Legal Writing for Judicial Clerks and Interns
Summer 2011
Professor Heiny
Assignments for the First Week

Throughout this course, we will split our time between theory and practice. While we discuss the practical, theoretical, and intellectual underpinnings of opinion writing, we will simultaneously research and draft an opinion.

You will spend all four weeks of the course writing an opinion in *Missouri v. Frye*. The United States Supreme Court has granted *certiorari* in *Frye*, but has not yet heard arguments or issued an opinion. The Court has also granted *certiorari* in a similar case, *Lafler v. Cooper*. Merit briefs have been filed by the government in both cases, but defense briefs are pending. The issues in the two cases are similar, and the Court has certified an identical question in the two cases. However, because the two cases have different procedural postures, you will only write an opinion for *Frye*.

Both *Frye* and *Lafler* are criminal cases involving claims of ineffective assistance of counsel. In *Frye*, the defense counsel was indisputably ineffective when he failed to communicate to his client a plea offer made by the prosecution. The proposed deal would have allowed Mr. Frye to plead guilty to a misdemeanor rather than a felony. Because he was unaware of the plea offer, Mr. Frye pled guilty to the felony and served a significantly longer prison sentence than would have been required under the plea offer.

In *Lafler*, the defense counsel was also indisputably ineffective. He advised Mr. Lafler that the state would be unable to prove a necessary element of the crime charged. His advice was clearly contrary to Michigan law. Mr. Lafler rejected several plea offers on the mistaken advice of counsel, and was later found guilty after a fair trial. He was sentenced to a significantly longer prison term than would have been required under any of the offered plea deals.

The United States Supreme Court directed the parties in both cases to brief and argue the following question: “What remedy, if any, should be provided for ineffective assistance of counsel during plea bargain negotiations if the defendant was later convicted and sentenced pursuant to constitutionally adequate procedures?”

**Assignments:**
Because of the compressed timeline of the summer schedule, we will be discussing theoretical concepts at the same time that we discuss the issues and law applicable to *Frye*. Therefore, you have two sets of reading assignments for the first week.

**Theoretical Materials:**

1. Prior to Class 1 (Monday, June 13): read Aldisert, Chapter 1.
2. Prior to Class 2 (Tuesday, June 14): read Aldisert, Chapter 3.
3. Prior to Class 3 (Wednesday, June 15): read Aldisert, Chapter 5.

Case Materials:

We will begin discussing Frye on Thursday, June 16th. However, you will need some background on prosecutorial discretion, plea bargaining, and ineffective assistance of counsel. This should be review for those of you who have taken a course in criminal procedure.

The materials are too voluminous for you to read the evening before. Therefore, I recommend reading the materials on the following schedule:

Prior to Class 1 (Monday, June 13):


2. ABA Standards for Criminal Justice:
   a. 3-4.1 (Availability for Plea Discussions)
      Available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pfunc_blk.html#4.1
   b. 4-3.8 (Duty to Keep Client Informed)
      Available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_blk.html#3.8
   c. 4-6.1 (Duty to Explore Disposition Without Trial).
      Available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_blk.html#3.8
   d. 14-3.2 (Responsibilities of Defense Counsel)
      Available at: http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_blk.html#3.2

3. Federal Rule of Criminal Procedure 11 (available on Westlaw)


Prior to Class 2 (Tuesday, June 14)


Prior to Class 3 (Wednesday, June 15):


Prior to Class 4 (Thursday, June 16):

Read the government’s merit briefs in *Frye*. These are available on Westlaw, as well as on the United States Supreme Court’s website.

Prior to Class 5 (Monday, June 20):

Read the defendants’ cert. briefs in *Lafler* and *Frye*. Although the governments’ merit briefs have been filed in both cases, the defendants’ merit briefs aren’t due until July 15th. Therefore, you should read the cert. briefs in order to get an idea of what arguments the defendants will make. Because the defendants’ cert. briefs are a little thin, reading both will give you a better idea of the totality of the arguments. These are available on Westlaw, as well as on the United States Supreme Court’s website.

Writing Assignments:

Your work on the *Frye* opinion will be broken up throughout the course, and each section will be graded and returned to you. You will then edit and merge all the assignments into a finished opinion.

You will have no writing assignments during the first week of class. Your first written assignment is due on Monday, June 21. A calendar outlining these assignments and their due dates will be posted separately.

Citation Exercises:

Your first citation exercise will be handed out on Monday, June 13 and will be due on Tuesday, June 14. A complete schedule of citation exercises will be included on the assignment calendar.