Legal Writing for Judicial Clerks and Interns  
Summer 2011  
Professor Louisa Heiny  
MTWR 5:30 p.m. to 7:30 p.m.  
Borchard Conference Room  

Contact Information:  
Office: 215  
Phone: 801-581-6342 (Do not leave message—I can’t retrieve them)  
303-718-9544. You may use this number to leave a message in case of emergency. Please email all other after-hour requests and questions.  
E-mail: louisa.heiny@gmail.com  
Office Hours: Monday through Thursday from 4:00 p.m. to 5:00 p.m., or by appointment. Please do not come to the office from 5:00 p.m. to 6:00 p.m., except in case of emergency, as I’m usually preparing for class.  

Required Texts:  
The Bluebook: A Uniform System of Citation (19th ed., Harvard L. Rev. Ass’n 2010). (If you already own the 18th edition or have an on-line subscription, there’s no need to replace it with the 19th edition).  
Ruggero J. Aldisert, Opinion Writing (AuthorHouse, 2d ed. 2009).  

You should also own a good English language dictionary, legal dictionary, and manual of style and grammar. There are many excellent books in these categories, and a number of on-line sources as well. Please see me if you would like suggestions.  

Course Description and Objectives:  
Legal Writing for Judicial Clerks and Interns is designed to develop students’ critical thinking, legal research, and legal writing through a simulation of the experience of a judicial clerkship. It emphasizes research, writing, analyzing, and editing bench memoranda and judicial opinions.  

This class is for students who are interested in becoming, or currently are, judicial law clerks or judicial interns. It may also be of interest to students who plan an active trial or appellate practice. Additionally, it fulfills the classroom component of the College of Law’s judicial internship program. It is designed to complement and integrate students’ judicial internship experience.  

Student enrollment may include those who have not yet clerked, those currently interning, and those who have completed their internship placement.
Classroom Methodology:

Students should expect the Socratic method, lecture, discussion, occasional guest-lecturers, and in-class exercises designed to simulate the judicial decision-making process and the work of clerks in chambers.

Students are encouraged to volunteer in class, but may also be called upon at random. Students may not “pass” when called on, except as noted in the “class participation” section below.

Grading and Standards for Coursework:

A. Assignments And Values

Throughout the course you will be researching and drafting an opinion for Missouri v. Frye. The United States Supreme Court has granted certiorari in Frye, but has not yet heard arguments. Your work on the opinion will be broken up into sections, and each section will be graded and returned to you. You will then edit and merge all the assignments into a finished opinion. Each section will have a page limit. Submissions that exceed the announced page limit will be penalized.

You may also be expected to complete and return Bluebook citation exercises.

There is no final exam for this course.

B. Calculating Grades

Each graded assignment will be returned to you with a grade sheet attached. The grade sheet will note how you performed in a variety of areas, including the thoroughness of your research, the depth and quality of your legal analysis, the quality of the writing, the preciseness of your citation form, and your ability to perform within the accepted norms of opinion writing. Citation exercises, when assigned, will also be reviewed and returned to you.

You will be given a numerical score on each graded assignment. Grades from individual assignments will be combined into a weighted average as follows:

2. Constitutional Provisions at Issue—11% of total grade
3. Standard for Ineffective Assistance of Counsel —11% of total grade
4. Application of Strickland and Hill—11% of total grade
5. Remedy Analysis—11% of total grade
6. Introduction and Conclusion —5% of total grade
7. Final Opinion—40% of total grade

Final grades for the course will be assigned using the law school’s 3.1 to 3.3 GPA mean grading scale, unless the Academic Dean determines that an exception is appropriate. Your final grade
will be a function of how you performed compared to others in the course. Thus, you cannot really know what your grade will be until the final scores of everyone in the course are tabulated.

C. Attendance and Participation

I take roll at the beginning of each class. You are expected to attend, participate in, and be prepared for every scheduled class. You should have read all assigned materials prior to the start of class, and be prepared at the start of class to discuss those materials. Students who have clerked or are clerking should come prepared to discuss their clerkship experience in light of the assigned materials and within the bounds of chamber confidentiality.

I will negatively alter your grade if you have excessive absences, arrive late to class, or are unprepared. Absence from 20% or more of the scheduled classes will result in involuntary withdrawal from the course. I will positively alter your grade if your work in the classroom is exemplary.

While I encourage volunteerism, students should expect to be called on at random. Students may not “pass,” or decline to answer a question. However, unexpected events may occur which cause you to be unprepared for class. I would rather you come to class, even if you are unprepared, than skip class. Therefore you are allowed two single-day “passes.” In order to use a pass, hand in a piece of paper with your name, the date, and the word “pass” at the start of class. I will not call on you that day and your failure to participate will not affect your grade. Students who pass on a given day are still expected to participate in any in-class activities or exercises, and may still volunteer in class. A pass on preparation is not a ticket to sleep or to do other work during class time. I emphasize that passes are for unexpected events and emergencies, and you should save them for this purpose.

Please note: Students who are currently clerking should never discuss a pending matter out of chambers. Students who have prior or current clerkship experience should use discretion when discussing their experience in chambers.

D. Computer Use

I generally discourage students from taking class notes on laptops. However, I recognize the nearly ubiquitous nature of computers in today’s law school classroom. Laptops with Internet access also allow you to move more quickly through in-class research exercises. Students may therefore use laptop computers in the classroom, subject to restriction.

Students may not check, read, or send email during class. Students may not use the Internet for unapproved purposes during class. Students may not use their computers to work on other projects during class time. Students may not play games, on-line or otherwise, during class. Students are expected to be courteous to their fellow classmates. While your computer may provide a pleasant diversion for you, it can be quite distracting to others.

Should your laptop use make it difficult for you to follow the classroom discussion and participate fully, your grade will suffer. Should your laptop use become distracting to me or your
classmates, your laptop privileges will be suspended. Should it appear that the use of computers is negatively impacting the classroom environment, laptop privileges may be suspended for the entire class.

D. **Deadlines**

Because a lawyer’s ability to deliver work on time is critical, you will be held to strict deadlines. Due dates for all assignments will be noted on the syllabus, in class, or via TWEN. Assignments are due at the beginning of class on the due date. If you are absent from class you may either ask another student to hand in your completed assignment at the designed time, or you may deliver it to my office prior to the due date. You are responsible for proper submission of the assignment.

If your situation presents excusable, extraordinary circumstances, please discuss this with me as early as possible, preferably before the deadline. Computer problems, network problems, printer breakdowns, car breakdowns, traffic jams, and the like do not suffice to excuse late papers. You should anticipate potential transportation delays, make backup copies, and plan ahead for printer problems.

An unexcused failure to submit any assignment on time will be penalized ten percent for each 24-hour period the paper is late (including weekend days). For example, if a paper is due Monday at 6:00 p.m., your grade will drop from an A to a B if you turn the paper in between Monday at 6:01 p.m. and Tuesday at 6:00 p.m.

When papers are due in class, they are due at 6:00 according to the clock in the classroom. You are expected to write the time at which you turn in your paper on the top of your paper before turning it in.

Papers handed in after the end of class will be graded only after all timely submissions have been graded and returned.

Should you miss an in-class exercise or assignment, no make-up will be provided. You may, however, complete the in-class assignment in order to receive feedback.

**Preparation of Assignments:**

A. **Format**

All papers must be on 8½” x 11” white, non-erasable paper. Handwritten assignments will not be accepted. Electronic submissions will not be accepted unless specifically noted. All papers must be legible, neat, and professional in appearance. All text must be double-spaced, except docket information and block quotes. Docket information and style will be provided to you. Block quotes are single-spaced and indented from the right and left margins as explained in the *The Bluebook: A Uniform System of Citation*. Please staple all multi-paged assignments in the upper left-hand corner and number each page after the first at the bottom of the page.
Page limits are given in the directions for each assignment. Any paper exceeding the page limit will be penalized. Page limits are based on the following: (1) all page margins are 1 inch; (2) tabs are ½ inch; (3) the font is Times New Roman 12; and (4) all pages are left justified only.

B. The West Education Network

Course announcements will be posted on the West Education Network (TWEN), accessible at www.lawschool.westlaw.com. TWEN can send you an email alert whenever a posting has been made to the course TWEN site. I try to ask TWEN to send students an email to indicate a new posting. However, please check the TWEN site and your email regularly and frequently, as you will be responsible for all announcements, assignments, or materials posted there.

C. Citations and Plagiarism

Generally, plagiarism concerns are the same in legal writing as in other types of writing. Whenever you adopt the precise wording of a court’s decision or a secondary source, even if the passage involves only a description of the facts of a case, you must use proper quotation form. You also must indicate when a court or other source is, in turn, quoting or citing an earlier source.

Often, a better legal writing technique is to paraphrase a court’s holding or a law review author’s thoughts. In the process of paraphrasing, you will often find small groups of words within the paraphrase to be identical to the original material. It is usually not necessary to set off each group of words in quotation marks, but you must give credit to the source by providing a proper legal citation and appropriate signal. You should set off groups of words in quotation marks when the words represent a precisely articulated legal doctrine, the pivotal part of the source’s analysis, or a unique phrasing. Failure to properly cite all sources is academic misconduct.

I will occasionally post my own work or a previous student’s work to use as a guide. The same plagiarism rules apply.

D. Collaboration

You may not collaborate on any work in this course except as expressly authorized. Unauthorized collaboration constitutes academic misconduct.

Students learn from each other. Therefore, you are permitted and encouraged to discuss the governing principles of law and key issues relevant to your assignments, but you may not turn in another student’s work as your own, discuss how you will put your analysis on paper, or collectively outline or write your assignments. Your written product must result from your own individual efforts. Once you begin the writing process, you may not receive help with drafting, writing, or editing from anyone other than your professor. You may not read or comment on another student’s written work. Additionally, you may not ask family members or friends outside the law school to read or edit your work.
Learning how to conduct legal research efficiently and independently is a critical skill learned only through practice. Therefore, you may discuss with others the various resources described in your reading or in class and how to find the resources in the library. However, each student must prepare his or her own research materials. You may not simply divide a research problem and share answers. In researching your writing assignments, you may not obtain the fruits of another’s research unless you have done a substantial amount of the work on your own. If an assignment requires you to turn in copies of research materials, you must make a copy from the original source. You may not make a copy of another student’s work. You may, however, request help from the law librarians or their assistants. They may place materials on reserve for the entire class, and you may use these materials in your work.

You also may not use research or written materials previously prepared by another student or lawyer involving the same or similar issues as a problem on which you are working.

Help:

A. Professor Help

I do not expect you to suffer in silence. Please feel free to contact me for help. I am available in person or by email. I have regular office hours. You may also schedule a conference with me. Conferences will be provided for all students during the time in which you are preparing your final opinion. The better prepared you are for these meetings, the more assistance I am able to provide.

Please do not call me on the telephone for assistance. Instead, email me or see me in person.

B. Electronic Communications

I make every effort to answer emails within 24 hours. Emails sent on an evening or weekend will be answered when I return to the office. Short email questions will be given preference over long or multi-part emails. If your email involves multiple questions, please break out the questions in numbered or bulleted paragraphs. Be prepared to explain the steps you’ve taken to answer your question independently. You may attach a portion of an assignment in order to illustrate your question. I use a MacBook with Word 2004, and may have difficulty translating newer files or files from other word processing programs. You may wish to modify your document prior to emailing it.

If you email me with a question I believe will help the entire class, I will post the question and answer on the TWEN site. Questions will posted without the author’s name. You may also use the TWEN site to bounce questions and ideas off other class members, within the confines of the restrictions outlined here.

I do not communicate with students via text messages, social media, or other electronic communications apart from email.
Accommodations:

A. ADA Disclosure

“The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean for Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive, Room 162, or you can call (801) 581-5020. All written information in this course can be made available in alternative format with prior notification.”

B. Religious Observances

If a religious observance requires you to miss class or an assignment deadline, you must notify me advance and alternative arrangements will be made. Any work missed must be made up in a timely manner.

Schedule of Assignments:

Throughout the course, we will mix the theoretical and the practical. In addition to the broad topics listed below, we will also discuss the research and materials specific to Frye.

Because each class moves at a different pace, I will post reading assignments on a week-by-week basis. Please see the document titled, “Assignments for the First Week.”

Topics:

The Basics
Organization and jurisdiction of the courts, election and appointment of judges, the life of a case, and the types of motions and documents a clerk is likely to see.

Theoretical Concepts
The power of the courts, stare decisis, opinion writing, the paper storm, criticisms of opinions, the purpose of an opinion, the purpose of the clerk.

To Write or Not to Write
Precedential opinions, non-precedential opinions, per curium opinions, judgment orders, publication guidelines, and opinion readership.

The Anatomy of an Opinion
Introductory paragraphs, venue, jurisdiction, standards of review, summary of issues, facts, the discussion and legal reasoning, conclusions.

Practical Considerations
Paper files, electronic filing, legal standards, reading the record, the ethics of research, the special challenge of prisoner cases.
Sources of Law and Rules
  Federal Rules, state rules, local rules, and internal operating procedures.

How to make a Decision
  Types of cases, circuit splits, concurrences and dissents, statutory construction and interpretation, legislative history, public policy, weighing interests, adverse authority.

Special Issues for Trial Courts and Administrative Agencies

Writing Style

Citation Form