

NOTES ON THE WRITING REQUIREMENT

All students must satisfactorily complete the "upper-class writing requirement" to be graduated. Most students fulfill this requirement by writing a paper in one of the various seminars at the law school. Some students (usually no more than 5 per course) are also permitted to write a paper that satisfies the writing requirement in an elective course, when the instructor has informed the registrar of his or her willingness to allow it. So, for example, in my Law & Literature seminar all students may (and must!) write papers that satisfy the writing requirement (even if they have previously satisfied the requirement in another way), and I often allow up to 5 students to write in my Copyright class. (I will not, however, supervise so-called "independent study," so please do not even ask.)

The purpose of the writing requirement is to have students grapple with a specific facet or feature of the law directly and in depth through the production of a paper with what one might term "scholarly aspirations." Thus, most professors (including me) will expect at minimum a cogent and tightly edited paper of 45 to 50 pages in length--not counting the footnotes or endnotes--to satisfy the requirement. Obviously quantity is no guarantor in and of itself of quality, but there is more insight, and insight of a different kind, to be gained from the production of a lengthy paper than can be gleaned from smaller endeavors. Yet all too often a student will not realize clearly how much work is involved in the production of this kind of paper until it is too late to meet the deadline. There is no part of my job that I dread more than having to inform a student scheduled to be graduated that he or she will not be graduating because of a failure to satisfy the writing requirement. So my first words of advice in this respect are that you should not leave the fulfillment of the writing requirement until your last semester!

When students are preparing their papers under my supervision, I require not only that each student choose a thesis, create a very detailed outline of the arguments to be addressed, write a first draft in sufficient detail for me to be able to make comments and criticisms, and then produce a final version sufficient to satisfy the requirement--taking care to incorporate the comments and criticisms from the first draft, but I also require that students do so according to a fixed schedule. If a student does not meet each of these requirements in timely fashion as the semester progresses, no paper--no matter how superlative it might be on its own merits--will be sufficient to garner credit for the writing requirement from me. Further, very often the "final" version that a student turns in will still not meet my standards. This is especially true when the first draft was so poor that any comments or criticism were directed to purely formal considerations.

Many students seem at a loss when beginning their writing requirement papers. The starting point is to do enough background reading in a specific area so that you can formulate a meaningful thesis for the paper. The thesis is simply the point or purpose of the paper--what you will seek to demonstrate or to prove to the reader. On the one hand the paper's thesis should not be so obvious as to be self-evident. On the other hand it should not be so recondite that you will not be able to marshal the arguments necessary to prove it. Most of the problems that students encounter ultimately stem from writing before they have sufficiently developed a thesis. It seems obvious that one cannot write well without having first understood what it is one is writing about, yet many students waste large amounts of time writing things that do not advance any thesis!

Once you have tentatively formulated your thesis, you next set about exploring the

primary and secondary sources--the "texts"--in detail to find information from which you can construct arguments that might support your thesis (or undercut it). Although the kind of writing required for this paper is different in form and in tone from the kinds of documents that you drafted in the Legal Writing class, because it is crafted according to more scholarly conventions, you will just the same be required to demonstrate the validity of your thesis in clear and convincing arguments to the reader. All information included in the paper should be designed to advance its thesis. For the most part, this means that the kind of writing to be used is probative, that is, designed to prove the truth of the assertions that make up the thesis. (You may remember that the word "probative" is the term Richard Neumann uses in his book Legal Reasoning and Legal Writing to describe all of legal writing in general.) To be sure there is also room for some descriptive writing too--certainly what is necessary to sketch the conditions that have given rise to whatever problem or issue the thesis concerns--but the essence of the paper is to show the reader exactly how and why the thesis is true.

It often comes as a surprise to students that the writing requirement contemplates that they will do more in writing the paper than simply report about what they have found. Conceiving of the writing requirement as some kind of report rather than as a personal, authorial project is not only error, it can be very harmful error indeed. It has been my experience that many of the students who have plagiarized the works of others when writing their upper-class papers did not realize that they were plagiarizing! (Of course some plagiarists did realize it; that is not my point.) If a student thinks that fundamentally all he or she is supposed to do in this kind of paper is to canvass the ideas of others and then to recast them into different form, that student can easily commit plagiarism if he or she is not careful! It is certainly acceptable--even desirable--to use the ideas and arguments of others as a starting point or spring-board, provided that those ideas and arguments have been clearly identified as coming from the works of earlier authors. This is, after all, only to do justice to the scholarly tradition. But it is not acceptable to build one's paper completely by patching together pieces of the works of others, even when the pieces have been properly identified! Further, all ideas or arguments that are not one's own original work must be clearly signaled as coming from other authors, and the exact sources of those ideas or arguments must be identified by means of proper citations. All quotations from other works must be so identified, as must extensive paraphrasing of earlier works. Students should begin the project understanding that their own original thought is the essence of the assignment (although not rambling, unedited, stream-of-consciousness kinds of thought). This yet another reason that the choice of one's thesis is so important.



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