Preparing for the 2013 Write On Competition:

HOW TO WRITE A CASE COMMENT

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Contributing Journals:

AMERICAN CRIMINAL LAW REVIEW
GEORGETOWN IMMIGRATION LAW JOURNAL
GEORGETOWN INTERNATIONAL ENVIRONMENTAL LAW REVIEW
GEORGETOWN JOURNAL OF GENDER AND THE LAW
GEORGETOWN JOURNAL OF INTERNATIONAL LAW
GEORGETOWN JOURNAL OF LAW & MODERN CRITICAL RACE PERSPECTIVES
GEORGETOWN JOURNAL OF LAW & PUBLIC POLICY
GEORGETOWN JOURNAL OF LEGAL ETHICS
GEORGETOWN JOURNAL ON POVERTY LAW & POLICY
GEORGETOWN LAW JOURNAL
JOURNAL OF NATIONAL SECURITY LAW AND POLICY
Introduction

This guide is meant to prepare you for the 2013 Write On competition. The guide is divided into three parts:

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I. Procedure and Write On Competition Requirements

All students are advised to carefully read the material in Part I. This section describes the process for the competition and will likely answer many of your questions!

A. PACKET PURCHASE: Available at or around May 8, 2013

All students must purchase packets through the Write On website, available at http://apps.law.georgetown.edu/write-on, using VISA, Mastercard, or American Express. The packets will cost $40.00. Students can log on to the website using netID and password, and all transactions will be conducted on secure servers. There will be no cutoff date for purchasing a packet prior to the actual end of the competition. Students will be able to purchase their packets right up until the last day of the competition itself, but will not be granted any extra time if they choose to do so. You will receive a confirmation email with your packet number – this is the number you will use to identify yourself on all Write On submissions. Save this email for future reference!

Note for Deferred Exam Students: You should notify the Office of Journal Administration (“OJA”) that you have a deferred exam as soon as you are aware of it, but you must notify OJA of your deferred exam prior to May 17, 2013, the opening of the Write On competition website. You must wait twenty-four (24) hours after you finish your last deferred exam before starting Write On. However, you will have the same total time period as provided to GULC students without a deferred exam.

B. PACKET AVAILABILITY: May 17, 2013

Write On packets will be available at 9:00 a.m. EDT on Friday, May 17, 2013 for both day and evening division students. The packet will be available on the competition website at http://apps.law.georgetown.edu/write-on, which you can access using your netID. You can download materials directly from the site.

You may enter the site anytime between May 17 at 9:00 a.m. and mid-July (note that all times are EDT). However, be aware that the competition ends at precisely at 8:00 p.m. EDT on May 28. All case comments, Bluebook test, and personal statement/resume materials must be uploaded to the website, hand-delivered, or mailed by that time in order to be accepted. You will be able to log in to the site through mid-July to adjust your preferencing, but no additional materials may be submitted past the May 28th deadline. The preferencing deadline will be announced later in the summer.

If you have special constraints or a serious medical problem documented by a physician that might impact this timeline, you must contact the Office of Journal Administration at writeon@law.georgetown.edu prior to the beginning of the Write On competition.

Further, if you need accommodations for a disability in order to participate in Write On, please contact Laura Cutway, the Associate Director of Disability Studies at Georgetown Law, at (202) 662-4042 or lmc228@law.georgetown.edu.
C. TURNING IN SUBMISSIONS: May 28, 2013

Students may upload their completed case comments and any supplemental materials such as personal statements or résumés to the competition website up until the 8:00 p.m. EDT deadline on May 28, 2013. OJA suggests that students upload their papers early so that in the unlikely event of a server failure their paper is received in a timely manner. Students may upload their completed papers to the competition website, hand-deliver the paper to the Office of Journal Administration, or mail their papers to OJA via FedEx, UPS, or USPS Express Mail. All papers must be hand-delivered, uploaded, or mailed by 8:00 p.m. EDT on May 28, 2013. Detailed mailing instructions will be found in the competition package.

If you chose to hand-deliver or mail your paper you must submit FOUR COPIES of your Write On competition case comment. A word of warning—budget time and money for printing and photocopying, and DO NOT count on the machines on campus being available the day of the deadline.

Note that the paper length is limited. In past years it has been seven pages of double-spaced text and about three pages of single-spaced endnotes. To ensure uniformity, fonts and margins will be specified in the packet. OJA highly recommends you submit all papers submitted electronically in PDF format to retain proper formatting and spacing.

D. PACKET CONTENTS AND RESTRICTIONS:

The Write On competition packet will consist of (1) a case and associated research materials for writing a case comment, (2) instructions for completing the online Bluebook test, and (3) general instructions.

Using the case and supplementary materials provided in the packet, you will be expected to write a case comment subject to the limitations discussed in Part I.C. You are NOT ALLOWED TO DO ANY OUTSIDE RESEARCH when writing your submission. For example, even if a source in the packet quotes a second source that is not in your packet, you may only use that second source to the extent it is used in the included source. Also note that you cannot look up and print any of the provided sources from West or Lexis—you can only use the PDF versions provided in the packet.

You must rely entirely upon the materials provided in the packet, plus the following sources: a dictionary, a legal dictionary, a thesaurus, and the Bluebook (19th ed.). You may not refer to any law journals during the Write On period unless they are part of the packet materials. You may not discuss the contents of the packet with anyone during the Write On period, and you may not receive editing or proof-reading assistance from anyone else. While writing, you may use a spell-check and grammar-check program. Treat the Write On process as if it were an exam!

In addition to a case comment, students will also be required to complete a forty-question, true/false Bluebook test on the Write On website itself. Instructions for completing the Bluebook test will be included in the packet.

There will be additional procedural requirements to follow for turning in your papers. Read them carefully in advance to make sure you have fully complied with all requirements. READ ALL OF THE WRITE ON PACKET INSTRUCTIONS CAREFULLY!
II. Technical Aspects of Writing a Case Comment

Refer to the “How to Write a Case Comment” presentation posted on the OJA website for more detail and information.

A. WHAT YOU WILL BE GIVEN

1. The principal case on which you are to comment
2. Maybe a lower court decision
3. Cases that bear on the principal case
4. Maybe statutes and legislative history, if appropriate
5. Maybe law review articles
6. Maybe newspaper, magazine, or other periodical articles

Do not confuse the lower court case with the case you are supposed to be analyzing. The other cases are included only to give you some basis for commenting on the principal case. Also, do not feel that you have to cite everything in the packet in your comment! Your thesis might be narrowly defined to eliminate the need to cite to everything, and some of the cases might be superfluous. However, you should be aware that cases are there for a reason. Judges do not use a checklist when going over the footnotes to make sure you cite to everything, but a dearth of sources will be recognized and noted.

B. READING THE PACKET

1. Devote one or two days just to reading, more if you are planning on briefing the cases that you receive.
   You do not need all twelve days to complete the competition. If you spend two days reading the packet, becoming familiar with it, and mulling over ideas for a strong thesis, that still leaves you eight days to write ten pages—not a Herculean task.

2. Decide how you want to read it. At the end of the day you will have read all the sources, so it doesn’t really matter.
   a. Chronologically
      Makes the most intuitive sense, so you can get an idea of the development of the law.
   b. In order of importance
      Also makes sense, but you will not have a very good idea of the order of importance until you read a few cases.
   c. Order in which the cases are given to you
      Takes less thought.

3. Brief the cases if that helps you understand the law.
   You need to be very familiar with the cases to write a coherent comment so brief them once you have finished the packet as a quick refresher. If ideas occur to you as you read, note them for later, but you will want to finish the entire packet before you finalize a thesis, as future materials may cause you to rethink your argument.
C. SELECTING A TOPIC

A case comment is your opinion about how a particular court decided a particular case. A case comment lays out, reflects on, and critiques a court’s decision and tells the reader what you think about the decision. You can take any of several approaches:

1. *The case was decided incorrectly, and you explain why.*
   This method is common, but be careful. You do not want to simply mirror a dissent or get into the rut of saying “The court’s wrong here” again and again. What you need to do is attack the court’s analysis and explain why, even though the court applied the correct law, it applied it incorrectly when compared with other precedential cases.

2. *The court is correct, but for the wrong reasons.*
   While you agree with the court’s decision, you believe that the court used the wrong approach to reach it. This approach means that while the decision is correct, the court applied the wrong law. You will need to identify for the reader what the proper law was, where you identified it in precedent, and why it is more proper for use in a given court.

3. *This whole area of law is a mess, and you can do better.*
   This is the most ambitious approach, but you really must know the material to suggest a whole new type of approach to the area. New approaches to the law should be logical, yield consistent results, and have public policy support. Use the principal case to illustrate how the new method would work and compare it to the prior, flawed outcome.

4. *The court missed the point.*
   Maybe the court missed an important issue that courts facing the issue in the future should consider. You may want to argue that policy or equity considerations override a given law or otherwise influence the outcome in a way that the court itself did not decide.

5. *The court is correct.*
   It is possible that you just might agree wholeheartedly with the court’s decision and to criticize it at all would violate your conscience. To go through your comment agreeing with the court is extremely dangerous; the only way to do it without writing a book report is to write from a defensive posture, anticipating any counterarguments and demonstrating to the reader why they are without merit.

6. *Some creative, dynamic idea of your own.*
   If you feel confident in using the case and the assignment as a springboard for some legal pyrotechnics, you might want to do something creative and original. Maybe you think the entire area of law is a mess and can articulate why using the sources you have been given. Such an approach is risky, but we do read a lot of these papers!

**REMEMBER:** Whatever you do, the focus of your case comment should be your original contribution. Don’t simply rehash the court’s opinion point by point or mimic the dissent. The heart of
your paper is your own analysis! Also, remember that judges will be more impressed with clear, competent writing than with extraordinarily deft leaps of logic into uncharted waters. In past years, some of the highest-scoring case comments have been those that thoroughly developed a single issue well, explaining its nuances to legal, but non-expert, readers.

D. ELEMENTS AND FORMAT OF A CASE COMMENT

Please don’t forget what you learned about legal writing this past year! A case comment should include the following elements:

1. **Facts of the Case** (approx. 2 pages or less)
   Include the relevant facts and the procedural history of the case.

2. **Holding** (approx. 1 page or less)
   Your analysis of the court’s holding in the principal case.

3. **Roadmap** (1/2 page)
   Explain the structure of the comment.

4. **Analysis** (whatever is left)

5. **Conclusion** (approx. 1/2 page)

Generally, the structure of the comment will follow one of two patterns:

1. **Introduction**

   The introductory portion of the comment includes the three elements listed below. The introduction must catch the reader’s interest and let the reader know what the comment is about and why it is important. The introduction will introduce and state how you will prove your thesis. Remember that you are writing for someone who, presumably, does not yet know the problem as well as you do, and may in fact have no knowledge of the area of law you are addressing. Prominently include your thesis! It is perfectly appropriate to say, “This comment argues that...” or “This comment contends that...” to make it very clear for the reader.

   a. **Statement of Facts**
      Starting with the facts is effective when the facts are important to the outcome of a case, provide a good illustration of the problem, or are simply exciting.

   b. **Holding**

   c. **Roadmap**
      The roadmap is a necessary part of the comment. It is perfectly appropriate to say, “This comment will argue” or “Part one of the comment will analyze.” The roadmap never comes first. It explains why the issue is important and describes the discussion and thesis. Its primary purpose is to inform the reader about what is coming so that subsequent material will seem relevant and fall into place.

**OR**

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a. *Holding*
   
   You may want to use this structure if the facts are not crucial to the comment, or the general rule of law overshadows the importance of the specific facts.

b. *Statement of Facts*

c. *Roadmap*

2. **Detailed Discussion of Facts and Holding**

   Explain the facts and analysis of the principal case to the reader.

3. **Analysis**

   This section will be the meat of your paper. It should include headings and subheadings to guide the reader and follow the roadmap you provided earlier!

4. **Conclusion**

**E. OTHER SOURCES**

Two texts that provide additional information about scholarly writing are: Eugene Volokh, *Academic Legal Writing* (3d ed. 2007) and Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students* (3d ed. 2005). You may want to review these sources before the beginning of the Write On competition; but you may NOT consult them during the competition.

**F. FOOTNOTES**

In case comments, you have to use a footnote-based method of citation, as opposed to the textual citations you have used in briefs and memoranda for LRW. Note that you will be using endnotes in this case comment. There are several ways to use a footnote:

1. **To give a citation**
   
   This is the simplest footnote. When you cite an authority in the text, you must include a footnote with the technical citation. You do not need to give the name of the case in the citation if you have given the full name in the text. When appropriate include a pinpoint or jump cite in the citation.

2. **When necessary to back up a proposition**

   You are accustomed to giving a proposition of law and then having to refer to some other source to back it up. In a comment, you do that with footnotes. Pay attention to proper use of Bluebook signals to indicate how the source relates to the proposition, and use parentheticals when appropriate.

3. **To make ancillary points**

   Often, you have an insight into a useful but tangential point that would take up lots of space in the text and distract from your main theme. Here, use a footnote to briefly develop that sub-issue.
Footnotes are the best place to:

1. show familiarity with the packet, by citing many cases;
2. display an understanding of closely related legal issues;
3. include facts that either take up space or are tangential;
4. show off your hours of memorizing arcane Bluebook rules.

The most important thing about your footnotes, though, is to make sure that they are technically correct. Any second-year journal staff member can pick out most Bluebook errors so make sure you know the rules when editing. The rules for law review articles are not the same rules as you have been using in LRW!

G. BLUEBOOK TIPS

One good way to ensure that your comment will comply with Bluebook conventions is to pick up a copy of one of the journals before the competition and check out the various footnote formats. Remember, however, that you cannot refer to any journals once the competition has started. The forms used in the case comment are the same as those used by most journals. For a general overview, please refer to the Quick Reference Guide on the front cover of the Bluebook. You are probably not familiar with this form of writing because of the focus on textual citations in LRW, and spending some time learning its intricacies is advisable. You may also encounter various documents with varying citation rules, such as constitutional provisions, law review articles, periodicals, and perhaps statutes. These rules are not difficult. Most of your questions will probably be answered by re-reading Bluebook Rules 1-8, 10.2, 10.6, 10.9, 11, 12, 15, and 16, and consulting the relevant tables referred to in those rules. The index is also a helpful place to start when encountering a source that you have never worked with before.

Here are a few Bluebook tips for common problems you might encounter:

1. When citing a case in the text, you have to italicize (if you cannot italicize, you can underline) the full name of the case. The first time you cite it, you must use the full name. After that, you can use an identifying name (i.e., Lemon).

2. When citing a case in footnotes, you do not italicize the case name if giving the case name in full along with the citation. You only italicize the name if:
   a. you are giving a partial case name, or
   b. you are giving the case name in full, but without a citation.

3. Review Rule 10.9 on short cites. Note that to use a short cite of a case already cited, you have to have cited the case in the same general textual discussion or within one of the preceding five footnotes. If you cite a case in footnote #6, do not short cite it thirty footnotes later.

4. Review Rule 3.5 on internal cross references, Rule 4.1 on short cites, and Rule 4.2 on the use of supra and hereinafter. These rules cause a lot of problems. Note that you can only use id. if the preceding footnote has only one case in it. Also note the proper form for a supra cite, which you will mainly use when citing a law review article.

   Ex.: See Smith, supra note XX, at XXX.

That form is a lot easier than giving the whole cite again.
5. Review the signals at Rule 1.2 and order of signals at Rule 1.3. You do not need to get fancy with your signals. Maybe you can show off with a compare . . . with cite somewhere. Just remember that proper use of signals is important.
III. Sample Case Comments

Below are brief summaries of the cases used in the 2011 and 2012 competitions. Two case comments submitted in those competitions will also be posted to the OJA website. These comments scored highly and should be used as a reference, but are not a definitive guide for how to write your case comment. The structure of a good 2012 note is not necessarily the same as that of a good 2010 or 2011 note. The Write On packet contents from prior competitions are on reserve at Williams Law Library and on the OJA Write On website (gtownlawjournalswriteon.org) so that you can familiarize yourself with this type of legal writing.

Remember that the posted samples are not the definitive source of proper Bluebook and grammar rules. Use them as a rough guide and not as a template. In particular, be aware that there are uncorrected errors and that there is no substitute for using the Bluebook. Students preparing prior to the competition for the Write On may also want to look at actual student notes published in academic journals to get a sense of style, format, and technical requirements. Make sure that the journal to which you refer follows the 19th edition of the Bluebook as opposed to another citation manual! Again, remember that you are strictly forbidden to conduct outside research on a topic or to look at a journal during the competition.

Although we have described some of the conventional forms of legal academic writing, we do not wish to discourage students who elect to employ another form of legal academic writing. However, note that these forms of legal writing can be more difficult to master, that students have an artificially limited set of materials, and that many of the student judges who read submissions may not be familiar with these forms of writing. The Georgetown law journals, in our role as a vital forum for legal scholarship in the Georgetown Law Center community, are committed to being receptive to all forms of legal academic writing.

2011 WRITE ON COMPETITION
Synopsis

The 2011 Write On competition examined whether the canons of judicial conduct for electoral campaigns violated the First Amendment. Particularly, the canons at issue were those against publically endorsing or opposing other candidates for public office, against soliciting funds for them, and against personally soliciting or accepting campaign funds. The principal case discussed was Wersal v. Sexton, 613 F.3d 821 (8th Cir. 2010), which determined that such canons violated the First Amendment, and that recusal mechanisms should be sufficient to police judicial conflicts of interest.

2012 WRITE ON COMPETITION

Synopsis

Last year’s Write On competition examined the appropriate standard for evaluating the free speech rights of secondary school teachers. Specifically, there are currently three competing standards by which courts may examine the free speech right of teachers: (1) the Hazelwood standard, (2) the Pickering standard, and (3) the Garcetti standard. All of those cases were included as additional packet material. The principal case discussed was Shelley Evans-Marshall v. Board of Education of the Tipp City Exempted Village School District, 428 F.3d 223 (6th Cir. 2005), wherein the Sixth Circuit evaluated the free speech rights of a high school teacher under the Pickering balancing test, which allows public schools to restrict employee speech unless that speech involves a matter of public concern.