PREPARING FOR THE 2019 WRITE ON COMPETITION:

HOW TO WRITE A CASE COMMENT

Prepared by:

GEORGETOWN JOURNAL OF GENDER AND THE LAW
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GEORGETOWN JOURNAL OF LAW & PUBLIC POLICY

Contributing Journals:

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GEORGETOWN IMMIGRATION LAW JOURNAL
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GEORGETOWN JOURNAL ON POVERTY LAW & POLICY
GEORGETOWN LAW JOURNAL
FOOD AND DRUG LAW JOURNAL
JOURNAL OF NATIONAL SECURITY LAW AND POLICY
INTRODUCTION

This guide is meant to help prepare you for the 2019 Write On competition.

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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!

PACKET PURCHASE: AVAILABLE ON OR ABOUT MAY 10, 2019.

All students must purchase packets through the Write On website using Visa, MasterCard, or American Express. The packets will cost $40.00. You can log in to the competition using your 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 end of the competition. While you are permitted to purchase a packet up until the last day of the competition, no extra time will be granted if you choose to do so. After purchasing the packet, 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 Students with Deferred Exams: Students with deferred exams should notify the Office of Journal Administration (“OJA”) of that fact as soon as they become aware of it, but no later than May 17, 2019, the opening of the Write On competition website. You must wait twenty-four (24) hours after completing your last deferred exam before beginning Write On. You will receive the same amount of time for completion of the competition as those students without a deferred exam.

PACKET AVAILABILITY: MAY 17, 2019

The Write On Competition will begin at 9:00 a.m. EDT on Friday, May 17, 2019, for both day and evening division students. All packet materials will be available through the Write On website.

You may enter the site anytime between May 17 at 9:00 a.m. and mid-July (note that all times are EDT), but be aware that the competition ends at precisely at 8:00 p.m. EDT on May 30. The case comment, Bluebook and Editing test, and personal statement(s)/resume materials must be uploaded to the website or mailed by that time to be accepted. You may also hand-deliver your competition materials, but you must contact the Office of Journal Administration in advance to make arrangements. You will be able to log in to the site through mid-July to adjust your journal preferences, but no additional materials may be submitted past the May 30 deadline. The preferencing deadline will be announced later in the summer via your Georgetown email account.

Students with special constraints or serious medical problems, documented by a physician, that might impact this timeline must contact the Office of Journal Administration at lawwriteon@georgetown.edu as soon as possible. Students with deferred exams must contact OJA prior to the start of the Competition.

Further, if you need accommodations for a disability in order to participate in Write On, please contact Mara Bellino, the Director of Disability Studies at Georgetown Law, at (202) 662-4042 or mcb260@georgetown.edu.

TURNING IN SUBMISSIONS: MAY 30, 2019

You may upload your completed case comment, bluebook and editing exam, and any required supplemental materials (personal statements, resumes) to the competition website until the 8:00 p.m. EDT deadline on May 30, 2019. 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 submit completed materials via upload to the competition website, hand-delivery to the Office of Journal Administration, or mail to OJA (through FedEx, UPS, or USPS Express Mail). All papers must be uploaded, hand-delivered, or mailed by 8:00 p.m. EDT on May 30, 2019. Detailed mailing instructions will be available in the competition package. If you wish to hand-deliver your materials, you must contact OJA in advance to make arrangements.

You may choose to hand-deliver or mail your paper. 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 previous years, the comment has been limited to seven pages of double-spaced text and three pages of single-spaced endnotes. To ensure uniformity, fonts and margins will be specified in the packet. OJA strongly recommends that all papers submitted electronically be in PDF format to retain proper formatting and spacing.
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 and uploading the Bluebook and Editing 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 PERMITTED TO DO ANY OUTSIDE RESEARCH when preparing 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 may only use the 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 (20th 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 spell-check and grammar-check programs. Treat the Write On process as if it is an exam!

In addition to a case comment, students will also be required to complete a Bluebook and Editing test on the Write On website. 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!

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.

MATERIALS PROVIDED

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 a 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 endnotes to make sure you cite to everything, but a dearth of sources will be recognized and noted.

**READING THE PACKET**

1. *Devote one to three days just to reading (more if you are planning on briefing the cases that you receive).*

You do not need all fourteen days to complete the competition. If you spend two days reading the packet, familiarizing yourself with it, and mulling over ideas for a strong thesis, that still leaves you eight days to write ten pages and two days to edit—not a Herculean task.

2. *Decide how you want to read it, but do not belabor this decision.*

   a. **Chronologically**

      Makes the most intuitive sense, so you can get an idea of how the law develops.

   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**

      Requires 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.

**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.*

   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 have a better approach.**

This is the most ambitious approach, as 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 be supported by public policy. 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 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. Nevertheless, to write 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 packet as a springboard for some legal pyrotechnics, you might want to do something creative and original. Such an approach is risky, but we do read some of these papers.

**REMEMBER:** Whatever you do, the focus of your case comment should be **YOUR ORIGINAL CONTRIBUTION.** Do not 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.

**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** (3-4 pages)
5. **Conclusion** (approx. 1/2 page)

Generally, a comment is organized according to the following structure:

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**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 your thesis very clear.

Your Introduction may follow **one of two structures:**

**Structure 1:**

a. **Statement of Facts:** Beginning 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, and it should be very clear to the reader. Judges expect to see language such as “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 the organization and relevance of subsequent material is understood.

**OR**

**Structure 2:**

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**

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**DETAILED DISCUSSION OF FACTS AND HOLDING**

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

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

CONCLUSION

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.

ENDNOTES

In case comments, you must use an endnote-based method of citation, as opposed to the textual citations you have used in briefs and memoranda for LRW. Note that your endnotes should be placed at the end of your comment, in a separate endnote section. There are several ways to use an endnote:

1. **To provide a citation**

   This is the simplest endnote. When you cite an authority in the text, you must include an endnote 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 pincite in the citation.

2. **When necessary to support a proposition**

   You are accustomed to providing legal propositions and citing to sources to back them up. In a comment, you do that with endnote. 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, though tangential, point that would take up lots of space in the text and distract from your main theme. Here, use an endnote to briefly develop that sub-issue.

Endnotes are the best place to:

1. Show familiarity with the packet,
2. Display an understanding of closely related legal issues, and
3. Show off your skills with the Bluebook.
The **MOST IMPORTANT** thing about your endnotes is to make sure that they are **technically correct**. Write On judges 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 those you have been using in Legal Practice: Writing and Analysis!**

**BLUEBOOK TIPS**

One good way to familiarize yourself 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 citing because of the focus on textual citations in LRW, and spending some time learning the intricacies is advisable. 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 with which you have not yet worked.

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 (e.g., *Lemon*).
2. When citing a case in endnotes, you **do not italicize** the case name if giving the case name in full along with the citation. You **italicize** the name only 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 must have cited the case in the same general textual discussion or within one of the preceding **five** endnotes.
4. Review Rule 3.5 on **internal cross references**, Rule 4 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 endnote cites only one case. Also note the proper form for a *supra* cite, which you will mainly use when citing a law review article.
   a. Ex.: See Smith, *supra* note XX, at XXX.
5. Review Rule 1.2 on **signals** and Rule 1.3 on the **order of signals**. You do not need to get fancy with your signals. Just remember that proper use of signals is important.
SAMPLE CASE COMMENT

Below is a brief summary of the case used in the 2018 Competition. A document containing the primary and secondary sources for last year’s competition, as well as a sample comment, can be found at the Write On website, gt writ eon.org. This comment scored highly and should be used as a reference, but it is not a definitive guide for how to write your case comment.

Remember that the **posted sample is not a definitive source for proper Bluebook and grammar rules**. Use it 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 20th edition of the *Bluebook* as opposed to another citation manual! Again, remember that you are **strictly forbidden** from conducting outside research on a topic or from looking 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. Please note, however, 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 University Law Center community, are committed to being receptive to all forms of legal academic writing.

2018 WRITE ON COMPETITION SYNOPSIS

Last year’s competition examined wage disparity under the Equal Pay Act and considered whether salary history is a legitimate factor other than sex that can be used to justify discrepancies in pay. The principal case, *Rizo v. Yovino*, 887 F.3d 453 (9th Cir. 2018), held a female employee’s prior salary could not be used to justify payment of lower wage because it is a factor “based on any other factor other than sex” under the Equal Pay Act. In the newest twist, the Equal Employment Opportunity Commission and employee advocacy groups recently asked the Ninth Circuit to revisit its decision, arguing that reliance on prior salary “perpetuates” what the EPA sought to correct. The case is up for rehearing en banc.