We’re Not in Memo and Brief Land Any More:
"Statutes and Rules and Regs! Oh My!"

Professor Jan M. Levine &
Professor Ann L. Schiavone
Duquesne University School of Law
ADVANCED LEGAL WRITING: DRAFTING

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DUQUESNE UNIVERSITY SCHOOL OF LAW
Overview

• This is a two-credit advanced legal writing course, meeting the school’s “experiential learning” or “upper-level writing (7500 word)” requirements.

• There are four assignments:
  • (1) job letters and résumés (750 words);
  • (2) a client letter and two “demand letters,” based on a fact pattern involving two federal statutes and corresponding regulations (2000 words);
  • (3) several short exercises from the assigned textbook involving the rewriting and editing of statutes; and
  • (4) solving a real-world problem by drafting a statute, ordinance, regulation, policy statement, or similar document (5000 words).
Overview

• Course enrollment is limited to 12 students.

• Schedule of assignments and tasks fits well with the critiques I have to do for my 1-L course.

• Students have come from all segments of the upper-division classes.

• The topics of the students’ papers are never boring!
Overview

• The course meets once a week, for two hours.

• I have taught the course for three credits, but changed it when the ABA removed the possibility of assigning credits beyond the number of hours the course met.

• The additional hour had been taken up by an assignment that was similar to a bar examination Performance Test, requiring students to draft a Memo in Support of, or in Opposition to, a Motion in Limine, involving principles of statutory interpretation.
# Course Grading

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Points</th>
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</thead>
<tbody>
<tr>
<td>#1 Job Application Letter and Résumé</td>
<td>5</td>
</tr>
<tr>
<td>#2 Federal Research</td>
<td>5</td>
</tr>
<tr>
<td>#2 Client Letter and Demand Letters</td>
<td>10</td>
</tr>
<tr>
<td>#3 Editing Exercises</td>
<td>2.5 + 2.5</td>
</tr>
<tr>
<td>#4 Class Presentations on Statutory Drafting Project</td>
<td>5 + 5</td>
</tr>
<tr>
<td>#4 Statutory Drafting Project</td>
<td>60</td>
</tr>
<tr>
<td>General Class Attendance (including participation in review of other students’ written work and suggestions offered during presentations on the final projects)</td>
<td>5 (loss of one point per hour for missed class meetings)</td>
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## Total

100
Purpose

• Most modern law practice centers on statutory materials and on the regulations promulgated by state or federal agencies.

• The focus on statutes and rules shows students some ways in which lawyers can prevent or resolve problems before they are forced to resort to litigation.

• Litigation is very rare, and a lawyer is often valued more for his or her role as a counselor than as a litigator.
Purpose

• Statutes and regulations formed the core of virtually every issue I faced in practice; furthermore, most of the time was spent on trying to guide clients to picking solutions to problems that did not require litigation.

• In any law practice context that involves the government, regulations and statutes will dominate a lawyer’s work.

• The law's impact on the life of an average citizen is usually by way of statutes and regulations, and very few people ever become involved in litigation.
Textbooks

• **REQUIRED TEXT:**
  

• **SUPPLEMENTAL TEXTS:**
  
  
Textbooks

• RECOMMENDED TEXTS, ON LIBRARY RESERVE:
  
  • Mary Beth Beazley & Monte Smith, LEGAL WRITING FOR LEGAL READERS (2014).
  
  • Chris Coughlin, Joan Malmud Rocklin, & Sandy Patrick, A LAWYER WRITES (2d ed. 2013).
  
  • Diana Donohoe, EXPERIENTAL LEGAL WRITING: ANALYSIS, PROCESS & DOCUMENTS (2011).
  
  • Elizabeth Fajans, Mary R. Falk, & Helene S. Shapo, WRITING FOR LAW PRACTICE (2d ed. 2010).
  
  
  • Richard K. Neumann, Jr. & Kristen Konrad Tiscione, LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE (7th ed. 2013) (this is the required 1-L text at Duquesne).
  
  • Helene S. Shapo, Marilyn Walter, & Elizabeth Fajans, WRITING AND ANALYSIS IN THE LAW (5th ed. 2008).
# Recommended Reading

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<tbody>
<tr>
<td>Writing Process</td>
<td>16</td>
<td>1</td>
<td>1</td>
<td>1, 2, 5</td>
<td>6</td>
<td>4, 5</td>
<td>8</td>
</tr>
<tr>
<td>Statutes and Rules</td>
<td>8</td>
<td>2, 4, 11</td>
<td>1 (parts 4 &amp; 6)</td>
<td>11, 12, 13</td>
<td>4 (part III)</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>General Correspondence</td>
<td>17</td>
<td>17, 18</td>
<td>3 (part 5)</td>
<td>17, 18</td>
<td>7</td>
<td>21</td>
<td>15</td>
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<tr>
<td>Opinion Letters</td>
<td>18</td>
<td>17</td>
<td>-</td>
<td>17</td>
<td>-</td>
<td>21, app. C</td>
<td>-</td>
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Final Project

• Writing statutes or regulations is one way in which attorneys can "make law" without any need to go to court, and the opportunity is present in this course to write something that will actually make law.

• The final statutory drafting project allows students to choose an area of law in which each is interested and to invest significant time working on developing a change in the law.
Final Project

• Students are encouraged to seek out federal, state, or local officials, or special interest groups, and ask about their concerns.

• Government officials and interest groups, including sports leagues, are very willing to work with students (and of course, they love to take advantage of a student’s skills and time).

• Two Pennsylvania legislators have come into class to hear reprise presentations on state law projects.

• Students might produce a draft of a statute or ordinance that could make it into law; several students actually did.
Final Project

• Many students found their work mirrored by later events.

• Some students have used the drafting project as a follow-up to a Law Review article they had written, by proposing a statutory solution to a case-law-based problem.

• Several students have published law review articles based on their final projects.

• Having such accomplishments enhanced the students’ job prospects; many students found the final project the key to getting a job.
Final Project

• Two in-class presentations are required.

• The first presentation is about the problem the student wishes to solve.

• The second presentation is about the solution to the problem.

• This permits me to review two drafts of the paper.

• Each student in the class must contribute to the in-class discussion of the other students’ papers.
Final Project Topics (State)

• Legalizing medical marijuana in Pennsylvania for children with seizure disorders.

• Rules governing ride-sharing apps and businesses in Pittsburgh.
Final Project Topics (State)

• Regulation of coal ash disposal in Pennsylvania.

• Independent water testing, pre- and post-drilling, for Pennsylvania communities with fracking well sites.
Final Project Topics (State)

• A tenant’s bill of rights for Pennsylvania.

• Requirements for rental property security measures.
Final Project Topics (State)

• A Pennsylvania statute for inspection and licensure of body art facilities.

• A revision of Pennsylvania’s DUI statute.
Final Project Topics (State)

- Equal access to polling places and times.
- Township zoning rules regulating “adult entertainment“ businesses in New Jersey.
Final Project Topics (State)

• A sign ordinance for a New Jersey town’s historic district.

• A statute legalizing sports betting in New Jersey.
Final Project Topics (Federal & National)

- A federal “Shield Law” for journalists.
- A federal statute for licensing sports agents.
Final Project Topics (Federal & National)

• Federal agency advisory board conflict of interest rules.

• Revising federal agency jurisdiction over foods and agriculture.
Final Project Topics (Federal & National)

• Labeling genetically-modified organisms in food products.

• Changing FRE Rule 306, to restrict the “Business Records” exception to hearsay.
Final Project Topics (Federal & National)

• Requiring local community involvement in airport runway expansion decisions by the FAA.

• Revising the video game rating system.
Final Project Topics (Sports)

- Changes to NCAA rules governing compensation of student athletes.
- Revision of NCAA rules governing the dispensing and storage of prescription drugs for student athletes.
Final Project Topics (Sports)

• Revision of NHL rules for illegal “head checks.”

• Revision of NHL rules for “kicking” the puck and governing review of game videos for penalty infractions.
Final Project Topics (Sports)

- A student athlete “Bill of Rights” for Pennsylvania, including health insurance coverage and scholarship protection.
Final Project Topics (Sports)

• Rewriting rules about soccer “fouls.”

• Rules for judging Olympic figure skating competitions.
Conference Announcement

The Fifth “Colonial Frontier” Legal Writing Conference
Saturday, December 3, 2016

Hosted by:

DUQUESNE UNIVERSITY
SCHOOL OF LAW

Drafting Statutes and Rules: Pedagogy, Practice, and Politics
PA LEGISLATIVE PROCESS & DRAFTING

PROFESSOR ANN L. SCHIAVONE
DUQUESNE UNIVERSITY SCHOOL OF LAW
Course Objectives

• To foster understanding of the legislative process as a tool to help solve the problems of clients encountered in almost any practice setting.

• To provide the opportunity to learn and practice drafting skills that are transferable to any area of law practice.

• To provide experiential learning opportunities that reinforce the theories of legislative process and drafting learned in the classroom.

• To enhance understanding of the political process and how it influences lawmaking.

• To encourage students to take on leadership roles within the classroom and the community.
Course Design

• Foundational Concepts
  – Lectures, readings & exercises to master basics.

• Mock Legislative Committee
  – Propose, draft, present, amend, and vote on bills; topics are Pennsylvania-based, but student-selected.

• Community Engagement Project
  – Work with a local nonprofit on a real-world issue.
# Weight of Assignments

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Weight</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>First Bill</td>
<td>10%</td>
<td>(common assignment)</td>
</tr>
<tr>
<td>Pennsylvania Bill</td>
<td>25%</td>
<td>(student-chosen/researched topic)</td>
</tr>
<tr>
<td>Amendments</td>
<td>15%</td>
<td>(3 amendments submitted in committee)</td>
</tr>
<tr>
<td>Final Bill</td>
<td>30%</td>
<td>(bill drafted for community group)</td>
</tr>
<tr>
<td>Position Paper</td>
<td>20%</td>
<td>(paper on research, background and drafting of final bill)</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
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Foundational Concepts

- Legislative Process Basics
- The Art of Drafting Law
- Statutory Interpretation
- Cooperation, Compromise, & Competition
- Lobbying and Outside Forces
Pennsylvania Bill Topics

• Amending the PA crime code to add pictures and video taken from drones to definition of “criminal surveillance.”

• Imposing a severance tax on natural gas producers in Pennsylvania.
Pennsylvania Bill Topics

• Imposing regulations on certain ride-sharing services (Uber & Lyft).

• Requiring labels on genetically modified foods.
Pennsylvania Bill Topics

• Increasing commercial protections for buyers involved in equine sales agreements.

• Reforming procedural deficiencies in the criminal pardon process.
Pennsylvania Bill Topics

• Authorizing online voter registration methods in the commonwealth.

• Legalizing medical cannabis use and providing procedures for prescription and distribution.
Pennsylvania “Mock Senate Committee”

- Each student gives a 20-minute presentation on the bill to the committee.
- Students field questions from colleagues about the bill.
- Students respond to proposed amendments.
- Committee then votes on proposed amendments and final bill.
- Students re-draft and submit the final version to me for grading.
Community Groups

- Casa San Jose - an organization dedicated to helping immigrant populations in Pittsburgh.

- Community Human Services (CHS) - a community group involved in issues of homelessness in our region.

- FluffyJean's Fund for Felines (FFF) - a nonprofit focused on welfare of feral cat populations in western Pennsylvania.
Community Group Bills

• Casa San Jose - Bill to provide means of obtaining Pennsylvania drivers’ licenses for undocumented immigrants.

• CHS - Bill providing incentives to developers to include low income housing in development projects.
Community Group Bills

• FFF - Amend Pennsylvania criminal law to provide a safe-harbor against animal “abandonment” charges for persons who trap, neuter, vaccinate & release feral cats.

• Project culminates in lobbying activity; generally a meeting with a member of the Pennsylvania legislature requesting introduction of the bill.
Course Take-Aways: Mock Legislative Committee

• Experienced the legislative process first-hand.

• Gained experience in research, writing/drafting, & oral presentation.

• Received and provided peer-review and critique.

• Engaged in competition, negotiation, and compromise.
Course Take-Aways: Community Engagement

• Stepped outside their comfort zones, and represent people very different from themselves.

• Felt the pull of competing interests of drafting a bill that would meet client needs, but at the same time, have a good chance of passing.

• Learned quickly that they needed to be both a student and a teacher, learning from their clients about the issues, while educating the clients about the legislative process.
QUESTIONS?