONDAY 3/6			Brief, including each of the sections listed under Short-term Assignments, as well as a Table of Contents, a Table of Authorities, a Conclusion,

				Certificat of Service, and a Certificate of Compliance
17	Tuesday 3/7			
18	Thursday 3/9			
	3/14	No class (Spring Break)		
	3/16	No class (Spring Break)		
19	Tuesday 3/21			
20	Thursday 3/23			
	SATURDAY 3/25			Oral Argument
21	Tuesday 3/28			

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- Analyze facts, issues, and legal authorities
- Find a variety of sources of primary and secondary law by topic and citation
- Organize a written analysis of a legal problem
- Use clear and concise prose when writing about a legal issue
- Recognize and use standard legal citation form
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1	Wednesday 1/3		
2	Friday 1/5	Westlaw	
3	Wednesday 1/10		
	1/16-19	Required meetings to discuss research;	

		bring research notes to meeting	
4	Friday 1/12		
5	Wednesday 1/17		
6	Friday 1/19		
7	Wednesday 1/24		
8	Friday 1/26		
9	Wednesday 1/31		
10	Friday 2/2		
11	Wednesday 2/7	Draft of Argument Section	
12	Friday 2/9	Lexis	
	Wednesday 2/14	No class (will make up through meetings)	
	2/16-2/23	Required meetings to discuss draft of argument section	
13	Friday 2/16		
14	Wednesday 2/21		
15	Friday 2/23		
16	Wednesday 2/28		
	Friday 3/2	No class (will make up through meetings)	
	MONDAY 3/5		Brief, including each of the sections listed under Short-term Assignments, as well as a Table of Contents, a

			Table of Authorities, a Conclusion, Certificate of Service, and a Certificate of Compliance
17	Wednesday 3/7		
18	Friday 3/9		
	3/14	No class (Spring Break)	
	3/16	No class (Spring Break)	
19	Wednesday 3/21		
20	Friday 3/23		
	SATURDAY 3/24		Oral Argument
21	Wednesday 3/28		

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LAWYERING SKILLS - SPRING 2019
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

Office: Room 286

Office hours: Wednesdays 12:00-1:00; or by appointment; or just drop by

Cell phone: 502-396-0020

Office phone: 502-852-6638

E-mail: justinreed.walker@louisville.edu

E-mail only for turning in assignments: LS.Spring.2019@gmail.com

Course Website: Locate through <http://blackboard.louisville.edu>

REQUIRED BOOKS

- Judith Fischer, Course Supplement
- Supplement II: Selected Briefs and Opinions
- Bryan A. Garner, *Legal Writing in Plain English* (2nd ed. 2013)
- *The Bluebook: A Uniform System of Citation* (20th ed. 2015)

COURSE OVERVIEW

The most important thing a junior attorney can do is deliver written products to senior attorneys that do not need extensive editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. Over the course of the year, we will also work on verbal communication and other lawyering skills. For more information about the course, please see the first-day memo from me to you.

OBJECTIVES

By the end of this class, you should be able to do the following:

- Identify and apply concepts related to the legal system of the United States
- Use research effectively when writing about a legal problem
- Analyze facts, issues, and legal authorities
- Find a variety of sources of primary and secondary law by topic and citation
- Organize a written analysis of a legal problem
- Use clear and concise prose when writing about a legal issue
- Recognize and use standard legal citation form
- Understand professionalism as it relates to legal writing

ATTENDANCE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria may affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are “excused” or not. It is my understanding that the school will drop you from the course after three absences.

GRADING

Your final grade is a combination of the letter grade you receive on your final brief and your class participation.

I. Letter Grades

- Brief 100%

II. Class Participation

Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your drafts, outlines, short-term homework exercises, simulations, and attendance in class and at required conferences.

Extraordinary participation will result in a half-grade increase. For example, if your grade on the memos is a B, your final grade for the semester will be a B+ if your participation is extraordinary.

Instances of poor participation will result in a half-grade decrease. For example, if your grade on the memos is a B, your final grade for the semester will be a B- if you had one instance of poor participation; it will be a C+ if you had two instances of poor participation; etc. Instances of poor participation include:

- Coming to class unprepared, without having read the assigned reading;
- Having more than one unexcused absence (for an absence to be excused, you must email me the reason BEFORE the absence);
- Inappropriate use of your laptop during class;
- Missing a scheduled conference without emailing me beforehand to reschedule; and

- Turning in a short-term assignment late on more than one occasion.

READING AND WRITING ASSIGNMENT SCHEDULE

- In addition to the assignments below, there will be reading and other writing assignments, including readings from *The Bluebook* and, for many classes, examples of legal writing.
- At times I may need to distribute information to you outside of class meetings. You are expected to be aware of all information posted on <http://blackboard.louisville.edu>. More often, I will distribute information via email. You are expected to be aware of all information emailed to you.
- For all assigned Bryan Garner readings, you do not have to do any exercises unless indicated below or in class.
- Be sure to retain a copy of your assignments. If any work is lost, you will be responsible for providing an additional copy.
- All assignments are to be turned in on or before the day and time identified by me. If no time is designated, the assignment is due at the beginning of class. For every written assignment except your final brief, please email the assignment to LS.Spring.2019@gmail.com and bring a hard copy to class.
- For almost every class, I will ask you to identify a writing principle that the reading exemplifies. This email is due by 11:59 PM the night before class. You do not need to bring a hard copy to class. Once you have used a writing principle, do not re-use that writing principle for future emails.
- If your final brief is late, it is subject to a reduction in credit, which is one letter grade per 24-hour period (or portion thereof) following the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems, family problems, or traffic.

Class	Date		Assignments
1	Friday 1/4	Lexis	
2	Wednesday 1/9		
3	Friday 1/11		
4	Wednesday 1/16		

5	Friday 1/18		
	1/21-25	Required meetings to discuss research	
6	Wednesday 1/23		
7	Friday 1/25		
8	Wednesday 1/30		
9	Friday 2/1		
10	Wednesday 2/6		
11	Friday 2/8	Draft of Argument Section	
	Wednesday 2/13	No class (will make up through meetings)	
12	Friday 2/15		
	2/11-2/19	Required meetings to discuss draft of argument section	
13	Wednesday 2/20		
14	Friday 2/22		
15	Wednesday 2/27		
16	Friday 3/1	No class (will make up through meetings)	
17	Wednesday 3/6		BRIEF DUE
18	Friday 3/8		
	3/14	No class (Spring Break)	
	3/16	No class (Spring Break)	
19	Wednesday 3/20		
20	Friday 3/22		

	SATURDAY 3/23		Oral Argument
21	Wednesday 3/27		

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Justin Walker and Jake Grey

Office: Room 286

Office hours: Wednesdays 1:45-2:45; or by appointment

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2	Wednesday 1/8	Lexis	
3	Monday 1/13		
4	Wednesday 1/15		

	1/20-24	Required meetings to discuss research	
5	Monday 1/20	No Class b/c MLK Day	
6	Wednesday 1/22		
7	Monday 1/27		
8	Wednesday 1/29		
9	Monday 2/3		
10	Wednesday 2/5	Guest Speaker	
	2/10-2/11; 2/13-2/14	Required meetings to discuss draft of argument section	
11	Monday 2/10	No Class b/c of Conferences	Drafts of Argument Section Due
12	Wednesday 2/12	No Class b/c of Conferences	
13	Monday 2/17		
14	Wednesday 2/19		
15	Monday 2/24		
16	Wednesday 2/26		
17	Monday 3/2		BRIEF DUE
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Confrontation Clause – Spring 2020
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Ben Beaton and Justin Walker

Ben Beaton and Justin Walker's Office: Room 286
Office Hours: Wednesdays 1:45-2:45; or by appointment

Ben Beaton's Phone: 513-361-1258
Justin Walker's Cell Phone: 502-396-0020

Ben Beaton's E-mail Address: benjamin.beaton@squirepb.com
Justin Walker's E-mail Address: justinreed.walker@louisville.edu

Class Schedule: Wednesdays 12:00-1:40 in LL71

REQUIRED BOOKS

- Course Supplement

COURSE OVERVIEW

In 2004, with *Crawford v. Washington*, the Supreme Court revolutionized the Sixth Amendment's Confrontation Clause. Although the decision was unanimous, unusual divisions soon emerged on the Court over how far to extend *Crawford*. By 2009, some justices appeared to regret their votes in *Crawford*. And by 2015, *Crawford*'s author was openly fretting the return of the pre-*Crawford* understanding of the Confrontation Clause. Complicating this story – and making it more interesting – is the odd coalition that fought to preserve *Crawford* (Scalia and Thomas on the right + Stevens/Kagan, Ginsburg, and Sotomayor on the left). The purpose of this class is to read about, write about, think about, and discuss in a critical and focused manner the past, present, and future of the Confrontation Clause, and to explore what it tells us about broader topics. Those topics include formalism vs. pragmatism; rules vs. standards; originalism vs. living constitutionalism; stare decisis; and the power of the Supreme Court.

OBJECTIVES

- Develop an enhanced understanding of the Sixth Amendment's Confrontation Clause;
- Engage with judicial precedents and academic literature about Confrontation Clause.

ATTENDENCE

Students are expected to be on time and prepared for every class session. Failure to meet any of these criteria may affect your grade.

GRADING

Each class, you will write a reflection about the readings for that week and about the class discussion from the previous week. Your final grade will reflect your written work and your engagement with the readings each class session. You are required to do all assigned reading. If you fail to do your assigned reading, your final grade will be reduced by a full letter grade each week you are unprepared.

READING AND DISCUSSION SCHEDULE

January 8, 12:00-1:40

Readings from:¹

- The Rule of Law as a Law of Rules (Scalia)
- Trial of Sir Walter Raleigh, Knight, for High Treason, 1 David Jardine, Criminal Trials (London, Charles Knight, Pall Mall East 1832)
- *Crawford v. Washington* (2004) → summary of pre-founding history
- *California v. Green*, 399 U.S. 149 (1970) (majority)
- *California v. Green*, 399 U.S. 149 (1970) (Harlan, J., concurring);
- *Ohio v. Roberts* (1980).

Be prepared to discuss:

- The trial of Walter Raleigh; or
- The English Common Law's understanding of the Confrontation right; or
- The state of the Confrontation Clause in the second half of the 20th century, including the *Roberts* test.

January 15, 12:00-1:40

Readings from:

- *Coy v. Iowa* (1988) (majority opinion);
- *Coy v. Iowa* (1988) (oral argument).
- *Parchment and Politics: The Positive Puzzle of Constitutional Commitment* (Levinson)

¹ For each class, there may be additional readings.

- The Enabling Role of Democratic Constitutionalism: Fixed Rules and Some Implications for Contested Presidential Elections (Issacharoff)

Be prepared to discuss:

- Whether *Coy v. Iowa* was correctly decided.

January 22, 12:00-1:40

Readings from:

- *Maryland v. Craig* (1990) (majority opinion);
- *Maryland v. Craig* (1990) (Scalia dissent);
- *Maryland v. Craig* (1990) (oral argument).

Be prepared to discuss:

- Whether *Maryland v. Craig* is consistent with *Coy*; or
- How *Maryland v. Craig* fits (or doesn't fit) within the history of the Confrontation Clause.

January 29, 12:00-1:40

Readings from:

- Randolph N. Jonakait, Restoring the Confrontation Clause to the Sixth Amendment, 35 UCLA L. Rev. 557, 558 (1988);
- Akhil Amar, Sixth Amendment First Principles, 84 Geo. L.J. 641, 690 (1996);
- *White v. Illinois*, 502 U.S. 346 (1992) (majority opinion);
- *White v. Illinois* (1992) (oral argument);

Be prepared to discuss:

- Amar and Jonakait's vision of a Confrontation Clause revolution; or
- How the arguments in *White* foreshadowed (or didn't foreshadow) the Confrontation Clause revolution 12 years later.

February 5, 12:00-1:40

Readings from:

- Miguel A. Mendez, Crawford v. Washington: A Critique, 57 Stan. L. Rev. 569, 607 (2004);
- Crawford v. Washington (2004) (majority opinion);
- Crawford v. Washington (2004) (Rehnquist concurrence);
- Crawford v. Washington (2004) (oral argument);

- Stephanos Bibas, Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?, 94 Geo. L.J. 183, 192 (2005).

Be prepared to discuss:

- Whether Crawford was rightly decided; or
- Why was Crawford unanimous (kind of); or
- How Chief Justice Rehnquist's concurrence does or doesn't reveal the cracks in the Crawford consensus that would lead to significant divisions down the road.

February 12, 12:00-1:40

Readings from:

- Tom Lininger, Prosecuting Batterers After Crawford, 91 Va. L. Rev. 747, 750, 767 (2005);
- Myrna Raeder, Remember the Ladies and the Children Too: Crawford's Impact on Domestic Violence and Child Abuse Cases, 71 Brook. L. Rev. 311, 328 (2005);

Be prepared to discuss:

- How Crawford makes it more difficult to prosecute domestic violence.

February 17, 12:00-1:40

Readings from:

- *Davis v. Washington* (2006) (majority opinion);
- *Davis v. Washington* (2006) (Thomas concurrence).
- Thomas Y. Davies, Not "The Framers' Design": How the Framing-Era Ban Against Hearsay Evidence Refutes the Crawford-Davis "Testimonial" Formulation of the Scope of the Original Confrontation Clause, 15 J.L. & Pol'y 349, 468 n.291 (2007);
- Robert Kry, Confrontation Under the Marian Statutes: A Response to Professor Davies, 72 Brook. L. Rev. 493, 498 (2007);

Be prepared to discuss:

- Does *Davis* correctly draw the line between (testimonial) statements that require confrontation and (non-testimonial) statements that don't? Is this even the proper inquiry?; or
- How does Justice Thomas approach the Confrontation Clause in a way no other justice does and is he correct?; or
- Whether *Davis*'s line looks likely to be workable in the future (much more on that in later weeks).

February 26, 12:00-1:40

Readings from:

- Richard D. Friedman, Grappling with the Meaning of "Testimonial," 71 Brook. L. Rev. 241 (2005);
- Josephine Ross, After Crawford Double-Speak: "Testimony" Does Not Mean Testimony and "Witness" Does Not Mean Witness, 97 J. Crim. L. & Criminology 147, 193 (2006);
- Josephine Ross, Crawford's Short-Lived Revolution: How *Davis v. Washington* Reins in Crawford's Reach, 83 N.D. L. Rev. 387, 411 (2007);
- Jeffrey L. Fisher, What Happened - and What Is Happening - to the Confrontation Clause?, 15 J.L. & Pol'y 587, 627 (2007).

Be prepared to discuss:

- Whether you agree with Ross that *Davis* is a significant constraint on *Crawford*.
- What Fisher says was happening to the Confrontation Clause before *Melendez-Diaz*.

March 4, 12:00-1:40

Readings from:

- *Melendez-Diaz v. Massachusetts* (2009) (majority opinion);
- *Melendez-Diaz v. Massachusetts* (2009) (Thomas concurrence).
- *Melendez-Diaz v. Massachusetts* (2009) (Kennedy dissent);
- *Melendez-Diaz v. Massachusetts* (2009) (oral argument).

Be prepared to discuss:

- Whether *Melendez-Diaz* was correctly decided.

March 18, 12:00-1:40

Readings from:

- Jeffrey L. Fisher, Categorical Requirements in Constitutional Criminal Procedure, 94 Geo. L.J. 1493, 1496 (2006);
- Mark Chenoweth, Using Its Sixth Sense: The Roberts Court Revamps the Rights of the Accused, 2008-09 Cato Sup. Ct. Rev. 223 (2008-2009);

Be prepared to discuss:

- What happened to Crawford's unanimity – do you think some of its majority developed buyer's remorse?

March 25, 12:00-1:40

Readings from:

- *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011) (majority opinion);
- *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011) (Kennedy dissent).

Be prepared to discuss:

- The strange ideological bedfellows that make up the two emerging sides of the Confrontation Clause divide; or
- Whether *Bullcoming* was correctly decided.

April 1, 12:00-1:40

Readings from:

- Michael D. Cicchini, *Dead Again: The Latest Demise of the Confrontation Clause*, 80 *Fordham L. Rev.* 1301, 1321 (2011);
- *Michigan v. Bryant* (2011) (majority opinion);
- *Michigan v. Bryant* (2011) (Scalia dissent).

Be prepared to discuss:

- Whether *Bryant* was correctly decided; or
- Whether the Confrontation Clause Revolution has staying power.

April 8, 12:00-1:40

Readings from:

- *Williams v. Illinois* (2012) (plurality opinion);
- *Williams v. Illinois* (2012) (Breyer concurrence);
- *Williams v. Illinois* (2012) (Kagan dissent).

Be prepared to discuss:

- Whether *Williams* was correctly decided; or
- Whether *Williams* is consistent with *Melendez-Diaz*.

April 15, 12:00-1:40

Readings from:

- Robert P. Mosteller, *Crawford v. Washington: Encouraging and Ensuring the Confrontation of Witnesses*, 39 *U. Rich. L. Rev.* 511, 512, 522 (2005);
- *Ohio v. Clark* (2015) (majority opinion);
- *Ohio v. Clark* (2015) (Scalia concurrence).

Be prepared to discuss:

- Whether *Ohio v. Clark* was correctly decided; or

- Whether the *Roberts* test is back from the dead; or
- Where the Confrontation Clause's jurisprudence is likely to go from here.

April 22, 12:00-1:40

Readings TBD

April 29, 12:00-1:40

Readings TBD

ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Any student who may need academic accommodations or access accommodations based on the impact of a documented disability must register with the University's Disability Resource Center (DRC) at the beginning of each semester. DRC is the official office to assist students through the process of disability verification and coordination of appropriate and reasonable accommodations. If you have a disability for which you are or may be requesting an accommodation, you must contact DRC (Cathy Patus, Director), in Stevenson Hall, or at (502) 852-6938, cathy.patus@louisville.edu. You must also advise Emily Clark at Emily.clark2@louisville.edu or 502-852-6367 that you are seeking an accommodation from DRC in order for the Law School and DRC to more effectively coordinate any assistance provided. For more information regarding disability services, see <http://louisville.edu/disability/>. Please also review the Law School's Handbook for Applicants and Students with Disabilities, available at <http://www.law.louisville.edu/sites/www.louisville.edu/files/Handbook%20for%20Disability%202012.pdf>.

HONOR CODE

This class follows all of the rules found in the Brandeis School of Law Honor Code, located at <http://www.law.louisville.edu/academics/selected-university-offices>, and the University's Code of Student Rights and Responsibilities, located at <http://louisville.edu/dos/policiesprocedures/student-rights-and-responsibilities-1-1.html>. These rules require that all students submit only their own individual work, unless collaboration is specifically authorized by your professor. Plagiarism, or the submission of someone else's work as your own without proper attribution, is unethical and is in violation of the Honor Code. The Honor Code also prohibits students from taking unfair advantage of other students and from doing anything that would impede another student's progress in his or her law school training. This includes the stealing, hiding, or defacing of library books.

TITLE IX/CLERY ACT NOTIFICATION

Sexual misconduct (including sexual harassment, sexual assault, and any other nonconsensual behavior of a sexual nature) and sex discrimination violate University policies. Students experiencing such behavior may obtain **confidential** support from the PEACC Program (852-2663), Counseling Center (852-6585), and Campus Health Services (852-6479). To report sexual misconduct or sex discrimination, contact the Dean of Students (852-5787) or University of Louisville Police (852-6111). Disclosure to **University faculty or instructors** of sexual misconduct, domestic violence, dating violence, or sex discrimination occurring on campus, in a University-sponsored program, or involving a campus visitor or University student or employee (whether current or former) is **not confidential** under Title IX. Faculty and instructors must forward such reports, including names and circumstances, to the University's Title IX officer. For more information, see the Sexual Misconduct Resource Guide (<http://louisville.edu/hr/employeerelations/sexual-misconduct-brochure>).

WRITING FOR PRACTICE – SPRING 2014
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

Telephone Number: 396-0020

E-mail address: justinreedwalker@gmail.com

E-mail address for assignments: WFPassignments@gmail.com

Course website: Locate through <http://blackboard.louisville.edu>

Office hours: After class or by appointment

The most important thing a junior associate can do is deliver written products to senior attorneys that do not need much editing before they go to the client or the court. The goal of this class is to develop your research, analytical, and writing skills – with an emphasis on writing skills. You will have the opportunity to prepare correspondence, pleadings, and other essential litigation documents such as time sheets. You will also be required to complete to write a formal judicial opinion.

Many weeks in class, you will be asked to complete exercises from Garner's *Legal Writing in Plain English*, and we will review those exercises together in class.

Many weeks, we will also critique legal writing that was assigned for that week. For example, you might be assigned an example of good writing and an example of bad writing and asked to come to class prepared to name things you like about the good writing and things you dislike about the bad writing.

We may also review in class some of your legal writing. I'll try to make sure that the class does not know who wrote what we are reviewing.

COURSE LEARNING OUTCOMES

By the end of the semester, you should be able to do the following:

1. Obtain information through client interviews and correspond with the client.
2. Keep track of litigation deadlines.
3. Keep records of time spent working on a case through comprehensive and accurate billing records.
4. Exhibit competent pre-trial motion drafting skills, including a complaint, a memo, and a motion to dismiss.
5. Write better than you did before.

REQUIRED BOOKS

1. Thomas A. Mauet, *Pretrial* (8th ed., Wolters Kluwer 2012).
2. Bryan A. Garner, *Legal Writing in Plain English* (2nd ed., 2013).

WEBSITE AND EMAIL

At times I may need to distribute information to you outside of class meetings. Please be sure to regularly check the course website, which can be found when you log on to <http://blackboard.louisville.edu>. You are expected to be aware of all information posted on the website.

At other times, I may distribute information via email. You are expected to be aware of all information emailed to you.

HONOR CODE

This class follows all of the rules found in the Brandeis School of Law Honor Code, located at <http://www.law.louisville.edu/academics/selected-university-offices>, and the University's Code of Student Rights and Responsibilities, located at <http://louisville.edu/dos/policiesprocedures/student-rights-and-responsibilities-1-1.html>. These rules require that all students submit only their own individual work, unless collaboration is specifically authorized by your professor. Plagiarism, or the submission of someone else's work as your own without proper attribution, is unethical and is in violation of the Honor Code. Additionally, discussion with your classmates and lawyers about the details of your research and writing assignments prior to submitting that work is prohibited, unless such discussion is specifically authorized by your professor. On the other hand, discussion with your professor and the school librarians is encouraged. In addition, the university writing center in the Ekstrom Library is a good resource to help you with organization and grammar (but cannot assist with legal analysis). You can make an appointment with the Writing Center by calling (502) 852-2173.

The Honor Code also prohibits students from taking unfair advantage of other students and from doing anything that would impede another student's progress in his or her law school training. This includes the stealing, hiding, or defacing of library books.

CLASSROOM ETIQUITE

Students are expected to be on time, be prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria may result in being marked as absent. Students with three or more absences will be dropped from the course. Depending on the reason and timing for the withdrawal, you may receive a failing grade. This may have consequences for other enrollment requirements. Moreover, due to the fact that this course meets only once a week and most, if not all, classes will include in-class assignments, it is strongly recommended that you attend every class. Please let me know at least 12 hours in advance if you will need to miss a class.

Please bring a laptop to class for in-class assignments. However, laptops may only be used for class-related purposes at the discretion of the professor. If the professor decides that laptops are distracting for students, their use will be restricted. In addition, if

a student is clearly distracted by their laptop during class, that student may be deemed unprepared, which may be recorded as a class absence. Please be aware that misuse of laptops can be distracting to nearby students as well as yourself. For that reason, a student may inform the professor if another student's laptop is distracting.

GRADING

Your final grade in Writing for Practice will be based on the following:

- | | |
|-------------------------------|-----|
| 1. In-class participation | 40% |
| 2. Retainer letter | 5% |
| 3. Complaint | 5% |
| 4. Billing sheets | 5% |
| 5. Motion to Dismiss | 15% |
| 6. Oppo. to Motion to Dismiss | 15% |
| 7. Judicial opinion | 15% |

All assignments are to be turned in on or before the day and time identified by your professor. Unless otherwise specified, for each outside assignment, email me your work before class begins (at WFPassignments@gmail.com) and bring a hard copy to class. Please ensure that you have used the correct submission format when turning in all assignments, because the wrong format will either hurt your grade or be grounds for requiring the assignment to be re-submitted. If you are unsure of the format to use, it is your responsibility to contact the professor to ensure you use the correct format.

Assignments turned in after the designated time are subject to a reduction in credit, which is typically one letter grade per 24-hour period (or portion thereof) after the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems or traffic.

ACCOMMODATIONS FOR STUDENTS WITH DISABILITIES

Students with disabilities who require accommodations must make those requests known to the Assistant Dean for Student Life of the law school. These requests should be made as early as possible to allow time for referral to the University Disability Resource Center as needed. The DRC handles the evaluation of the documentation of the disability and the relationship to the requested accommodation.

FORMAT FOR WRITING ASSIGNMENTS

STUDENT INFORMATION: A separate title page should be included with each outside assignment. The title page should have the following information towards the bottom center of the page:

- Assignment title
- Student's name

- Date
- Professor's name
- Word count

PAPER: 8 ½" x 11" white paper. Staple in the upper left-hand corner; do not use any cardboard or plastic covers.

MARGINS: The printed material on each page must be left justified, with one-inch margins on all four sides.

TYPE: Typewritten, Times New Roman, 12 point. Double spaced, except block quotes.

CITATION: Citations should make the source clear. Common sense should be used. For week 5, we will read <http://www.yalelawjournal.org/images/pdfs/940.pdf>. It can be used as a guide.

PAGINATION: Number each page of text except for the title page. Numbers should be centered at the bottom margin.

BE SURE TO RETAIN A COPY OF YOUR ASSIGNMENTS. IF ANY WORK IS LOST, YOU WILL BE RESPONSIBLE FOR PROVIDING AN ADDITIONAL COPY.

	Date	Reading	In-Class Assignment	Outside Assignment
1	1/8	Mauet p. 28-37 (Client Interviews); Garner p. 193-201 (model memo).		
2	1/15	Mauet p. 89-97 (Establishing the Attorney-Client Agreement); Garner p. 7-8 (Case brief); Garner p. 20-22 (Headings); David Foster Wallace article (http://harpers.org/wp-content/uploads/HarpersMagazine-2001-04-0070913.pdf).	Interview client.	Draft interview questions; complete the “Intermediate” exercise on Garner 7, but don’t circulate to class; complete the “Basic” exercise on Garner p. 22, but select only one brief and do not circulate to class.
3	1/22	NO CLASS – To Be Rescheduled		
3	Make-up for 1/22	Mauet p. 129-148 (Complaints); Garner p. 177-190 (punctuation); Garner p. 202-211 (model good motion); Model of bad motion (will be emailed to you).		Retainer letter due (hard copy in class)
4	1/29	Mauet p. 150-161 (Motion to Dismiss); Garner p. 211-225 (model good brief); Model of bad brief (will be emailed to you).		Complaint due (hard copy in class)
5	2/5	Kozinski article (1992 BYU L. Rev. 325); Posner article (http://www.yalelawjournal.org/images/pdfs/940.pdf); Garner p. 9-15 (Planning) (don’t complete exercises); models of writing (will be emailed to you or found by students).		January billing sheet due (hard copy in class)
6	2/12	Models of writing (will be emailed to you or found by students).		
7	2/19	Models of writing (will be emailed to you or found by students).		Motion to dismiss due (hard copy in class).
8	2/26	Mauet p. 340-341; models of writing (will be emailed to you or found by students).		
9	Make-up for	Models of writing (will be emailed to you or found by students).		February billing sheet due (hard copy in class).

	3/5 class			
	3/5	NO CLASS – To Be Rescheduled		
10	3/19	Smith article (http://ssrn.com/abstract=2321285); Scalia dissent in <i>Morrison v. Olson</i> (good); Kagan dissent in <i>Williams v. Illinois</i> , 132 S.Ct. 2221 (good)		Opposition to motion to dismiss due (hard copy in class).
11	3/26	Models of writing (will be emailed to you or found by students).		
12	4/2	Models of writing (will be emailed to you or found by students).		March billing sheet due
13	4/9	Models of writing (will be emailed to you or found by students).		Judicial opinion re: motion to dismiss due (hard copy in class)
14	4/16	Models of writing (will be emailed to you or found by students).		

WRITING FOR PRACTICE – SPRING 2017
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

Office: Room 286

Office hours: Tuesdays 10:30-11:30; or by appointment; or just drop by

Cell phone: 502-396-0020

Office phone: 502-852-6638

E-mail: justinreed.walker@louisville.edu

E-mail only for turning in assignments: WFP.Spring.2017@gmail.com

Course Website: Locate through <http://blackboard.louisville.edu>

REQUIRED BOOKS

Bryan A. Garner, *Legal Writing in Plain English* (2nd ed., 2013).

COURSE OVERVIEW

The most important thing a junior associate can do is deliver written products to senior attorneys that do not need much editing before they go to the client or the court. The goal of this class is to build on what you learned in your first year by further developing your research, analytical, and writing skills – with an emphasis on writing skills. You will have the opportunity to prepare correspondence, pleadings, and other essential litigation documents such as time sheets. You will also be required to write a formal judicial opinion.

Many weeks in class, you will be asked to complete exercises from Garner's *Legal Writing in Plain English*. Many weeks, we will also critique legal writing that was assigned for that week.

OBJECTIVES

By the end of the semester, you should be able to do the following:

1. Obtain information through client interviews and correspond with the client.
2. Keep track of litigation deadlines.
3. Exhibit competent pre-trial motion drafting skills, including a complaint, a memo, and a motion to dismiss.
4. Write better than you did before.

ATTENDANCE

Students are expected to be on time and prepared for every class and stay in the classroom for the duration of the class. Failure to meet any of these criteria may affect your participation grade. It may also result in your being marked as absent.

In part because of classroom assignments, class attendance is important. Any more than one unexcused absence will affect your participation grade.

Pursuant to school policy, students are permitted only three absences for the semester, whether these absences are “excused” or not. It is my understanding that the school will drop you from the course after three absences.

GRADING

To calculate your final grade, I will begin with the letter grade you receive on the judicial opinion you write, which is your final writing assignment. Your other writing assignments are pass/fail. If you fail any of them, it will drop your final grade by one full grade. If you perform extraordinarily on the motion to dismiss or the opposition to the motion, it will raise your final grade by a full letter grade; if you perform extraordinarily on both the motion and the opposition to the motion, it will raise your final grade by two full letter grades. (This increase comes before any reductions based on poor participation or lateness, as explained below, and it maxes out at an A. In other words, if your judicial opinion is an A, even if your motion was extraordinary, you will receive an A- if you were unprepared for class once. If this is at all unclear to you, just ask me.)

Your participation also affects your final grade. Your participation assessment is based on traditional aspects of class participation – in-class exercises, contributions to class discussions, and preparation for class – as well as your short-term homework exercises, simulations, and attendance in class.

Extraordinary participation will result in a half-grade increase to your final grade. For example, if your final grade would otherwise be a B, your final grade for the semester will be a B+ if your participation is extraordinary.

Instances of poor participation will result in a half-grade decrease. For example, if your grade on the memos is a B, your final grade for the semester will be a B- if you had one instance of poor participation; it will be a C+ if you had two instances of poor participation; etc. Instances of poor participation include:

- Coming to class unprepared, without having read the assigned reading;
- Missing class without emailing me before class to explain why;
- Having more than one unexcused absence;
- Inappropriate use of your laptop during class;
- Missing a scheduled conference without emailing me beforehand to reschedule; and

- Turning in multiple short-term assignments late.

If your motion to dismiss, opposition to the motion, or judicial opinion is late, your final grade is subject to a one letter grade reduction per 24-hour period (or portion thereof) following the time due. Exceptions are given for bona fide emergencies at the discretion of the professor. Emergencies do not include computer problems, family problems, or traffic.

FORMAT FOR WRITING ASSIGNMENTS

STUDENT INFORMATION: A separate title page should be included with each outside assignment. The title page should have the following information towards the bottom center of the page:

- Assignment title
- Student's name
- Date
- Professor's name
- Word count

PAPER: 8 ½" x 11" white paper. Staple in the upper left-hand corner; do not use any cardboard or plastic covers.

MARGINS: The printed material on each page must be left justified, with one-inch margins on all four sides.

TYPE: Typewritten, Times New Roman, 12 point. Double spaced, except block quotes.

PAGINATION: Number each page of text except for the title page. Numbers should be centered at the bottom margin.

READING AND WRITING ASSIGNMENT SCHEDULE

- In addition to the assignments below, there will be other reading assignments.
- At times I may need to distribute information to you outside of class meetings. You are expected to be aware of all information posted on <http://blackboard.louisville.edu>. More often, I will distribute information via email. You are expected to be aware of all information emailed to you.
- For all assigned Bryan Garner readings, you do not have to do any exercises unless indicated below or in class.
- Be sure to retain a copy of your assignments. If any work is lost, you will be responsible for providing an additional copy.

- All assignments are to be turned in on or before the day and time identified by me. If no time is designated, the assignment is due at the beginning of class. For every written assignment except your final memos, please email the assignment to LawyeringSkills.Spring.2017@gmail.com and bring a hard copy to class.

	Date	In-Class Assignment	Outside Assignment
1	1/4		
2	1/11	Interview client	Write interview questions
3	1/18		Retainer letter due
4	1/25		Complaint due
5	2/1		
6	2/8		Draft of Motion to Dismiss due
7	2/15		Motion to Dismiss due
8	2/22		
9	3/1		Draft of Opposition to Motion due
10	3/8		Opposition to Motion due
	3/15	Spring Break	
11	3/22		
12	3/29		Draft of Judicial Opinion due
13	4/5		Judicial Opinion due

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This class follows all of the rules found in the Brandeis School of Law Honor Code, located at <http://www.law.louisville.edu/academics/selected-university-offices>, and the University's Code of Student Rights and Responsibilities, located at <http://louisville.edu/dos/policiesprocedures/student-rights-and-responsibilities-1-1.html>. These rules require that all students submit only their own individual work, unless collaboration is specifically authorized by your professor. Plagiarism, or the submission of someone else's work as your own without proper attribution, is unethical and is in violation of the Honor Code. The Honor Code also prohibits students from taking unfair advantage of other students and from doing anything that would impede another student's progress in his or her law school training. This includes the stealing, hiding, or defacing of library books.

Additionally, discussion with your classmates and lawyers about the details of your writing assignments prior to submitting that work is prohibited, unless such discussion is specifically authorized by your professor. Any incidences of sharing information regarding writing assignments, irrespective of motive or amount of disclosure, may be reported to the Honor Council in the professor's sole discretion. On the other hand, discussion with your professor, teaching assistants, and the school librarians is encouraged. In addition, the university Writing Center in the Ekstrom Library is a good resource to help you with organization and grammar (but cannot assist with legal analysis). You can make an appointment with the Writing Center by calling (502) 852-2173.

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LAW-933-11-4182_syllabus

Independent Study

Course Number: LAW 933

Prerequisite: See rules in Student Handbook.

Supervised research and preparation of a publishable written work. Open only to students with the permission of the Associate Dean and the instructor. In seeking the permission of the Associate Dean the student must provide a detailed outline of the proposed research project with a schedule of projected deadlines and a projection of the length of the paper; the faculty member who will supervise the project must approve the outline.

LAW-933-11-4182_syllabus

Independent Study

Course Number: LAW 933

Prerequisite: See rules in Student Handbook.

Supervised research and preparation of a publishable written work. Open only to students with the permission of the Associate Dean and the instructor. In seeking the permission of the Associate Dean the student must provide a detailed outline of the proposed research project with a schedule of projected deadlines and a projection of the length of the paper; the faculty member who will supervise the project must approve the outline.

LAW-933-07-4185_syllabus

Independent Study

Course Number: LAW 933

Prerequisite: See rules in Student Handbook.

Supervised research and preparation of a publishable written work. Open only to students with the permission of the Associate Dean and the instructor. In seeking the permission of the Associate Dean the student must provide a detailed outline of the proposed research project with a schedule of projected deadlines and a projection of the length of the paper; the faculty member who will supervise the project must approve the outline.

Independent Study: Prosecutorial Discretion (Part 1 of 2)

This two-credit independent study will meet with Professor Walker for two hours every week. Students are expected to be on time and prepared for every independent study session. The readings will each week will be extensive, and the expectations are demanding, particularly with regard to the student's ability to discuss the assigned text in a precise, insightful, and critical manner each week, without exception.

At each weekly session, students will receive what is the equivalent of a weekly verbal exam. They should prepare for each weekly session as they would prepare for an exam. They will be evaluated according to the following criteria: Did the student's contribution to the weekly session with the professor, and answers to the professor's cold call questions, demonstrate that the student clearly completed the week's reading materials? How well did the student critically analyze the materials? How well did the student connect the week's materials to previous weeks' materials in a manner that shows the student is retaining what has been learned and building off the foundation the student is creating?

Any student who is not able to come to every discussion session prepared for a vigorous, substantive, probative inquiry into the week's readings should not take this independent study.

This independent study is inspired by a class taught by Professor Rachel Barkow. I am grateful to her for sharing her syllabus, which I have adapted for this independent study. Like her class, this independent study "addresses what is widely considered to be the most pressing problem in criminal law today, the power of prosecutors. After analyzing the scope of prosecutorial power and the potential problems it creates in our first three sessions, we will spend our remaining meetings discussing the main reforms proposed in the literature. We will approach our readings with two goals. The main goal is to better understand the specific problems posed by prosecutorial discretion and to assess critically the various solutions that have been proposed to address those problems." Thanks to Professor Barkow for so many of the readings and questions below.

Class One

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Introduction
- *Bordenkircher v. Hayes*, 434 U.S. 357 (1978)
- *Wade v. United States*, 504 U.S. 181 (1992)
- *United States v. Armstrong*, 517 U.S. 456 (1996)
- *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375 (1973)

Prepare an analytical commentary on:

1. If you were on the Court, would you have joined the majority or dissent in *Bordenkircher*? If you disagree with the three approaches, on what basis would you write your concurrence or dissent?
2. Did the Court reach the correct result in *Wade*? If you disagree, how would you craft your concurrence or dissent? What would be the constitutional or statutory argument for disagreeing with the Court's approach?
3. Which opinion in *Armstrong* is the most persuasive as a matter of law? Of policy?
4. Why does the court of appeals in *Attica* refuse to second-guess the prosecutor's decision not to bring charges? Should judges be so deferential? If not, on what basis should/could judges decide to force prosecutors to bring charges?

Class Two

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Introduction
- William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001) (Part 1)
- Laurie L. Levenson, *Working Outside the Rules: The Undefined Responsibilities of Federal Prosecutors*, 26 FORDHAM URBAN L.J. 553 (1999)

Prepare an analytical commentary on:

1. Does Professor Stuntz accurately describe the incentives of the participants involved in the administration of criminal law?

Class Three

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 1
- Albert W. Alschuler, *Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System*, 50 U. CHI. L. REV. 931 (1983)

Prepare an analytical commentary on:

1. Is plea bargaining necessary for the system to function?

Class Four

Readings from:

- Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909 (1992)
- Frank H. Easterbrook, *Plea Bargaining as Compromise*, 101 YALE L.J. 1969 (1992)
- Stephen J. Schulhofer, *Plea Bargaining as Disaster*, 101 YALE L.J. 1979 (1992)
- Robert E. Scott & William J. Stuntz, *A Reply: Imperfect Bargains, Imperfect Trials, and Innocent Defendants*, 101 YALE L.J. 2011 (1992)

Prepare an analytical commentary on:

1. If you were a defendant, do you think you would be better or worse off if plea bargaining were not an option? Does it matter whether you are innocent or guilty?

Class Five

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 1
- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 2
- John H. Langbein, *Torture and Plea Bargaining*, 46 U. CHI. L. REV. 3 (1978)

Prepare an analytical commentary on:

1. Can the existence of plea bargaining be reconciled with the trial rights in the Constitution?

Class Six

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 2
- William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001) (Part 2)
- *United States v. Angelos*, 345 F. Supp.2d 1227 (D.Utah 2004)
- *United States v. Ammidown*, 497 F.2d 615 (D.C. Cir. 1973)

Prepare an analytical commentary on:

1. Is the chief problem of prosecutorial discretion over-enforcement, under-enforcement, or discriminatory enforcement? How do we know?

Class Seven

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 3
- “Georgia Man Fights Conviction as Molester,” NY TIMES 12/19/2006
- “In Justice Shift, Corporate Deals Replace Trials,” NY TIMES 4/9/2008

Prepare an analytical commentary on:

1. Does the nature of the problem of prosecutorial discretion vary by the type of crime or defendant? For example, do cases involving corporate defendants raise different issues? Sex offenses? Drug cases?

Class Eight

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 3
- Brandon L. Garrett, *United States v. Goliath*, 93 VA. L. REV. IN BRIEF 105 (2007), <http://www.virginialawreview.org/inbrief/2007/06/18/garrett.pdf>
- Daniel Richman, *Institutional Competence and Organizational Prosecutions*, 93 VA. L. REV. IN BRIEF 115 (2007), <http://www.virginialawreview.org/inbrief/2007/06/18/richman.pdf>
- F. Joseph Warin & Andrew S. Boutros, *Deferred Prosecution Agreements: A View from the Trenches and a Proposal for Reform*, 93 VA. L. REV. IN BRIEF 121 (2007), <http://www.virginialawreview.org/inbrief/2007/06/18/warin.pdf>

Prepare an analytical commentary on:

1. How could/do prosecutorial decisions lead to racial disparities in convictions and sentencing?

Class Nine

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 4
- Lynn D. Lu, *Prosecutorial Discretion and Racial Disparities in Federal Sentencing: Some Views of Former U.S. Attorneys*, 19 FED. SENT. R. 192 (2007)

Prepare an analytical commentary on:

1. What have you changed your mind about since we began this independent study?

Class Ten

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 4
- Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 NYU L. REV. 911 (2006)

Prepare an analytical commentary on:

1. Do you agree with Silvergate that federal prosecutors sometimes “target the innocent”?

Class Eleven

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 5
- Stephen J. Schulhofer, *Is Plea Bargaining Inevitable?*, 97 HARV. L. REV. 1037 (1984)

Prepare an analytical commentary on:

1. How could the judiciary exercise greater control over prosecutorial discretion? Would the cases we discussed on our first day need to be overruled?

Class Twelve

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 5
- *United States v. Stein*, 435 F. Supp.2d 330 (S.D.N.Y. 2006)
- “A Judge’s Struggle To Avoid Imposing A Penalty He Hated,” NY TIMES 1/13/2004
- William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001) (Part 3)

Prepare an analytical commentary on:

1. Would we be better off with a system that dispensed of jury trials and plea bargaining than with our current system?

Class Thirteen

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 6
- Julie R. O’Sullivan, *In Defense of the U.S. Sentencing Guidelines’ Modified Real Offense System*, 91 NW. U. L. REV. 1342 (1997)

Prepare an analytical commentary on:

1. Is the abuse that worried Judge Kaplan in *Stein* different in nature from prosecutorial behavior generally? What is the difference between the Thompson Memo’s consideration of attorney-client waiver and cooperation generally?

Class Fourteen

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 6
- William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 780 (2006)

Prepare an analytical commentary on:

1. Are judicially-centered solutions to the problems created by plea bargaining and prosecutorial discretions likely to be politically feasible?

Independent Study: Prosecutorial Discretion (Part 2 of 2)

This two-credit independent study will meet with Professor Walker for two hours every week. It is the second in a two-part course. Students are expected to be on time and prepared for every independent study session. The readings will each week will be extensive, and the expectations are demanding, particularly with regard to the student's ability to discuss the assigned text in a precise, insightful, and critical manner each week, without exception.

At each weekly session, students will receive what is the equivalent of a weekly verbal exam. They should prepare for each weekly session as they would prepare for an exam. They will be evaluated according to the following criteria: Did the student's contribution to the weekly session with the professor, and answers to the professor's cold call questions, demonstrate that the student clearly completed the week's reading materials? How well did the student critically analyze the materials? How well did the student connect the week's materials to previous weeks' materials in a manner that shows the student is retaining what has been learned and building off the foundation the student is creating? How well does the student's written reflection serve as a quality starting point for the discussion at the weekly session?

Any student who is not able to come to every discussion session prepared for a vigorous, substantive, probative inquiry into the week's readings should not take this independent study.

This independent study is inspired by a class taught by Professor Rachel Barkow. I am grateful to her for sharing her syllabus, which I have adapted for this independent study. Like her class, this independent study "addresses what is widely considered to be the most pressing problem in criminal law today, the power of prosecutors. After analyzing the scope of prosecutorial power and the potential problems it creates in our first three sessions, we will spend our remaining meetings discussing the main reforms proposed in the literature. We will approach our readings with two goals. The main goal is to better understand the specific problems posed by prosecutorial discretion and to assess critically the various solutions that have been proposed to address those problems."

Class One

Readings from:

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 7.
- Robert Weisberg, *Crime and Law: An American Tragedy*: 125 Harv. L. Rev. 1425 (2012).
- Stephanos Bibas, *Designing Plea Bargaining from the Ground Up: Accuracy and Fairness Without Trials as Backstops*, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Two

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 7
- Hon. J. Harvie Wilkinson III, In Defense of American Criminal Justice, 67 Vand. L. Rev. 1099 (2014)
- Josh Bowers, Plea Bargaining's Baselines, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Three

Readings from:

- Jonathan A. Rapping, Who's Guarding the Henhouse? How the American Prosecutor Came to Devour Those He Is Sworn to Protect, 51 Washburn L.J. 513 (2012)
- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Chapter 8
- Carol A. Brook, et al, *A Comparative Look at Plea Bargaining*, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Four

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 8
- Daniell Epps, Adversarial Asymmetry in the Criminal Process, 91 N.Y.U.L. Rev. 762 (2016)
- Darryl K. Brown, Judicial Power to Regulate Plea Bargaining, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Five

Readings from:

- Joshua Kleinfeld, Manifesto of Democratic Criminal Justice, 111 Nw. U.L. Rev. 1367 (2017)

- Harvey Silvergate, *Three Felonies a Day: How the Feds Target the Innocent* (2011), Conclusion.
- I. Bennett Capers, The Prosecutor's Turn, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Six

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 9
- William Ortman, Probable Cause Revisited, 68 Stan. L. Rev. 511 (2016)
- Gabriel J. Chin, Pleading Guilty Without Client Consent, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Seven

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Chapter 10
- Shima Baradaran Baughman, Subconstitutional Checks, 92 Notre Dame L. Rev. 1071 (2017).
- Donald A. Dripps, Guilt, Innocence, and Due Process of Plea Bargaining, 57 Wm. & Mary L. Rev. 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Eight

Readings from:

- William Stuntz, *The Collapse of American Criminal Justice* (2011), Epilogue
- Roger A. Fairfax Jr., Thinking Outside the Jury Box: Deploying the Grand Jury in the Guilty Plea Process, 57 Wm. & Mary L. Rev. 1083 (2016)
- *Lafler v. Cooper*, 132 S.Ct. 1376 (2012)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Nine

Readings from:

- Nicola Lacey, Humanizing the Criminal Justice Machine: Re-Animating Justice or Frankenstein's Monster?, 126 Harv. L. Rev. 1299 (2013).

- Stephanos Bibas, *The Machinery of Criminal Justice*, Chapter I
- *Missouri v. Frye*, 121 S.Ct. 1399 (2012)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Ten

Readings from:

- Stephanos Bibas, *The Machinery of Criminal Justice*, Chapter II
- Jenny Roberts & Ronald F. Wright, *Training for Bargaining*, 57 *Wm. & Mary L. Rev.* 1083 (2016)
- Brandon L. Garrett, *Why Plea Bargains Are Not Confessions*, 57 *Wm. & Mary L. Rev.* 1083 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Eleven

Readings from:

- Stephanos Bibas, *The Machinery of Criminal Justice*, Chapter III
- Christopher Slobogin, *Plea Bargaining and the Substantive and Procedural Goals of Criminal Justice*, 57 *Wm. & Mary L. Rev.* 1083 (2016)
- Gregory M. Gilchrist, *Trial Bargaining*, 101 *Iowa L. Rev.* 609 (2016)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Twelve

Readings from:

- Stephanos Bibas, *The Machinery of Criminal Justice*, Chapter IV
- Jenia I. Turner, *Plea Bargaining and Disclosure in Germany and the United States: Comparative Lessons*, 57 *Wm. & Mary L. Rev.* 1083 (2016)
- Shima Baradaran, *Race, Prediction, and Discretion*, 81 *Geo. Wash. L. Rev.* 157 (2013)

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Thirteen

Readings from:

- Stephanos Bibas, *The Machinery of Criminal Justice*, Chapter V

- Wesley M. Oliver, Charles Lindbergh, Caryl Chessman, and the Exception Proving the (Potentially Waning) Rule of Broad Prosecutorial Discretion, *Berkeley J. Crim. L.* 1 (2015).
- Zachary S. Price, Enforcement Discretion and Executive Duty, *67 Vand. L. Rev.* 671 (2014).

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Class Fourteen

Readings from:

- Stephanos Bibas, *The Machinery of Criminal Justice*, Chapter VI
- *Vindicating Vindictiveness*, *123 Yale L.J.* 1014 (2014)
- *Texas v. United States*, Fifth Circuit (2015), <http://www.scotusblog.com/wp-content/uploads/2015/11/15-40238-CV0.pdf>.

Write an analytical commentary disagreeing with at least one argument that one of the authors made.

Independent Study on Confrontation Clause - FALL 2016
UNIVERSITY OF LOUISVILLE, LOUIS D. BRANDEIS SCHOOL OF LAW

Justin Walker

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REQUIRED BOOKS

- Course Supplement

COURSE OVERVIEW

In 2004, with *Crawford v. Washington*, the Supreme Court revolutionized the Sixth Amendment's Confrontation Clause. Although the decision was unanimous, unusual divisions soon emerged on the Court over how far to extend *Crawford*. By 2009, some justices appeared to regret their votes in *Crawford*. And by 2015, *Crawford*'s author was openly fretting the return of the pre-*Crawford* understanding of the Confrontation Clause. Complicating this story – and making it more interesting – is the odd coalition that fought to preserve *Crawford* (Scalia and Thomas on the right + Stevens/Kagan, Ginsburg, and Sotomayor on the left). And making the future even more uncertain is the recent passing of the revolution's author, Justice Scalia, and the nomination of Judge Garland, whose tough-on-crime record suggests he could be the nail in the coffin of the Confrontation Clause Revolution – if he is ever confirmed. The purpose of this independent study is to read about, write about, think about, and discuss in a critical and focused manner the past, present, and future of the Confrontation Clause.

OBJECTIVES

- Develop an enhanced understanding of the Sixth Amendment's Confrontation Clause;
- Engage with judicial precedents and academic literature about Confrontation Clause.

ATTENDENCE

Students are expected to be on time and prepared for every independent study session. Failure to meet any of these criteria may affect your grade.

GRADING

Your final grade is will reflect your engagement with the readings during independent study sessions and your written work.

READING AND WRITING ASSIGNMENT SCHEDULE

August 19, 11:30-12:30

Readings from:

- Trial of Sir Walter Raleigh, Knight, for High Treason, 1 David Jardine, Criminal Trials (London, Charles Knight, Pall Mall East 1832)
- *Crawford v. Washington* (2004) → summary of pre-founding history
- *California v. Green*, 399 U.S. 149 (1970) (majority)
- *California v. Green*, 399 U.S. 149 (1970) (Harlan, J., concurring);
- *Ohio v. Roberts* (1980).

Write an analytical commentary on:

- The trial of Walter Raleigh; or
- The English Common Law's understanding of the Confrontation right; or
- The state of the Confrontation Clause in the second half of the 20th century, including the *Roberts* test.

August 26, 11:30-12:30

Readings from:

- *Coy v. Iowa* (1988) (majority opinion);
- *Coy v. Iowa* (1988) (oral argument).

Write an analytical commentary on:

- Whether *Coy v. Iowa* was correctly decided.

September 2, 11:30-12:30

Readings from:

- *Maryland v. Craig* (1990) (majority opinion);
- *Maryland v. Craig* (1990) (Scalia dissent);

- *Maryland v. Craig* (1990) (oral argument).

Write an analytical commentary on:

- Whether *Maryland v. Craig* is consistent with *Coy*; or
- How *Maryland v. Craig* fits (or doesn't fit) within the history of the Confrontation Clause.

September 9, 11:30-12:30

Readings from:

- Randolph N. Jonakait, Restoring the Confrontation Clause to the Sixth Amendment, 35 UCLA L. Rev. 557, 558 (1988);
- Akhil Amar, Sixth Amendment First Principles, 84 Geo. L.J. 641, 690 (1996);
- *White v. Illinois*, 502 U.S. 346 (1992) (majority opinion);
- *White v. Illinois* (1992) (oral argument);

Write an analytical commentary on:

- Amar and Jonakait's vision of a Confrontation Clause revolution; or
- How the arguments in *White* foreshadowed (or didn't foreshadow) the Confrontation Clause revolution 12 years later.

September 16, 11:30-12:30

Readings from:

- Miguel A. Mendez, *Crawford v. Washington*: A Critique, 57 Stan. L. Rev. 569, 607 (2004);
- *Crawford v. Washington* (2004) (majority opinion);
- *Crawford v. Washington* (2004) (Rehnquist concurrence);
- Stephanos Bibas, Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?, 94 Geo. L.J. 183, 192 (2005).

Write an analytical commentary on:

- Whether *Crawford* was rightly decided; or
- Why was *Crawford* unanimous (kind of); or
- How Chief Justice Rehnquist's concurrence does or doesn't reveal the cracks in the *Crawford* consensus that would lead to significant divisions down the road.

September 23, 11:30-12:30

Readings from:

- Tom Lininger, Prosecuting Batterers After *Crawford*, 91 Va. L. Rev. 747, 750, 767 (2005);

- Myrna Raeder, Remember the Ladies and the Children Too: Crawford's Impact on Domestic Violence and Child Abuse Cases, 71 Brook. L. Rev. 311, 328 (2005);

Write an analytical commentary on:

- How Crawford makes it more difficult to prosecute domestic violence.

September 30, 11:30-12:30

Readings from:

- *Davis v. Washington* (2006) (majority opinion);
- *Davis v. Washington* (2006) (Thomas concurrence).
- Thomas Y. Davies, Not "The Framers' Design": How the Framing-Era Ban Against Hearsay Evidence Refutes the Crawford-Davis "Testimonial" Formulation of the Scope of the Original Confrontation Clause, 15 J.L. & Pol'y 349, 468 n.291 (2007);
- Robert Kry, Confrontation Under the Marian Statutes: A Response to Professor Davies, 72 Brook. L. Rev. 493, 498 (2007);

Write an analytical commentary on:

- Does *Davis* correctly draw the line between (testimonial) statements that require confrontation and (non-testimonial) statements that don't? Is this even the proper inquiry?; or
- How does Justice Thomas approach the Confrontation Clause in a way no other justice does and is he correct?; or
- Whether *Davis*'s line looks likely to be workable in the future (much more on that in later weeks).

October 7, 11:30-12:30; 12:30-1:30 (double readings, double session)

Readings from:

- Richard D. Friedman, Grappling with the Meaning of "Testimonial," 71 Brook. L. Rev. 241 (2005);
- Josephine Ross, After Crawford Double-Speak: "Testimony" Does Not Mean Testimony and "Witness" Does Not Mean Witness, 97 J. Crim. L. & Criminology 147, 193 (2006);
- Josephine Ross, Crawford's Short-Lived Revolution: How *Davis v. Washington* Reins in Crawford's Reach, 83 N.D. L. Rev. 387, 411 (2007);
- Jeffrey L. Fisher, What Happened - and What Is Happening - to the Confrontation Clause?, 15 J.L. & Pol'y 587, 627 (2007).

Write an analytical commentary on:

- Whether you agree with Ross that *Davis* is a significant constraint on *Crawford*.
- What Fisher says was happening to the Confrontation Clause before *Melendez-Diaz*.

October 14, 11:30-12:30

Readings from:

- *Melendez-Diaz v. Massachusetts* (2009) (majority opinion);
- *Melendez-Diaz v. Massachusetts* (2009) (Thomas concurrence).
- *Melendez-Diaz v. Massachusetts* (2009) (Kennedy dissent);
- *Melendez-Diaz v. Massachusetts* (2009) (oral argument).

Write an analytical commentary on:

- Whether *Melendez-Diaz* was correctly decided.

October 21, 11:30-12:30

Readings from:

- Jeffrey L. Fisher, Categorical Requirements in Constitutional Criminal Procedure, 94 Geo. L.J. 1493, 1496 (2006);
- Mark Chenoweth, Using Its Sixth Sense: The Roberts Court Revamps the Rights of the Accused, 2008-09 Cato Sup. Ct. Rev. 223 (2008-2009);

Write an analytical commentary on:

- What happened to Crawford's unanimity – do you think some of its majority developed buyer's remorse?

October 28, 11:30-12:30

Readings from:

- *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011) (majority opinion);
- *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011) (Kennedy dissent).

Write an analytical commentary on:

- The strange ideological bedfellows that make up the two emerging sides of the Confrontation Clause divide; or
- Whether *Bullcoming* was correctly decided.

November 4, 11:30-12:30

Readings from:

- Michael D. Cicchini, Dead Again: The Latest Demise of the Confrontation Clause, 80 Fordham L. Rev. 1301, 1321 (2011);
- *Michigan v. Bryant* (2011) (majority opinion);
- *Michigan v. Bryant* (2011) (Scalia dissent).

Write an analytical commentary on:

- Whether *Bryant* was correctly decided; or

- Whether the Confrontation Clause Revolution has staying power.

November 11, 11:30-12:30

Readings from:

- *Williams v. Illinois* (2012) (plurality opinion);
- *Williams v. Illinois* (2012) (Breyer concurrence);
- *Williams v. Illinois* (2012) (Kagan dissent).

Write an analytical commentary on:

- Whether *Williams* was correctly decided; or
- Whether *Williams* is consistent with *Melendez-Diaz*.

November 18, 11:30-12:30

Readings from:

- Robert P. Mosteller, *Crawford v. Washington*: Encouraging and Ensuring the Confrontation of Witnesses, 39 U. Rich. L. Rev. 511, 512, 522 (2005);
- *Ohio v. Clark* (2015) (majority opinion);
- *Ohio v. Clark* (2015) (Scalia concurrence).

Write an analytical commentary on:

- Whether *Ohio v. Clark* was correctly decided; or
- Whether the *Roberts* test is back from the dead; or
- Where the Confrontation Clause's jurisprudence is likely to go from here.

ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Any student who may need academic accommodations or access accommodations based on the impact of a documented disability must register with the University's Disability Resource Center (DRC) at the beginning of each semester. DRC is the official office to assist students through the process of disability verification and coordination of appropriate and reasonable accommodations. If you have a disability for which you are or may be requesting an accommodation, you must contact DRC (Cathy Patus, Director), in Stevenson Hall, or at (502) 852-6938, cathy.patus@louisville.edu. You must also advise Assistant Dean Jennifer DiSanza in room 216 (or at j.disanza@louisville.edu or 852-8956) that you are seeking an accommodation from DRC in order for the Law School and DRC to more effectively coordinate any assistance provided. For more information regarding disability services, see <http://louisville.edu/disability/>. Please also review the Law School's Handbook for Applicants and Students with Disabilities, available at <http://www.law.louisville.edu/sites/www.law.louisville.edu/files/Handbook%20for%20Disability%202012.pdf>.

HONOR CODE

This class follows all of the rules found in the Brandeis School of Law Honor Code, located at <http://www.law.louisville.edu/academics/selected-university-offices>, and the University's Code of Student Rights and Responsibilities, located at <http://louisville.edu/dos/policiesprocedures/student-rights-and-responsibilities-1-1.html>. These rules require that all students submit only their own individual work, unless collaboration is specifically authorized by your professor. Plagiarism, or the submission of someone else's work as your own without proper attribution, is unethical and is in violation of the Honor Code. The Honor Code also prohibits students from taking unfair advantage of other students and from doing anything that would impede another student's progress in his or her law school training. This includes the stealing, hiding, or defacing of library books.

TITLE IX/CLERY ACT NOTIFICATION

Sexual misconduct (including sexual harassment, sexual assault, and any other nonconsensual behavior of a sexual nature) and sex discrimination violate University policies. Students experiencing such behavior may obtain **confidential** support from the PEACC Program (852-2663), Counseling Center (852-6585), and Campus Health Services (852-6479). To report sexual misconduct or sex discrimination, contact the Dean of Students (852-5787) or University of Louisville Police (852-6111). Disclosure to **University faculty or instructors** of sexual misconduct, domestic violence, dating violence, or sex discrimination occurring on campus, in a University-sponsored program, or involving a campus visitor or University student or employee (whether current or former) is **not confidential** under Title IX. Faculty and instructors must forward such reports, including names and circumstances, to the University's Title IX officer. For more information, see the Sexual Misconduct Resource Guide (<http://louisville.edu/hr/employeerelations/sexual-misconduct-brochure>).