

Writing a Law School Paper

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I. Choosing a Thesis

A. What Is a Thesis and Where Do You Find One

A thesis has been defined as “an assertion supportable by arguments and evidence.”¹ In other words, the thesis is your “take” on an issue. A thesis should explain the issue and what you hope to write about the issue. You cannot merely say, for example, that “this paper addresses the failure or success of environmental impact statement (EIS) provisions.” Instead, a good thesis would state that EIS provisions are a failure as demonstrated by the evidence you have provided and then explain that the provisions are a failure for specific reasons.

Choosing a good thesis can be the most difficult part of writing a good paper. Above all, you want your paper to be original and interesting. You can choose an interesting topic by researching a particular area of law or a problem that is interesting to you. For example, if you are writing a paper for international environmental law and have an interest in global warming, page through INTERNATIONAL ENVIRONMENT REPORTER, a bi-weekly publication that describes recent happenings in international environmental law as well as foreign environmental law. Even a quick glance through this publication will reveal many international and domestic stories relating to global warming.

To ensure that your article is original, try to identify the gaps in the law, the failure of law to apply to certain circumstances, or gaps in the literature. Of course, you want your research to be useful and do not want to simply restate something that someone else has already written. You may want to ask your professor or a lawyer if he or she knows of any topics.

Another way to think about your thesis is to think about the purpose of your paper. The following list provides some ideas (taken almost *verbatim* from Jill J. Ramsfield, “Creating a Good Scholarly Paper,” 1 (1991)):

1. To synthesize a body of law not yet drawn together;
2. To criticize or support a recent opinion;
3. To expand on a field of knowledge by offering new direction for a specific area of law;
4. To dismiss another article by criticizing a theory or argument made by another scholar;
5. To foreshadow or predict developments in the law;
6. To suggest changes in the law; and
7. To make recommendations for action on a legal issue.

In addition, you should ensure that the scope is tailored for the appropriate audience when choosing a thesis.

¹ ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS 15 (1995).

B. Things to Avoid

This subsection is excerpted from Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247, §I(F) (1998), (<http://www.law.ucla.edu/faculty/volokh/writing.htm>).

1. *Articles that show there's a problem, but don't give a solution.* Giving a solution makes your article more novel, nonobvious, and useful, and generally turns it into a better professional calling card. You want to show people that you have a fine, creative legal mind that can solve problems as well as discover them.

2. *Case notes.* An article that describes a single case and then critiques it is likely to be fairly obvious, even if it's novel and useful; and it doesn't show off your skills at research and at tying together threads from different contexts. If you got your topic from a particular case, keep it; but don't focus on the *case*, focus on the *problem*, and bring to bear all the cases that deal with the problem.

3. *Articles that just explain what the law is.* These can be useful, and sometimes even novel, but they tend to be obvious -- the reader is likely to say "True, I didn't know this, but I could have figured it out if I just sat down and did a bit of research." Just fine if your reader is a busy lawyer looking for a good summary of the law; not so good if your audience is a professor, a law review editor, or a judge looking for a law clerk.

4. *Responses to other people's works.* Framing your article as a response to Professor Smith's article will limit your readership to people who've already read Smith's article, and will tend to pigeonhole you (fairly or not) as a reactive thinker rather than a creative one. If your piece was stimulated by your disagreement with Smith, no problem -- just come up with your own claim and prove it, while demolishing Smith's arguments in the process. By all means cite Smith in the footnotes; Smith's opposition will help show that your claim is important and non-obvious. But don't let Smith be the main figure in your story.

5. *Excessive mushiness.* Be willing to take a middle path, but beware of proposals that are so middle-of-the-road that they are indeterminate. For instance, if you're arguing that single-sex educational programs should neither be categorically legal nor categorically illegal, it might be a mistake to claim that such programs should therefore be legal if they're "reasonable, fair, and promote the cause of justice." Such a test means only what a judge wants it to mean.

Few legal tests can produce mathematical certainty, but a test should be rigorous enough to give at least some guidance to decisionmakers. Three tips for making tests clearer:

a. If possible, tie your test to an existing body of doctrine, by using terms of art that have already been elaborated by prior cases.

b. Whenever you use terms such as “reasonable” or “fair,” ask yourself what you think defines “reasonableness” or “fairness” in this particular context.

c. When you want to counsel “balancing,” or urge courts to consider the “totality of the circumstances,” ask yourself exactly what you mean. What should people look for when they’re considering all the circumstances? How should they balance the various factors you identify? Making your recommendation more specific will probably also make it more credible.

Thus, “single-sex educational programs should be legal if they’re narrowly tailored to an educational approach that’s been shown effective in controlled studies” is probably a more defensible claim than “single-sex educational programs should be legal if they’re reasonable.” The more specific test incorporates the concept of “narrow tailoring” from Equal Protection Clause caselaw, caselaw which has given the concept some substance. And instead of an abstract appeal to “reasonableness,” the test refers to one particular kind of reasonableness -- educational effectiveness -- that seems to be particularly apt for decisions about education. Still not a model of predictability, but better than just a “reasonableness” standard.

II. Some Basics of a Law School Paper

Every paper needs an introduction, main body, and a conclusion. This comment may sound condescending, but I have read enough papers to know it is worth making.

A. Purposes of an Introduction (or a Précis)

An introduction must accomplish several goals in 5 to 7 paragraphs. First, it must get the reader’s attention, because many people will decide to continue reading based on the introduction. Second, it must explain why the issue is important. To accomplish these first two goals, use an example that demonstrates the problem. Do not merely say, “Climate change is bad.” Give an example, such as, “Tuvalu has lost 20% of its land mass in the last ten years as rising seas encroach on fishing communities and eliminate sandy beaches.” Then explain that anthropogenic sources of greenhouse gases appear to be the cause and that the most recent agreement to protect the earth from climate change fails to address quickly enough the causes of climate change.

Third, the introduction must tell the reader what your paper in particular will contribute to the issue.² This third point is your thesis. You need to describe the issue that you will address and how you will address it. Demonstrate your thesis’ originality and importance, as well as the manner in which you address the issue. Of great importance, provide the reader with enough specific information to understand the issue and your paper’s contribution to the issue. Many student authors fear repetition and fail to include key information in the introduction. For example, one recent introduction criticized the international regulation of pesticides and

² Michael Blumm, “Précis -- What Is It?” at 1 (undated).

specifically criticized two agreements relating to international pesticide regulation. Yet, the introduction never explained the provisions of those two agreements and the reasons for their ineffectiveness.

To be sure, most authors struggle with the amount of material to include in the introduction. After all, you do not want to write your entire paper in the introduction. You must remember, however, to write briefly and succinctly about your issue while at the same time providing the information that the reader needs to understand your issue and your thesis.

In summary, an introduction should do the following:³

1. State the problem/issue;
2. Describe why it is important;
3. Describe what your paper will contribute to the discussion (state your thesis);
4. Provide a road map to your paper; and
5. State your conclusion.

The introduction/précis must also be cited properly.

Professor Mike Blumm describes an approach to writing an introduction that I think is worth considering. He believes that the first paragraph or two should be used to get the reader's attention and introduce the topic. In these paragraphs, you want the reader to know that the topic is an important one. By the third paragraph, you need to describe what your paper will contribute to the topic and explain the theme of the paper. The final paragraph of the introduction should outline a section-by-section overview of the paper. One sentence per section is sufficient with the final sentence stating your conclusion.⁴

A précis is, in essence, a draft introduction to your paper. You must submit a précis to me on a mutually agreed date. The précis provides me with an opportunity early in the semester to review your writing and the organization of your paper in prose form. It also requires you to research your issue thoroughly at the beginning of the semester rather than later.

1. An Example of an Ineffective Introduction

Note: I have also included my comments in boldface.

Overfishing represents one of the largest threats to the biological health of the world's oceans.^{FN1} Global marine fisheries harvest peaked in 1989 at 86 million metric tons, and by 1992, the catch had fallen to only 5 million metric tons.^{FN2} Recent catch statistics suggest that commercially exploited fish stocks have plummeted to only a fraction of their sizes of less than 20 years ago.^{FN3} The swordfish stock, which lies primarily off the western coast of South America (hereinafter Chilean stock), has exhibited a similar pattern of decline, with

³ *Id.*

⁴ *Id.*

swordfish landings peaking at 7,300 metric tons in 1991, but decreasing sharply by 900-1,700 metric per year between 1991 and 1996.^{FN4} The rapid decline of swordfish catch, along a sharp decrease in the average size and length of Chilean swordfish, prompted Chile to begin enacting conservation measures for these fish with the Chilean exclusive economic zone (EEZ).^{FN5}

Comment: This first paragraph is very good. It starts with general fish statistics and moves quickly to swordfish, the topic of this paper. Notice also the excellent use of footnotes.

However, the Chilean swordfish stock, like so many species, does not recognize national boundaries. The stock migrates throughout the territorial waters of Chile's neighbors, as well the deep, offshore waters beyond the 200-mile EEZs, in the high seas.^{FN6} Chile became concerned that the unregulated high seas fishing efforts of Spanish longliners undermined the swordfish conservation measures they enacted within their jurisdiction. Therefore, Chile began to prohibit Spanish vessels from using Chilean ports for transshipment of their swordfish catch because the Spanish refuse to recognize Chilean minimum conservation measures on the high seas.^{FN7} Spain claims that Chile does not have the authority to require Spain to comply with Chilean regulations beyond the boundaries of the Chilean EEZ. Accordingly, at the request of Spain, the European Communities (EC) has requested the matter be resolved by a panel of World Trade Organization's (WTO) Dispute Settlement Body, claiming that Chile's denial of port access violates the General Agreement on Tariffs and Trade (GATT).^{FN8}

Comment: This second paragraph moves quickly and effectively to the legal dispute. It needs, however, more information about the specific dispute. For example, why does Spain claim that Chile cannot require Spain to comply with Chilean regulations? This is central to the dispute yet we have no indication what Chilean regulations are at issue or the legal basis for Spain's claims. Instead, the author has simply provided us with an unsupported assertion.

Nonetheless, the paragraph ends strongly by stating that this dispute has led to a challenge within the WTO. In doing so, the author has nicely brought the factual situation to a concrete legal dispute.

Notice, however, that the author loses focus in the next paragraph by describing general trade and environment concerns. Instead, the author should have discussed the specific substantive questions about the applicability of the GATT/WTO raised by the swordfish dispute.

Academics and environmentalists frequently question the suitability of WTO panels for the resolution of trade and environment disputes.^{FN9} Critics of the WTO fear that the judges that review the cases interpret relevant international

environmental law agreements extremely narrowly, concerning themselves more with liberalizing trade restrictions, and not giving proper consideration to the notion that trade restrictions might be the most effective means of addressing an environmental problem.^{FN10} Interestingly, the convoluted factual scenario Chilean Swordfish dispute provides an excellent opportunity to flesh out many of the concepts that are asserted as arguments against WTO jurisdiction in cases that turn primarily on the proper implementation of international environmental laws.

Comment: This last sentence is typical—and ineffective. The author tells us that the factual scenario allows us to discuss many interesting jurisdictional questions. Yet, the author does not tell us why the jurisdictional questions are relevant or interesting or which jurisdictional issues are involved. This paragraph, or perhaps the next, should have provided the basis for understanding the jurisdictional dispute, not merely told us that one exists. An effective précis/introduction must give the reader the information to understand the issue and your thesis. The précis does not function to introduce your topic.

This Article examines the Chilean swordfish dispute and the number of theories for destroying WTO jurisdiction over the dispute, or for contradicting a WTO decision which unacceptably erodes environmental safeguards. The arguments range in focus from an analysis that examines whether the GATT actually contemplates mandatory port access for foreign fishing vessels fishing vessels to possibility that the United Nations Convention on the Law of a the Sea^{FN11} (UNCLOS) should exercise simultaneous jurisdiction over international trade and environment disputes, with the possibility that UNCLOS and WTO might issue inconsistent, yet equally binding decisions.

Comment: This paragraph is also typical of many papers. It introduces a number of concepts and ideas, but fails to describe the context for them. For example, the author indicates that Chile's ban on port access may violate the GATT, but fails to explain why that might be. The author needs to tell the reader that the GATT regulates access to ports under certain circumstances. Then, the author should note that UNCLOS also regulates port access—and herein lies the dispute, because both the WTO and UNCLOS have dispute resolution mechanisms.

A careful analysis of these propositions suggest that the Chilean swordfish dispute, along with many other international disputes in which environmental issues predominate, may be able to avoid a negative ruling by a WTO panel. First, limited evidence suggests that countries adopted a definition of trade and port access under the GATT Article V which, because of the international agreements from which this Article borrows language specifically exclude fishing vessels from their otherwise provisions of mandatory port access.^{FN12} Second, even if a WTO panel finds potential jurisdiction under the GATT, in this instance, an

application of the rules of *lex specialis*^{FN13} and *lex posterior*^{FN14} could ensure that environmental concerns do not play a secondary role to free trade. Finally, many international disputes of an environmental nature can find a jurisdictional hook under UNCLOS or the International Court of Justice (ICJ). When compared with the WTO, UNCLOS and the ICJ provide a better forum for resolving disputes that require interpretation of both GATT and international environmental law.^{FN15}

Comment: You can see that the author is trying to define a thesis here. Yes, we have a dispute, but it is capable of resolution. However, the author fails to define the key concepts and issues for resolving the dispute and fails to tell the reader how those concepts might resolve the dispute. As a result, the reader sees a list of possibilities—*lex specialis*, *lex posterior*, the ICJ, and UNCLOS—without having any idea how they resolve the dispute. This is a very common mistake: introducing concepts but failing to explain their relevance.

Part II of this paper provides a brief background of the Chilean swordfish dispute, and the international law that may be relevant to its eventual adjudication. Part III examines the scope of the GATT Article V as it relates to the regulation of fishing vessels and port access. Part IV assumes that Article V does pertain to fishing vessels, and then investigates how Article V might operate in light of the rules of *lex posterior* and *lex specialis*, when pitted against contradictory provisions in UNCLOS and the 1995 Straddling Stocks Agreement.^{FN16} This section also examines how the ICJ could play a role in applying these rules to reconcile the GATT with conflicting environmental agreements. Part V examines the choice of forum between UNCLOS and the WTO tribunals, and the relative competence of each to hear and adjudicate the various issues raised by the Chilean swordfish dispute. Part VI explores the possible result of adjudicating this dispute in both WTO and UNCLOS tribunal concurrently. The Article concludes in Part VII, drawing conclusions from these analyses, and hypothesizing about their implications, and the future of international trade and environment disputes in general.

Comment: This road map section ably provides the reader with the information needed to find relevant sections of the paper. However, it also introduces entirely new laws and fora, such as the Straddling Stocks Agreement and ICJ. You *cannot* introduce new ideas here. If something is part of your solution, you must describe that in the introduction.

2. An Example of an Effective Introduction

Note: I have omitted the footnotes from the excerpt below. Your introduction and précis must be well-cited. I have also included my comments in boldface.

Mike C. Blumm and Stephen R. Brown, *Pluralism and the Environment: The Role of Comment Agencies in NEPA Litigation*, 14 HARV. ENVTL. L. REV. 277, 277-283 (1990)

The nation's basic environmental charter, the National Environmental Policy Act ("NEPA"), requires federal agencies to evaluate the effects of their proposals, consider alternative courses of action, and subject their analyses to public review and comment. Once heralded as the environment's Magna Carta, twenty years after its enactment, some see NEPA as a statute in decline, largely because the Supreme Court thinks it requires only federal paperwork. A number of studies indicate that agencies can evade NEPA's spirit and letter with impunity.

Comment: Notice that the authors briefly describe NEPA, even though it is a well-known statute. In addition, notice how the authors establish some interest—by noting that the “Magna Carta” may be in decline and agencies may easily evade its spirit and its requirements.

Others contend that, even though NEPA does not authorize courts to reverse reasonable agency decisions, NEPA's procedures—which require agencies to think intelligently about the environmental effects of their actions and to share their thinking with the public and other agencies—have had a profound effect on the federal bureaucracy. Despite repeated Supreme Court declarations that the statute fails to give courts substantive standards with which to review agency actions, lower courts continue to enjoin agency actions that violate NEPA's procedural requirements. Recent projects halted for NEPA violations include federal land management plans, dams, highways, and port developments.

Comment: In the second paragraph, the authors provide an opposing view—that NEPA's procedural requirements are having a substantive impact. To support their claim, they note that several types of projects have been halted for NEPA violations.

Thus, two decades after Earth Day, NEPA seems to be a statute with two lives: part “paper tiger,” part “procedural straightjacket”; apparently too vague to give courts authority to reverse agency actions for conflicting with its policies, but still capable of inducing court injunctions when agencies fail to satisfy its procedures. This process-laden approach to environmental policymaking has both critics and defenders, but both seem to agree that what reviewing courts think NEPA requires of agencies is not predictable. The statute's opaque, constitution-like language seems to give courts enough latitude to subject NEPA documents to either the hardest of looks or the softest of glances. For example, whether an agency has

reasonably concluded that a proposal has “no significant environmental impacts,” or whether it has adequately considered “cumulative impacts” sometimes appears to depend more on the nature of the judge, or the skills of the advocates, than on the nature of the agency proposal or the surrounding environmental context.

Comment: In this paragraph, the authors summarize the conflict with lively phrases (“paper tiger” and “procedural straightjacket”) and then suggest a possible reason for the opposing views—NEPA has constitution-like language that allows judges great latitude. Note again that the authors provide examples to support their assertion.

The notion that NEPA cases may be a function of judicial whim is unfortunate for several reasons. First, it invites criticism that NEPA induces unwarranted judicial intrusion into matters that should be left to agency discretion, a view the Supreme Court apparently holds. However, agency administrators themselves cite NEPA’s many contributions to reasoned decisionmaking, improvements that were highly unlikely without judicial oversight. Second, the charge that courts use NEPA as a device to reverse agency proposals with which they subjectively disagree mischaracterizes as judicial overreaching what is actually judicial recognition of the congressional goal of elevating the role of agencies with environmental expertise within the federal bureaucracy, a NEPA objective that, while not entirely overlooked, has not received enough attention. Third, failure to recognize the critical role played by comment agencies in the NEPA process makes it more difficult for lead agencies to comply with NEPA in some cases and invites fruitless litigation in others. The net result is to make NEPA compliance and litigation appear haphazard, when in fact it is often predictable.

Comment: In this fourth paragraph, the authors begin to move toward their thesis. They say that the notion of judicial whim is unfortunate. They then provide three reasons why that is unfortunate.

This Article examines NEPA and its contribution to informed federal decisionmaking by concentrating on the judicial sensitivity to the concerns raised by agencies with environmental expertise during the period for public and interagency comment. On the basis of our study of appellate decisions handed down during the 1980’s in which the court made mention of agency comments, we conclude that courts are very likely to reach conclusions about NEPA compliance that are consistent with the position advanced by the comment agency. Where agencies with environmental expertise raised serious questions about the merits of particular projects or about the quality of environmental analysis of those projects, courts have readily found NEPA violations. Similarly, where the agency comments reflected no serious opposition or supported a project, courts generally found NEPA compliance, despite the opposition of one interest group or another.

Comment: Now we get to the thesis. After establishing the notion of judicial whim, and explaining why that notion is unfortunate, the authors specifically assert that judges actually view the comments of agencies with environmental expertise. When these agencies criticize a project, courts are likely to find NEPA violations. So, in fact, courts are not ruling on whim.

Oddly, many students do a great job of introducing the topic but never state their thesis. Many now jump to the last paragraph which provides the roadmap to the paper. I can't explain why this happens. But, I mention it so that you can avoid this mistake.

The case law of its second decade suggests that courts are enforcing a pluralistic model of NEPA. This vision of NEPA requires lead agencies to address the concerns of comment agencies with environmental expertise-- especially the Environmental Protection Agency ("EPA") and federal and state fish and wildlife agencies--with specificity. Our review of the case law leads us to conclude that lead agencies, comment agencies, and members of the public have undervalued the role of the comment process in NEPA litigation. Recognition of the importance of agency comments in helping courts determine NEPA compliance may induce lead agencies to pay more attention to agency comments and comment agencies to devote increased resources to commenting on lead agency proposals.

Comment: In this sixth paragraph, the authors further develop their thesis: not only are the courts taking into account the comments of agencies with environmental expertise, the courts are enforcing a pluralistic model of NEPA. Then they tell us why this is important: agencies and the public undervalue the comment process and thus fail to appreciate its affect on the courts.

Part II of the Article explains the NEPA statutory and regulatory framework for interagency comments. Part III examines cases in which adverse agency comments helped to produce NEPA violations--both situations in which the lead agency erroneously concluded that no Environmental Impact Statement ("EIS") was necessary and where the EIS proved to be inadequate. Part IV discusses cases where the comment agency's support coincided with a judicial conclusion of NEPA compliance. Part V evaluates some cases which do not conform to our thesis that courts determine NEPA compliance largely on the basis of comments from agencies with environmental expertise. We claim these are exceptional cases, indicating that the pluralistic model this Article describes is only a powerful aid in explaining the outcome of NEPA case law. The Article concludes, in Part VI, with some suggestions about what the pluralistic model means for lead agencies, comment agencies, the public, and the future of NEPA litigation.

Comment: The last paragraph provides the roadmap for the paper. This

useful paragraph helps the reader see how the arguments will develop. It also forces the writer to establish order to the paper. Lastly, it helps readers identify which sections they may want to read. For example, someone familiar with NEPA can skip Section II and move directly to Section III.

B. The Body of Your Paper

The body of your paper should include any relevant background facts, background law, and then your analysis. The remainder of this section is excerpted from Eugene Volokh, *Writing a Student Article*, 48 J. LEGAL EDUC. 247, §§II(C)-(D) (1998) (<http://www.law.ucla.edu/faculty/volokh/writing.htm>). I provide some comments in **boldface** type.

1. Explaining Background Facts and Legal Doctrines

The purpose of your article is to state and prove your claim. That's where the action is, and you should be excited and impatient about getting there.

Before you get there, you'll probably have to describe some relevant background aspects of the law. If you want to write about why certain kinds of zoning laws violate the Takings Clause, you'll have to briefly describe these laws. You might also want to give a broad explanation of the general Takings Clause jurisprudence.

The key words here, though, are *briefly* and *background*. Too many student articles spend 90% of their time summarizing the law and 10% explaining and proving their claims. Doing this is very tempting: Summarizing the law is the easier task, and when you've spent many weeks doing research, it's emotionally hard to boil the result down to just a few pages. Resist the temptation. Your claim and your proof are what you're adding to the field of knowledge; your achievement will be measured largely by this value added. You can't prove your claim without explaining the background facts and the background doctrine, but do this as tersely as possible.

Things to avoid, besides excessive detail:

1. Summaries of the various precedents in the doctrinal line. Your job is to synthesize the precedents, not to describe each one. Briefly state the relevant rule, in whatever detail is needed; cite your authorities in the footnotes. Do not say "In *A v. B*, this-and-such happened. The Court ruled for A. Then in *C v. D*, the facts were this-and-such. The Court ruled for D. Then in *E v. F . . .*" No-one wants to slog through that.

2. Mini-treatises that go beyond what's needed to set the stage for your proof. All you need to do in this section is to give the reader the necessary legal and factual

framework; you don't need to describe all the law and all the facts that you'll later use, only that which is helpful to set out up front. You'll have plenty of time to go into more detail later, as you set out your proof.

Comment: These two points both relate to using only the information that is relevant to your thesis. Too often, the author provides too much background information that simply is not relevant to the thesis. As you are writing, ask yourself, "How does this information help the reader understand my topic and thesis?" If it doesn't, then you shouldn't include it in your paper. I like to analogize the thesis to a buoy in the middle of the ocean. Because an ocean of information exists, you need to choose selectively only that information that helps you get to the buoy.

2. The Proof of Your Claim

This is where you can shine, by showing that your claim is correct, and that it's the best way of solving the problem you've identified. Some tips:

1. *Prove your point on both the doctrinal and the policy levels.* Don't just show that your proposal fits the case law; also persuade your reader that it's practically and morally sound. Authors often come up with a neat syllogism that supposedly proves that some law is unconstitutional, or that it should be interpreted this way or that -- and that leaves many readers unpersuaded. We all know how courts can dance around syllogistically correct claims. To the extent possible, show that your proposal makes practical sense as well as logical sense, that it fits with the policy as well as with the doctrine.

2. *Be concrete.* Illustrate your theoretical arguments with concrete examples, drawn from real cases or from realistic hypos. This will make your point clearer to your reader; it will prove to the reader that you have a point, and aren't just playing a theoretical shell game; and it will often make your point clearer to yourself, or require you to rethink your point.

3. *Focus on your arguments, not the other side's.* Confront all the counter-arguments, but take the offensive. Don't write "Some people say that this law fits within the captive audience doctrine, and this might at first seem plausible. Let me quote exactly what they say: But on further reading it turns out that this isn't so, because" Instead, write "The law can't be justified under the captive audience doctrine, because" Cite your adversaries and rebut their assertions, but don't let them play center stage in your discussion.

Comment: I want to emphasize this point because following this advice makes your writing much sharper, clearer, and persuasive. Arguments become confused and confusing when the following formula is used: Bob said this and here is why Bob is wrong. Charlie said that and here is why Charlie

is wrong.” Remember, you can always use Bob and Charlie’s names in the footnotes.

4. *Turn the problems in your argument to your advantage.* Logical and practical difficulties with your argument should be embraced, not swept under the rug.

a. To begin with, confronting the difficulties can turn a banal, straightforward argument into one that’s more nuanced and interesting. Say that the leading precedent in the field doesn’t support your claim as squarely as you’d like. Don’t just ignore this; explain how some other precedents or policy arguments fill the gap.

For instance, say your argument rests partly on the claim that public single-sex schools are unconstitutional. You could just cite *Mississippi University for Women v. Hogan* and *United States v. Virginia* for this proposition, and many people do. But these cases don’t actually stand for quite this broad a principle; if you cite them for this principle, the reader will be unpersuaded, and you’ll also have lost your chance to show off your reasoning skills.

Rather, explain why the broader policies embodied in the Court’s equal protection jurisprudence fill the gap between the precedents and your proposed rule; or explain why, even if there’s a gap remaining, your particular case is factually quite close to the situation in the precedents. You shine by showing how you deal with the tough questions, not by pretending that the tough questions are easy.

b. Second, the difficulties can lead you to modify your claim to something more moderate and sophisticated. Say your argument proves your claim in most cases, but not in some other cases; for instance, say that it persuasively shows that single-sex schools are usually unconstitutional, but that it doesn’t really work for programs specially aimed at students who have been sexually abused or who are mentally disturbed. Maybe you should change your claim from “single-sex public education is unconstitutional” to “single-sex public education is generally unconstitutional, but single-sex education of certain classes of hard-to-teach children is constitutional.” This may be a sounder claim, and it’s also more likely to be novel and nonobvious.

c. Third, the difficulties can require you to acknowledge some uncertainty, and to prove your argument as best you can in the face of that uncertainty. This can actually make your work look more sensible and worldly. After all, little in our lives and in the law is logically proven. We must often make the best guess we can, given gaps in the evidence. It’s no great loss to admit this, assuming you have enough evidence to make your point plausible, even if not formally proven.

Say the cases hold only that public single-sex education is unconstitutional unless there’s strong evidence that such education is very valuable; and say that people

disagree about the evidence. Use the evidence on your side as best you can, acknowledge that there's disagreement, and make the best practical and logical argument you can for your point. (For instance, you might argue that, in the face of the disagreement, courts should err on the side of nondiscrimination and thus coeducation.)

5. Look for interesting implications and twists. Sometimes, as you explain your claim, you'll see unexpected applications for it, or interesting interactions with other doctrines or other theories. If they wouldn't distract too much from your main point, mention them. They can add subtlety and complexity to your overall argument, and can better show its significance.

For example, you might find that your substantive point has procedural implications. Say you're arguing that the First Amendment shouldn't protect speech that reveals certain facts about someone's sex life. Can you say something interesting about the related procedural free speech rules? For instance, should punitive damages be restricted in such cases, by analogy to the rule in certain libel cases? Should such speech lead only to damage awards, or should courts also be allowed to enjoin the speech?

Or you might find that in some contexts your thesis works out in unexpected ways. For instance, does your broad point about revealing facts have particular implications for publication of photographs, or of tape recordings? Even if the legal rule is the same, will it affect people's behavior differently in different situations?

Mentioning these kinds of implications can make your point more novel, nonobvious, and useful. More broadly, it can make your article seem richer and more sophisticated -- a thorough explanation of many facets of the problem, rather than just one narrow claim. (Of course, at a certain point you'll need to stop working out all the implications, or else your article will become too long.)

C. The Conclusion

A conclusion restates your thesis, summarizes your major points, and reminds the reader why your issue and thesis is important. The conclusion does not include your "recommendations" or solution section. Your recommendations and solution should constitute a separate section.

III. Effective Argumentation

Effective argumentation requires several skills. Many of these comments seem obvious, but once you get knee deep in your research, many things become less than obvious.

First, your sentences and paragraphs must be structured coherently and well. Second, your paper must be well organized. These two points require that each succeeding sentence and each

succeeding paragraph relate to each other. Third, write simply, write simply, write simply.⁵

A. Sentence Structure

You can improve your sentence structure by writing in the active voice and using active verbs. The use of the active voice provides your sentence with an “actor”—someone who is doing something. Passive voice causes problems in legal writing for many reasons. First, passive voice sentences often exclude the subject, as in this sentence: “Equal protection was the first argument made.” This sentence fails to tell us who made the argument and for what purpose. An active voice sentence would clearly tell us: “Plaintiff first argued that the equal protection clause required hotels to accommodate persons of all races.” Yes, the passive voice sentence could have included that information, but the language will be less direct and more awkward: “Equal protection was the first argument made by the plaintiffs for the purpose of showing that hotels must accommodate persons of all races.”

In addition, the passive voice can lead to ambiguity. For example, the text of the World Trade Organization’s Agreement to Technical Barriers to Trade offers an example. It states:

Members shall use [international standards] or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of a legitimate objective.

The text clearly says that Members—the countries that have signed the agreement—must use international standards. The text, however, fails to use active voice in describing the exceptions. As a result, the text does not identify who makes a determination as to whether the international standard is ineffective or inappropriate. Can the Member make a unilateral determination or does a dispute resolution panel make that determination?

The failure to use active verbs also will make your writing less clear and less interesting as well. Avoid the verb “to be.” The verb “to be” is not active; it merely states a condition of existence. Its use makes sentences less forceful and less interesting. In addition, the use of “to be” often accompanies indefinite pronouns and the passive voice—two things you want to eliminate from your writing. This paper describes passive voice and the use of “to be” in more detail in Section IV.

B. Topic Sentences

Think of your topic sentences as mini-theses: something you will prove or disprove in the paragraph. Don’t ever start a paragraph with the following type of sentence: “This section addresses the topic of state responsibility.” This sentence really doesn’t tell the reader much and certainly does not qualify as a strong topic sentence. It has stated no assertion which you want to prove or disprove. In addition, if your header for the section is “State Responsibility,” then the sentence is completely redundant.

⁵ *Id.*

Instead, start with a topic sentence such as: “The concept of state responsibility fails to compensate victims of significant harm due to transboundary pollution.” Now you have a topic sentence that engages the reader and one that you can prove.

C. Paragraph Structure

Each paragraph has a beginning, middle, and end. Throughout, a paragraph “must exhibit unity and cohesion, that is, the ideas within each paragraph must not only bear on the idea expressed in the topic sentence (have unity), they must be meaningfully related to each other (show cohesion).”⁶

The beginning, the first sentence, should be a strong topic sentence that tells the reader what the paragraph is about. Then, in the middle, you support your topic sentence. This includes information to prove or disprove the assertion made in the topic sentence. Then, you end the paragraph with some kind of conclusion. Or, the last sentence can be a transition to the next paragraph which continues to support or contradict the assertion made in the preceding paragraph.

Note the following two sentences:

“The goals of international trade are almost exclusively economic. In the recent past, a series of global problems that are harming the environment and human life have come to light.”

The two ideas are totally unrelated and the reader (me) has no idea why the writer thought the second sentence should follow the first sentence. The two sentences lack both unity and cohesion.

Normally, your first sentence introduces a topic or main idea—a topic sentence. The next two or three sentences must relate to that idea, either by supporting it, opposing it, or contrasting it with other ideas.

Now let’s look at this paragraph:

In essence, the Biodiversity Convention could create synergy among biodiversity-related conventions and institutions. It would ensure that the proper institutions address particular issues. It would harmonize provisions, such as reporting provisions, that are common to many biodiversity-related conventions. And it would address issues not covered by existing conventions. In doing so, it would bring some degree of order to the large number of biodiversity-related conventions, reduce the redundancies in issue jurisdiction, and assure a much more efficient use of scarce funding for international environmental conventions.⁷

⁶ ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS 79 (1995).

⁷ Chris Wold, *The Futility, Utility, and Future of the Biodiversity Convention*, 9 COL. J. INT’L. ENVTL. L. & POL’Y 1,

The first sentence, the topic sentence, makes an assertion—the Biodiversity Convention can create synergy among various conventions. Then, the next three sentences provide specific examples of how the Biodiversity Convention can create that synergy. Then the last sentence concludes by stating why such synergy is important. Of importance, the conclusion relates to the supporting sentences and the topic sentence.

Prof. Amy Bushaw provides another example of good paragraph structure:

Worker control might serve as a check on managers, particularly in the absence of other effective controls. The potential of worker control in this regard, however, should not be overrated. Workers may have an information advantage over widely-dispersed owners, insofar as the workers are likely to be familiar with the operations of the firm. They may be just as unversed as the owners, however, in the skills needed to use this information to effectively monitor the firm. And there is no reason to believe that workers will be any less likely than managers to use control power given to them to the detriment of owners. These factors suggest workers should have a voice in the control of the firm, but they do not support workers being given actual decision-making power when it comes to firm control.⁸

Again, the first sentence makes an assertion: worker control can provide a check on managers. Then, the second sentence says, well, worker control might not be universally good. The next sentences provide specific reasons why worker control might not be beneficial, despite some advantages. Then Prof. Bushaw concludes the advantages suggest that workers should have a voice in, but not control over, the decision-making process.

D. Introducing Concepts and Developing Your Thesis

A writer must introduce and develop key topics. You cannot assume the reader knows much. Consider the following first paragraph of an introduction. I have numbered the sentences for explanation:

(1) The goals of international trade are almost exclusively economic. (2) In the recent past, a series of global problems that are harming the environment and human life have come to light. (3) These concerns gained momentum and soon several states and corporate pioneers developed comprehensive, environmentally-oriented systems of management. (4) The Europeans addressed the need to harmonize regulatory environmental standards in order to facilitate intra-European trade. (5) Although some competing nations view the ISO standard as a non-tariff barrier designed by the European industry, the environmental impact has proven quite positive. (6) The necessity for a global system of international

3 (1998).

⁸ Amy C. Bushaw, *The Benefits of Worker Participation in Firm Governance: The Polish Experience*, 3 PARKER SCHOOL J. EAST EUR. L. 371, 401 (1996).

environmental standards to facilitate international trade appears imminent but implementation of a global standard raises many issues.

As written, the first two sentences do not relate. Sentences (2) and (3) relate better, but in sentence (3) the writer does not explain “environmentally-oriented systems of management.” Sentence (4) now discusses what appears to be an entirely new subject: environmental standards. The writer apparently wants to equate environmental management systems with environmental standards. The writer must make these connections for the reader. Then, in Sentence (5), the writer introduces the ISO. But the reader has no idea what the ISO is or even what the letters mean (remember, always write the complete name of any law, institution, or anything else followed by the abbreviation; then you can use the abbreviation). In addition, the reader has no idea what a “non-tariff barrier” is. The writer must tell the reader why the ISO is important and what it does. Once you do that, the reader has the context to understand why the ISO is important for environmental standards and management systems. By explaining the role of the ISO (the ISO develops international standards) the last sentence makes sense.

To rewrite the paragraph, I would begin by making the first sentence relate to the others:

(1) Although international trade focuses on economic efficiency, it has begun to consider environmental efficiency relevant as well. (2) As environmental concerns gained momentum, nations and corporate pioneers have developed comprehensive environmental management systems (EMS) to increase the company’s environmental efficiency of its production and process methods and to evaluate the company’s environmental performance. (3) At the regional level, the European Union (EU) has begun harmonizing EMS standards to facilitate intra-European trade. (4) At the same time, the International Standards Organization (the ISO) has prepared international EMS standards.

(5) Although most agree that EMS standards are having a positive environmental impact, because most companies had no system to gauge their environmental performance prior to the EU and ISO EMS standards, several implementation issues exist. (6) Some concern exists that the ISO’s standards may conflict with the EU’s standards, and that the ISO standards would prevail over the EU standards. (7) Some fear a loss of sovereignty because the international standards might prevail over domestic standards. (8) In addition, the EU provides competitive advantages to companies that meet their EMS standards, a situation that benefits EU corporations, but which foreign companies believe creates a barrier to the importation of their products in violation of free trade rules. (9) Thus, while the environmental necessity for international EMS standards appears self-evident, these important implementation issues must be resolved.

By adding a few words, the reader now understands the relation between trade and EMS. The reader now knows enough, although not all, information about EMS to understand the context. More information on EMS will obviously be discussed in a separate section. Remember, this is/was an introduction. In addition, a relation between the EU standards and the ISO standards

appears—they conflict. In addition, the reader now sees the problems associated with potentially conflicting regional and international standards. Last, we learn that, despite the environmental advantages of harmonized EMS standards, the problems just mentioned must be resolved.

IV. Transitions and Introductory Paragraphs

In any kind of writing that you do, your goal is to convey information clearly and concisely. Transitions help you achieve this goal “by establishing logical connections between sentences, paragraphs, and sections of your papers.”⁹ Transitions act as bridges from one paragraph to the next or one thought to the next thought.¹⁰ As a result, they help readers understand how your paragraphs and sections “work together, reference one another, and build to a larger point.”¹¹

However, you must think carefully about which transition word or clause you use to ensure that you provide the proper logical connection. For example, you may want to signal to the reader that you are about to describe a similar example (“Similarly, ...”) or that you are about to rebut the claims made in a previous paragraph (“In contrast ...” or “Despite these claims ...”).

You need to use transitions often and effectively. Transitions can be single words or phrases, such as “nonetheless”, “in addition”, “conversely”, or “subsequently.” Other transitions mark your arguments, such as “first”, “second”, and “third.” Transitions can also be sentences and, in particular, topic sentences. Consider the following two paragraphs by Prof. Paula Abrams:¹²

Numerous other countries entered substantive reservations derived from conflicts between the rights protected in the Women’s Convention and their cultural norms. Malawi, for example, entered a reservation stating that, “owing to the deep-rooted nature of some traditional customs and practices’ the Government did not, ‘for the time being, consider itself bound by such of the provisions of the Convention as require immediate eradication of such traditional customs and practices. South Korea entered numerous reservations to women’s rights within the family based on traditional practices.

These reservations are incompatible with the object and purpose of the Convention. Where cultural and religious norms perpetuate systematic discrimination against women, reservations based on these norms undermine principles of gender equality required by the Women’s Convention. Reliance on religious and cultural traditions to deny human rights to women is profoundly troubling dynamic because it offers no expectation or opportunity for enhancement of women’s status. more importantly, international acquiescence validates the moral authority of traditions inconsistent with the rights of women.

⁹ UNC, The Writing Center, Transitions, <http://writingcenter.unc.edu/handouts/transitions/>.

¹⁰ Purdue University, Welcome to the Purdue OWL, Writing Transitions, <https://owl.english.purdue.edu/owl/owlprint/574/>.

¹¹ Purdue University, Online Writing Lab, Writing Transitions, <https://owl.english.purdue.edu/owl/resource/574/01/>.

¹² Paula Abrams, *Reservations about Women: Population Policy and Reproductive Rights*, 29 CORNELL INT’L L. J. 1, 20-21 (1996).

Notice the simple, yet strong, topic sentence to the first paragraph: the paragraph discusses State’s reservations to the Women’s Convention. Then the remaining sentences describe those reservations. Then the first sentence of the second paragraph is a topic sentence and a transitional sentence. It is a strong topic sentence because it states that those reservations are inconsistent with the Women’s Convention and then the remainder of the paragraph tells us why those reservations are inconsistent with it. Similarly, it is a transitional sentence because the previous sentence provided reasons for creating reservations. This sentence says those reasons are wrong.

Lastly, paragraphs that introduce new sections are a form of transition because they take a reader away from one section and into another. You need to begin each section (Section II, e.g.) with a short paragraph, maybe two paragraphs, that explains what you have written in that section. These types of paragraphs ease the reader into the new section. These paragraphs should *not* include sentences such as, “This section explains/outlines x, y, and z.” Such sentences do provide markers, but do not do so very well. Instead, write a paragraph that is in essence a very, very short version of your section.

The following table from the Writing Center at the University of North Carolina provides some examples of transition words and phrases to use for specific purposes.¹³

LOGICAL RELATIONSHIP	TRANSITIONAL EXPRESSION
Similarity	also, in the same way, just as ... so too, likewise, similarly
Exception/Contrast	but, however, in spite of, on the one hand ... on the other hand, nevertheless, nonetheless, notwithstanding, in contrast, on the contrary, still, yet
Sequence/Order	first, second, third, ... next, then, finally
Time	after, afterward, at last, before, currently, during, earlier, immediately, later, meanwhile, now, recently, simultaneously, subsequently, then
Example	for example, for instance, namely, specifically, to illustrate
Emphasis	even, indeed, in fact, of course, truly
Place/Position	above, adjacent, below, beyond, here, in front, in back, nearby, there
Cause and Effect	accordingly, consequently, hence, so, therefore, thus
Additional Support or Evidence	additionally, again, also, and, as well, besides, equally important, further, furthermore, in addition, moreover, then
Conclusion/Summary	finally, in a word, in brief, briefly, in conclusion, in the end, in the final analysis, on the whole, thus, to conclude, to summarize, in sum, to sum up, in summary

¹³ UNC, *supra* note 9.

V. Verb Tense and Verb Choices

A. Verb Tense

Within a sentence and a paragraph, stay in the same verb tense. Try, also, to stay in the same tense for your entire article. Use present tense whenever possible.

You may sometimes need to use past tense, however, to discuss a court opinion or event that took place in the past. Use past tense, however, only when describing the facts of a particular case or the outcome of the specific case or treaty. For example, if you are writing about the negotiating history of the Montreal Protocol on Substances that Deplete the Ozone Layer, you would use the past tense: “To halt the depletion of the ozone layer, states agreed to control the production and consumption of ozone depleting substances.”

If, however, you are merely describing the current law that derives from a case or treaty, use present tense. For example: “The Montreal Protocol requires Parties to eliminate the production and consumption of certain ozone depleting substances.” Although states created the Montreal Protocol’s obligations in 1987, the Montreal Protocol still requires Parties to eliminate ozone depleting substances. Thus, use present tense to describe its obligations.

In another example: The Supreme Court **ruled** in *NWF v. Lujan* that ...; The Supreme Court’s decision in *NWF v. Lujan*, **requires** a plaintiff to have plans to visit the affected area in the future ...”

In addition, **avoid future tense**. The most common use of future tense occurs in the introduction where the writer states, “Section II will describe” Instead, write “Section II describes....” Don’t use future tense in the spatial sense—to indicate something is coming later in the paper. You may, however, need to use future tense to describe activities that will occur in the future.

B. Passive Voice

Again, use active voice. Do not use passive voice. Generally speaking, passive voice is a sentence without a subject, a sentence in which action occurs but nobody did it (e.g., “The ball was kicked.”) As a short cut, you can often identify passive voice by the use of the verb “to be”, including “is”, “was”, and “there is/was.”

C. Regarding “Is”

Avoid using the verb “to be” (“is,” “are,” “was,” “were”). A group of writers formed a club with the goal of never using the verb “to be.” They have taken the form to an extreme, perhaps, but they have provided a useful goal.

The use of “to be” indicates several things. First, “to be” is not active; it merely states a condition of existence. As a result, the use of “to be” makes your writing less interesting and less

persuasive, because people do not actively do things; things just exist. Compare the following two sentences. The second sentence is much clearer:

One response to this criticism is that renewable energy systems are amenable to local, on-site applications, thereby alleviating the need for storage and transportation.

This criticism overlooks local, on-site applications of renewable energy systems that alleviate the need for storage and transportation.

Similarly, the use of “there is/there are” lacks clarity or makes sentences less forceful. Consider the following statements:

There are three approaches that the U.S. and Australia could use to enact ecosystem management policies.

The United States and Australia could employ three different ecosystem management policies.

There were a great number of dead leaves lying on the ground.

Dead leaves covered the ground.

Also note that when I delete “there is”, the sentence becomes stronger and shorter: “brevity is a by product of vigor.”¹⁴

Second, the use of “to be” often indicates the use of indefinite pronouns, such as “it is clear” and “it is important.” In addition to lacking clarity, these sentences rarely explain why “it” is clear or important.

Third, the use of “to be” often indicates the use of the passive voice. I recently read the following sentence containing a rare double passive: “Traffic fines were imposed because forms were not submitted.” Somebody imposed the fines and someone failed to submit the forms, but the author tells us neither of these things. Much activity occurs, but nobody did it.

Fourth, the use of “to be” lacks clarity. I have read the following construction often: “The Parties to the Biodiversity Convention are to protect habitat.” Well, “must” the Parties protect habitat or “should” the Parties protect habitat? The use of “are to” does not answer whether the Parties have affirmative or discretionary duties.

¹⁴ William Strunk, Jr. & E.B. White, *THE ELEMENTS OF STYLE* 15 (1959).

D. Regarding “It”

The following is a cute, and clever, look at the use of “it”, from Lewis Carroll, *Alice in Wonderland*.

“The patriotic archbishop of Canterbury found it advisable _____ “

“Found what?” said the Duck

“Found it,” the Mouse replied rather crossly: “Of course you know what ‘it’ means.”

“I know what ‘it’ means well enough when I find a thing,” said the Duck: “It’s generally a frog, or a worm. The question is, what did the archbishop find?”

VI. Some “Rules” for Writing Clearly

1. ***Avoid using article numbers in the text.*** Avoid using article/provision numbers to describe a legal provision unless that article number has distinct legal meaning and you have already described that legal meaning. Usually, the provision’s number is unimportant and you can simply cite to the appropriate provision. For example, I don’t think reference to Article 10 adds anything to this sentence:

Article 10 of the Montreal Protocol requires technology transfer from developed to developing countries.

Simply write:

“Developed country Parties must transfer technology to developing country Parties” or

“The Montreal Protocol requires developed country Parties to transfer technology to developing country Parties.” [Then cite to: Montreal Protocol, *supra* note 1, at art. 10.]

In some situations, however, the article number carries distinct legal meaning. For example, Article 5 of the Montreal Protocol creates a grace period for developing countries. However, developing countries are defined according to their per capita consumption of ozone depleting substances. Thus, you could write:

Article 5 grants developing country Parties preferential treatment if their per capita consumption of controlled substances is less than 0.3 kilograms. These “Article 5 Parties” enjoy a ten-year delay in implementing their obligations.

In this example, I include Article 5 to state a specific legal provision. Then I use the article

number in a distinct legal sense: “Article 5 countries.” The phrase “developing” countries does not accurately describe the countries to which Article 5 applies.

2. ***Avoid using long quotes.*** As Prof. Mike Blumm says, “Forget them. No one reads them.”¹⁵ He is right. In general, they distract the reader. Your writing will be stronger if you paraphrase, and, if the quote is really important, then reprint the full quote in a footnote. In general, use quotes only when you cannot say things better or if the writer has said things in such a unique way that to paraphrase would lose the meaning of the statement. If you do use a long quote, remember that it must be indented and single spaced.

3. ***Edit, Proofread, and Peer Review.*** You must become a good editor of your own work. That means writing a draft, reading it, and editing it. Then read the next draft and edit it, and repeat this many times. If you are having trouble editing your own work, let a friend read it. You certainly don’t want your professor to be the first person to read your poorly organized or incomprehensible paper or incorrect legal reasoning. You must be egoless. Remember that good writing is difficult work. As long as you recognize that writing is hard work, then criticism is easier to handle.

You should be prepared to write several drafts and to have friends read them. When I write a paper, I work through several drafts, each with major revisions. Then, I give it to several colleagues to review. When I get all their comments, I return to the computer and work through several more drafts.

4. ***Don’t use vague verbs that require prepositions.*** In informal English, we often use verbs such as “point out” and “deal with”. These verbs, which always require a preposition, are vague. Consider this sentence: “The agency dealt with endangered species issues by preparing new regulations.” “Dealt with” doesn’t really describe what the agency did. Find another word that better describes the action: “The agency issued new regulations to prohibit the taking of control of endangered species.”

5. ***Some other things:***

- a. ***United States vs. U.S.*** Use “United States” as a noun, U.S. as an adjective: Brazilian and U.S. Senators visited many national parks in the United States.
- b. ***Comprise vs. Compose.*** By definition, the whole comprises the parts. The parts do not comprise the whole. Also, comprise does not take the preposition “of” as composed does. Thus, “The Union comprises 50 states” or “The Union is composed of 50 states.” But, “Fifty states compose the Union.” And not: “The Union is comprised of 50 states.”
- c. ***It’s vs. Its.*** “It’s” is a contraction of “it is” or “it has.” “Its” is the possessive form of the pronoun it. Do not confuse the two.
- d. ***Table of Contents.*** You must include a Table of Contents in your draft and final papers. You do not need to include page numbers in the table of contents, just the section numbers (however, you must include page numbers in your précis and all versions of your paper).

¹⁵ Blumm, *supra* note 2, at 3.

- e. **Page numbers.** Include page numbers in your précis and all versions of your paper.
- f. **Title.** Include a title for your paper in your précis and all versions of your paper.
- g. **Your name and e-mail.** Identify yourself and provide me with your e-mail address.

VII. Citation

A. When to Cite

A couple of points are worth mentioning regarding citations. First, you must cite *every time* you refer to, paraphrase, or quote from a law or another person's work. That's the law. Second, when you cite to a law, always cite to the primary source. For example, do not write that NEPA requires cumulative impact assessment and then cite to a law review article. Cite to the law first and, if you want to include a secondary source that discusses the law, then do that second. But remember, always cite to the law, regulation, or case that is the origin of the rule. Third, if you have a sentence with a string of items that you must cite, cite each law individually, not collectively at the end of the sentence. The following example may help:

The National Environmental Policy Act (NEPA)¹ requires an assessment of alternatives² and mitigation measures³ for “major Federal actions significantly affecting the quality of the human environment.”⁴

¹ National Environmental Policy Act, 42 U.S.C. §§ 4321 to 4370d [hereinafter “NEPA”].

² NEPA, § 4332(C)(iii); 40 C.F.R. § 1502.14

³ 40 C.F.R. § 1508.20. See Peter J. Eglilck & Henry J. Hiller, *The Myth of Mitigation under NEPA and SEPA*, 20 ENVTL. L. 773 (discussing NEPA's mitigation requirements and possibility for limiting the scope of the environmental assessment).

Comment: Note the use of the parenthetical to describe the contents of the article. This useful mechanism helps identify the salient points of the article so that the reader knows whether or not to read the source. Note also that the secondary literature relates directly to the referenced legal provision.

⁴ NEPA, § 4332(C); See also 40 C.F.R. § 1502.4, § 1508.3 (defining “affecting”) § 1508.14 (defining “human environment”), § 1508.18 (defining “major Federal action”), § 1508.27 (defining “significantly”).

Comment: This is a tricky citation. I could have divided the phrase into several footnotes because each term within the phrase “significantly affecting the quality of the human environment has been defined separately in the regulations. However, because the phrase derives from the same legal provision, I included the phrase in one footnote.

B. How to Cite

Citation form is the bane of us all. Unfortunately, we have all volunteered to be lawyers and lawyers, like scientists, have chosen a very specific citation form. Learn the correct citation form from *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION*. Use footnotes, not endnotes.

VIII. Expectations about Paper Length and Quality

A. Paper Length and Quality

I expect papers written for a two or three credit class to be 25 to 30 pages. A four- or five-credit paper should be 35 to 40 pages. These page lengths assume double spaced text, single-spaced footnotes, one inch margins, and a “normal” sized font (i.e., 12 point Times Roman for the body; 10 point Times Roman for the footnotes).

Analysis distinguishes good papers from great papers. In addition, analysis likely distinguishes a law school paper from many other papers that you have written. A paper that merely describes a certain law or area of the law is not sufficient to receive your WIE or capstone writing requirement — at least from me. This should not be a problem since I have imposed several steps for reviewing your work in progress.

B. The First “Draft”

For certain papers, you must prepare a first draft. I want to emphasize very strongly that I expect this draft to be the first that I read, but most definitely not the first draft that you produce. The draft that you give me should be the best paper that you can produce. It should be a paper that could be graded. In that way, you have shown me the best that you can do. Then I can help make you better. If you are unwilling to make the effort to write a good “first” draft for me to read, I am unlikely to provide the types of comments you need to take you to the next level of writing. And, if my admonitions here do not compel you to write the best draft you can possibly write, remember that I grade your paper and you really don’t want to upset me.

While I expect you to submit the best draft that you can write, I do not expect perfect footnotes in the draft. I recognize that the “supras” will change. If your footnote says, *Wold, supra* note XY, at 40, without identifying the exact “supra” reference, that is fine. You should, however, use proper citation form in your draft, because I will review your footnotes. In addition—trust me—the closer your footnotes are to perfect the first time you write it, the happier you will be. From experience I can tell you that you do not want to look for the page number of a particular citation at midnight (or worse) the day before your paper is due.

Appendix 1 — Précis/Draft Checklist

Make sure your précis includes the following:

1. ***Your name and e-mail.***
2. ***Date of submission***
3. ***Page numbers.***
4. ***A title for your paper.***
5. ***Footnotes.***
6. ***Table of Contents (for draft and final paper***
7. ***Margins.*** Use 1 inch margins. For those of you who use Microsoft Word, you must adjust your margins as the default settings are not for one inch margins.
8. ***Double-spacing.***
9. ***Fonts.*** Use 12-point font for the body of your paper; use 10-point font for footnotes.
10. ***The Contract.*** Make sure you submit your contract, which verifies that you have read this paper, before or with your précis.

Appendix 2 — Editing Abbreviations

awk	awkward
b/c	because
b/s caps	USE BIG AND SMALL CAPITAL LETTERS
	delete
^	insert
ital.	<i>italics</i>
=	change to capital letter
/	change to lower case letter
IP	indefinite pronoun
tense	indicates that you have inappropriately switched tenses or are using the wrong tense
¶	start a new paragraph
PV	passive voice
#	add or subtract a space
sp	incorrect spelling or spell out something you have abbreviated
stet	“let it be.” It means that I have made a mistake in editing your paper.
→	tab
→ ←	indent
w/	with

Appendix 3 — Writing Contract

1. I, _____ (your name), have read Chris Wold, *Writing a Law School Paper* on _____ (date). I agree, to the best of my abilities, to follow the advice provided in that paper. I understand that Professor Wold will not read my précis until I have read *Writing a Law School Paper*, signed this contract, and submitted it to Professor Wold. Further, I understand that, if I sign this contract without having read *Writing a Law School Paper*, I violate the honor code of the Lewis & Clark Law School.

2. I understand that I must meet the following deadlines and expectations:

- a. **Précis: Due at the end of week 4.** The précis will be my best effort at an introduction. It will be properly cited using the *Bluebook*.
- b. **Draft: Due at the end of week 10.** My draft will be a paper that I feel comfortable submitting as a final paper for a grade. It will be properly cited using the *Bluebook* and be complete in every way.
- c. **Final Paper: Due at the end of week 13.**

3. I understand that if I do not meet the deadlines for the submission of my précis, draft paper, final paper, or any other required documents, that Professor Wold will reduce my grade by one (e.g., from an A to B) each time I submit a document beyond the deadline assigned for that document.

Signature