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# Bringing the Court into the Classroom: Suggestions for How to Craft Exercises for Upper- Level Courses Using Real Practitioners' Briefs

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# Bringing the Court into the Classroom: Suggestions for How to Craft Exercises for Upper-Level Courses Using Real Practitioners' Briefs

By Benjamin Halasz

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When I came to teach after practicing for over a decade, I wanted my students to learn to write by using materials from real clients and cases. I quickly found that's easier said than done. But through experimentation and discussions with experienced colleagues, I found several successful ways to put students into the role of writing parts of a "real" brief—one that uses a real case and real facts—for short, in-class exercises in upper-level courses.

Several articles tout the benefits of using briefs as examples,<sup>1</sup> an enthusiasm I join.<sup>2</sup> But this article focuses on using cases, and especially briefs, as part of in-class writing exercises. It starts with a section that describes some of the types of exercises an instructor might use and how they fit into a legal writing class. It then describes the benefits and challenges from using briefs in class; it discusses the logistical problems of how to time these exercises and how to find briefs; and it outlines in-class exercises I've found effective.

## I. A Few Categories of Assignments Within a Legal Writing Course

Before planning in-class assignments using briefs, you might think about your goals and how you intend for students to practice them. This section

starts by describing some of my usual goals for my final graded assignments, as the final assignment often dictates what techniques you work on earlier in the semester. Then I'll describe some categories of assignments that practice some of these goals and are good fits for real briefs.

### A. Out-of-class, graded final assignments

For the classes in which I use real briefs, my final projects tend to be two types: the predictive memo, akin to a research memo a new lawyer would give to a supervisor; and the persuasive brief, written for a court.

My overall goal for both types is for students to write as skilled practitioners would. That leads to some common sub-goals for each. I ask students to write using a strong structure, usually a CRAC format. I look for compelling legal analysis that appropriately utilizes deductive reasoning, reasoning by analogy, and arguing from policy. I urge students to research the law thoroughly, showing that they strived for the best possible cases and most nuanced arguments. I celebrate smooth writing that reflects careful use of citations.

Some of my goals differ between the two types of assignment. I ask my students to write predictive memos that are balanced in tone and analysis. Students should write compelling arguments about why their conclusions are correct, but they must also explain and analyze their arguments' weak points. When I ask students to write persuasive briefs, I emphasize they should write persuasively in every section and every line. They must do so while writing ethically and clearly, and they should work to express a theme that convinces a judge that the proper outcome is the one sought by their client.

Although this article focuses on in-class assignments, it's possible to use a real case for these

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<sup>1</sup> See, e.g., Megan E. Boyd, *Legal Writing in the Real World—Using Practitioners' Briefs to Teach Advanced Legal Writing Strategies*, 23 PERSP.: TEACHING LEGAL RES. & WRITING 74 (2014); Anna P. Hemmingway, *Making Effective Use of Practitioners' Briefs in the Law School Curriculum*, 22 ST. THOMAS L. REV. 417 (2010).

<sup>2</sup> When I've taught an upper-level course on persuasive writing, I've used NOAH A. MESSING, *THE ART OF ADVOCACY* (2013). It contains many examples from real briefs.

out-of-class assignments as well. One standard approach is to find a real case that has briefed on a fairly simple issue that hasn't been decided by a controlling authority. The instructor gives the students the record without the briefs (possibly changing the names of the parties and some facts) and asks them to write the briefs. This runs into the problem that students often can find the missing briefs on their own, especially for federal litigation.<sup>3</sup> But many of the benefits and challenges of using real briefs for in-class assignments, discussed later, apply equally well to out-of-class assignments.

#### B. In-class assignments that set up those out-of-class assignments

To achieve my class goals, throughout the semester I have my students read theory and study examples. And then, whenever possible, I have my students practice the techniques in class, receive feedback, and try again. Here are four types of in-class exercises for which I've used real briefs.

##### 1. Writing the law

One common type of in-class assignment is to ask students to write either a rule from an opinion or a parenthetical that discusses the facts of an opinion. The opinion usually is one that students are already familiar with, or one short and simple enough that students can grasp it quickly.

I have several goals in this kind of assignment. I want students to focus on which parts of the case matter and which don't (a skill they practice in doctrinal courses), and then commit to those conclusions by putting them on paper (a skill doctrinal courses may not cover). That forces students to confront whether they really grasped the doctrine. I want my students to get immediate feedback if possible, from both myself and their peers. I want students to discover how malleable rules and material facts are and how malleable

they aren't. And I want students to work on writing quickly, a skill demanded by many areas of practice.

##### 2. Writing the application of law to facts

This type of assignment calls upon students to write an application of the law. Students have been given a deductive rule or the facts of a case, they have their own client's facts, and they are assigned to explain the result required by precedent based on their client's facts. That requires students to write about either how the rule applies to their client's facts to require a result (reasoning by deduction) or how similar or different their client's facts are to facts from precedent (reasoning by analogy).

My goals here are similar to those with the first exercise. But students may not practice this skill in pure doctrinal classes, as they may not have "client facts" in those courses until the final exam. The key skill here, I emphasize to my students, is in that intersection between the law and their client's facts: they must explain how the rules or how the facts from precedent apply to their client's case, compelling a result (or escaping a bad one).

##### 3. Stylistic exercises

I sometimes ask students in class to work on aspects of their writing separate from legal doctrines—topic sentences or cohesion, commas or semicolons, citations or legalese. I can ask students to work on these techniques outside of class; but by spending the time in class, I know they've done so, and I signal these issues are important. I aim for my students to see themselves as professional writers, ones who care enough to ensure their writing is free from mistakes. And I want to be sure my students know where to go to find the answers on their own, just as professional writers do.

##### 4. Section structure

A fourth type of exercise focuses on the proper way to structure part of a memo or brief. For instance, students often struggle with introductions to briefs. I've found simply reading and discussing numerous examples may not be enough for students to understand how to write them well. Instead, I provide guidelines for what should be in each introduction they write for me. For instance, I may explain that I look for the key legal rule at issue, the most important facts pertaining to that rule, and a little case background for a reader new to the case.

<sup>3</sup> My more experienced colleagues have said they used to regularly pull hard-copy documents from court dockets to generate "real" problems, a practice sometimes facilitated by tips from practitioners. Those documents are now often available online, both through a paid service such as PACER and through services such as Bloomberg Law, which is licensed by many law school libraries.

When we use "real" federal cases for graded problems now, we attempt to find ones in which the record is developed on an issue but the briefing is not; we change the names and some of the facts; and we sometimes switch jurisdictions. Some of these issues can be avoided by using litigation that either doesn't appear on an electronic docket (such as in some state trial courts) or that hasn't reached the briefing stage. Those have the accompanying problem that just as they are difficult for students to find, they may be difficult for you to find.

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We then practice writing introductions in class, and students receive feedback through peer review, models, or my comments on samples or submissions.

I have several goals for this type of assignment. I want students to recognize the aims of each section (for instance, I ask students to write an introduction that will be interesting and helpful for a new reader). I want to provide students with a basic structure that will work for them most of the time in practice. And I want to make students see that while each section by itself may be short, it also takes time to write them well—time that students will need to allocate when writing their final papers and, ultimately, briefs for clients.

## II. Real-Brief Messiness: Its Benefits and Challenges

To use one of these types of in-class assignments, the instructor will need to decide whether to use a real brief or a “canned” problem. There are numerous benefits to using real briefs in writing exercises, ones that stem from the feeling that the case is “real.” But there are challenges, too—that realness carries with it a loss of control. I find the trade-off worth it, but I tread lightly around the challenges.

While this article treats “canned problems” and ones with “real briefs” as distinct, they are on opposite ends of a spectrum. A pure canned problem is one for which all the relevant materials—cases, statutes, facts, procedural status—are created by the professor or a textbook. For example, my colleagues and I sometimes start the first-year legal writing course by presenting a “no vehicles in the park” problem, complete with artificial statutes, cases, legislative history, and facts.<sup>4</sup> First-year textbooks commonly use similar problems.<sup>5</sup> A pure real-brief problem, on the other hand, is one in which students are given cases, facts, procedural status, and briefs from an actual case and are asked to step into the shoes of the

lawyer. In between are the variants in which some materials or tasks are “real,” and others are created.

The benefits of using problems that fall onto the “real” side of the spectrum are those stemming from the excitement—and messiness—of real life. For one thing, the problems aren’t perfectly geared for teaching, and those imperfections can stand out to your students. This may help them realize that they are soon going to be in those attorneys’ shoes, where the path forward is not always clear. This messiness also helps answer any complaints that the issue may not be perfect for a class. To the extent students discover unexpected twists in the problem, it’s particularly easy with a problem from real life to turn those issues back to the students: how would you find the answer? What databases or treatises would you use? What searches would you perform? Let’s research it! That process can both empower students to find their own answers and teach them to improvise quickly.

The real-life problems are also often more complicated: a well-chosen sample will convey a sense of the procedural and factual history of the case, in the same way the backstory in a well-written novel conveys an unspoken depth of history. Sometimes a small factual detail can catch students’ attention and pique their interest. For instance, in the Woods case I’ll discuss later, a suspected drug trafficker had on his seat what appeared to be an iPhone but was actually a disguised scale.<sup>6</sup> Sure, I could add that to my canned problems, and explain that I was incorporating real-life details into the problem; but even then, that it was me picking and choosing facts would make the problem more artificial—they wouldn’t have that same feeling of realism and history.

And finally, real-life briefs have the advantage that students may be better engaged when critiquing written product from a practicing attorney. It’s more exciting to criticize an attorney’s writing when you’ve grappled with the same issues yourselves.<sup>7</sup>

“The benefits of using problems that fall onto the ‘real’ side of the spectrum are those stemming from the excitement—and messiness—of real life.”

<sup>4</sup> The problem originates with Professor H.L.A. Hart. See H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593, 607 (1958). It continues to be debated today. See, e.g., Richard A. Posner, *The Incoherence of Antonin Scalia*, NEW REPUBLIC (Aug. 23, 2012), <https://newrepublic.com/article/106441/scalia-garner-reading-the-law-textual-originalism>; Pierre Schlag, *No Vehicles in the Park*, 23 SEATTLE U. L. REV. 381 (1999).

<sup>5</sup> The textbook I’ve used in the first-year course contains dozens of canned problems, many of which I’ve used and found helpful. See, e.g., HELENE S. SHAPO ET AL., *WRITING & ANALYSIS IN THE LAW* 23–25, 31–32, 66–69 (6th ed. 2013) (examples of some of the canned problems).

<sup>6</sup> *United States v. Woods*, 829 F.3d 675, 679–80 (8th Cir. 2016).

<sup>7</sup> Others have made the same observation. See, e.g., Hemingway, *supra* note 1, at 427 (“The students were energized at the chance to criticize actual lawyers’ work.”). Whether using briefs as examples or as part of writing exercises, one should keep in mind that a class critique can easily spread outside the classroom. For this reason, an instructor may consider finding briefs from

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That messiness also carries with it numerous inherent challenges to be aware of. These challenges can often be mitigated, though, by selecting and curating the briefs carefully.

One challenge is that it can be easier with a canned problem to present materials that focus on just one aspect of legal writing. If I want my students to work on distinguishing cases, I can create law and facts that make it easy to see how to do so. Or I can make it hard, or somewhere in between. Real briefs almost never lend themselves to such clearly focused lessons.

Sometimes the attorneys’ writing may also be too complicated or nuanced to use for a short classroom exercise. Relatedly, students may just copy practitioners’ writing later, in their graded assignments, either not realizing its flaws or not appreciating that some of what the attorney did was for reasons specific to that case.<sup>8</sup>

Another challenge is that briefs may refer to concepts that lawyers in a practice area are familiar with but that students aren’t; and if the teacher is a practitioner from that same area, it is sometimes difficult to remember which concepts these are. For instance, when I use problems involving UCC Article 2, an area I’ve taught doctrinally, I’m wary of assuming that 3L students remember concepts such as offer and acceptance from a contracts class they took in their first semester of law school.

Finally, as noted earlier, with enough time, students may be able to find the actual briefs online before I’m ready to discuss them.

These challenges can be mitigated, though, by carefully selecting the problem. I’m upfront with my students about the challenges that real problems present, and I warn them ahead of time that I may need to cabin their research. I explain why I’ve chosen particular briefs, and I emphasize they are

not paragons of persuasive writing. And I leave more time than normal for questions, encouraging students to speak up if there’s a concept they don’t understand.

It’s because of these benefits and challenges that I’ve used real-world problems primarily in upper-level classes. Upper-level students are more familiar with the law and its terms, and those who have had a summer or externship experience involving legal work often have a better feel for how both the substantive law works and the procedural history fits together.

### III. Solving Two Logistical Problems: Allocating the Right Amount of Class Time and Finding the Briefs

An instructor who wants to use briefs in classroom exercises will need to overcome two logistical difficulties: how to time the exercises and how to find briefs for them.

#### A. Give students plenty of time to write

One of the major logistical challenges I’ve found when using real briefs in class is timing. All these exercises take a longer time than I originally think. It’s not that the briefs or passages are long. It’s that as a practitioner, I had lost touch with how much more difficult it is to read and discuss any piece of legal writing as a student. Students cannot draw upon the same background knowledge as practitioners, especially with respect to terminology, doctrines, and that innate sense of how courts decide cases.

This problem is especially acute because one of the worst outcomes for in-class activities is to have students frustrated. Not only may students feel upset that they lacked time to understand the piece they were given, they may feel doubly upset as they also “failed” to practice the legal-writing technique.

Canned problems address this issue in several ways. The law is both simplified and described to a greater degree than is common in briefs.<sup>9</sup> The facts are short and described in well-written prose, and their application to the law is often fairly clear, permitting the professor time to focus on other issues (such as persuasive techniques, structure, parentheticals, etc.).

either a distant jurisdiction or a particularly good-humored practitioner.

<sup>8</sup> See *id.* at 422 (“In using these briefs, professors need to be careful that students are not relying on them as templates.”). This is especially the case when the instructor uses a brief in an exercise that covers the same subject matter as a graded assignment.

<sup>9</sup> See, e.g., SHAPO ET AL., *supra* note 5, at 66–67 (presenting deductive rule of false imprisonment in three sentences, client’s facts in four sentences, and facts of precedent in three sentences).

To address the timing problem, I've used three techniques, ones that appear in the examples later. The essence is, "less is more." First, keep the pieces short. All else being equal, it will be easier for students to get through less text, and even just the appearance of a shorter text will help students avoid panic. While I'm always tempted to incorporate the fun nuances from a real case, that is almost always too much detail for students to take in.

Second, set up an in-class activity by having students do some of the reading outside of class. While students may read more carefully in class, that out-of-class reading will both provide background and reduce students' stress level. You often can piggy-back off readings from their other courses, or at least use an area of law you know students are familiar with.

Third, think carefully about how much time your activity will take; then double it. There are limits to increasing time, of course; if an activity goes too long, students may lose interest. But to avoid frustration, it's better to have an activity that is too long than one too short. If you do find yourself with unneeded time, spend a few minutes discussing as a class the challenges of this type of assignment—a good way for students to both de-stress and feel like they're not the only ones who may have struggled.

#### B. Know where you're going to find good briefs

Finding good briefs can take time. Finding good briefs that work well for legal-writing exercises can take even more time. But by planning your subject area, jurisdiction, and court type, you can reduce the time you spend unproductively thrashing around in Westlaw, Bloomberg, or Lexis.<sup>10</sup>

My first step is to plan the subject matter in which I'll find a good brief. I tend towards areas in which I've practiced, and I think about doctrines that both are relatively simple and implicate factual scenarios that my students can easily understand and relate to. For criminal law, I tend towards Fourth and Fifth Amendment problems, ones involving police officers pulling over a car or talking

to someone who later becomes a defendant.<sup>11</sup> For contract law, I tend towards sales problems set in the context of Craigslist ads, ones that involve an item sold "as-is" and that therefore implicate the waiver of warranties. I avoid more complicated areas, such as patent, health care, bankruptcy, and antitrust law; while those areas are interesting, simply grappling with the facts takes too much time for an in-class exercise.<sup>12</sup>

The other way I've found interesting and usable briefs is by watching for them in more casual reading. Online newsletters such as Law360 have helpful short summaries of cases. At times, I've read journal articles about interesting simple cases, or I've heard about them from colleagues. Other times I've scanned through briefs from famous cases to see if there are usable sections in them.<sup>13</sup> Oftentimes briefs found in these ways are both timely and interesting.

Once I've decided on an area of law, I choose whether I'm going to search for appellate or trial court briefs. Trial briefs have the benefit of being generally shorter, but they also often assume the reader already knows the procedural background of the case. Appellate briefs almost always strive to introduce the law and facts for a new reader, but they also tend to drag on.

I then plan whether I'm going to look for fact-intensive or law-intensive briefs. Honestly, for in-class exercises, my main goal is to find briefs that aren't intensive at all. But even within that category, it's helpful to think about whether I'm looking for the discussion to be primarily about the law or the facts.

My final step is to start skimming through briefs. I decide on my jurisdiction, and I look for the lead appellate case in that jurisdiction.

<sup>11</sup> See *infra* note 22 for a couple of examples.

<sup>12</sup> Instead, I've used canned problems to present students with challenging areas of the law as part of final assignments. See, e.g., A.G. HARMON, *THE COMPLETE ADVOCATE II: EMPLOYMENT OFFENSES IN HEALTH CARE CONTEXTS* (2013) (providing materials involving, among other issues, the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b (2006)); DAVID W. MILLER ET AL., *PRACTICING PERSUASIVE WRITTEN AND ORAL ADVOCACY* (2003) (presenting problem involving, among other issues, specific personal jurisdiction in the internet context).

<sup>13</sup> For instance, I've found the brief for Appellants in *Brown v. Board of Education* to provide a helpful example of writing rules in a CRAC form. Brief for Appellant, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (Nos. 1, 2, 4, 10), 1952 WL 47265. The brief is also remarkably concise.

<sup>10</sup> Two great ways to find problems are to work with a practitioner, who often may have access to cases not available in electronic databases, or get help from your librarians; but I'm writing this section assuming you've struck out with those options.

“... think carefully about how much time your activity will take; then double it.”

I then use a citator to pull up all briefs that cite to that opinion, and I use headnotes or search terms to further limit the search results to those briefs discussing the specific issue I'm interested in. I generally sort briefs by date, to ensure that the law they rely on isn't outdated; and I start reading quickly through them, looking for sections that would be suitable for my exercises.

### III. Some Ideas for Using Briefs for In-Class Writing Exercises

The vast number of briefs available through online databases provides opportunities for interesting in-class exercises that are as varied as the instructor's imagination. Four suggestions for writing exercises follow, first listed in a chart and then described in greater detail. Most of these involve both in-class and out-of-class work.

Exercise	Goals	Timing	Materials
A. Deductive application	Draw connection between deductive law and facts	Fairly involved; out-of-class reading and in-class reading and writing	Brief with facts section and simple deductive rule
B. Framing the law	Write rule and parenthetical persuasively	Fairly involved; reading and writing in class	Opinion with short section describing rule; short canned facts
C. Sentence-level work	Simplify language	Short to medium; editing in class	Difficult language from an actual brief or opinion
D. Introductions	Write an introduction that is accessible to a reader unfamiliar with the case	Medium; out-of-class writing and either in-class editing or out-of-class writing	Complete brief on fairly simple issue

#### A. Applying deductive rules

This exercise requires students to write the start of an application section after I've given them the facts and the rules from the brief. It relies on a fairly rigid CRAC structure to help students organize their thoughts, a structure I provide to students in an earlier class.

Students sometimes struggle to decide how to start the application section of their argument, the section that turns from a description of the law to an argument about why, under these facts, the students' client should prevail. To solve this problem, I encourage students to start their application section with a topic sentence that restates the deductive rule and adds the key facts from their case. For example, a brief involving the application of the *Terry* standard to a car stop might start with: "Here, the police had **reasonable suspicion sufficient to justify the stop** [the deductive rule] because the car was weaving erratically between lanes [the key reason]." While my students discuss the theory and review examples, they often find putting that theory into practice challenging.

To craft a writing exercise to address this, I've assigned students to read the introduction and facts section of the petitioner's brief from *Sandifer v. U.S. Steel* prior to class.<sup>14</sup> It's a fun case, and it involves the easily understood issue, "what are clothes?" The relevant portions of the facts section of petitioner's brief are about five pages long.<sup>15</sup> In class, we first discuss how to draw the ties between facts and law, and we review some examples. I then distribute to the students the deductive rule section of the brief (not including the application). It is about two pages long, and it ultimately defines "clothing" as "whatever covering is worn for decency or comfort."<sup>16</sup>

<sup>14</sup> Brief for Petitioner, *Sandifer v. U.S. Steel Corp.*, 678 F.3d 590 (7th Cir. 2012) (Nos. 10-1821, 10-1866), *aff'd*, 571 U.S. 220 (2014), 2013 WL 2136504. The issue in *Sandifer* was whether union members were dressing for their shifts in protective "clothes"—in which case the time spent dressing was properly uncompensated—or in protective gear that was not "clothes," in which case the time was properly on the clock. *Sandifer*, 678 F.3d at 591-92 (Posner, J.).

<sup>15</sup> Brief for Petitioner, *supra* note 14, at 9-18 (five pages after unrelated facts are redacted).

<sup>16</sup> *Id.* at 27. Finding that definition takes some work by the students, though, as it appears roughly in the middle of the rule section.

“The vast number of briefs available through online databases provides opportunities for interesting in-class exercises that are as varied as the instructor's imagination.”

Without discussing the rule section, I then ask the students in class to write the first line or two of the application section of the brief. I give them about 20 minutes, and I ask them to submit their writing online when they are finished. We then perform a “pair and share” exercise in which students compare their versions with the person next to them, discuss the differences, and share with the class what they’ve noticed.

As a class, we then discuss how students may have approached this task. Many students will properly focus on the “decency and comfort” language, and how particular pieces of protective gear—such as facemasks, goggles, and helmets—don’t meet that definition. We then compare the students’ versions with the version from the actual briefs, and we discuss which they like better, and why.

That comparison seems to always result in a fun discussion. Not only do students get to critique the writing of actual practitioners,<sup>17</sup> they get to compare practitioners’ versions with their own. And by inserting their own lines into the briefs, they can see how the remainder of the application section may or may not flow as well.

Following up on this, we then, as a class, view on the screen the application Judge Posner wrote in his opinion in the case.<sup>18</sup> That opinion includes a photograph,<sup>19</sup> the merits of which have been subject to discussion and debate.<sup>20</sup> That in turn leads into the class discussion on the proper use of visual aids in a brief and how practitioners may frame the aids in a way that most favors their clients.

This exercise has many moving parts, and so I’ve found it best both to write out my plans fairly explicitly for my own reference and to put clear instructions to students on an overhead. That

way if half-way through the deductive rule section, students forget what they are writing about, they can look up to see a reminder.

One of the main benefits of this exercise is that it integrates students’ own writing with a practitioner’s writing on the same topic to allow students to decide what works and what doesn’t. A disadvantage is the time it takes, both in class and outside of it. It also requires students to be able to grasp deductive rules quickly, a requirement making it more suitable for upper-level courses.

#### B. Framing the law

This exercise has students practice writing persuasive versions of both deductive rules and analogies. It is a hybrid between a “real” problem and a canned one, and it can be run entirely as an in-class exercise.

When students write about a deductive rule, they are tempted to simply copy and paste the version used in an opinion that seems relevant. While that approach ensures that the brief is accurate, it misses the opportunity to present the law in a way that most favors the client. I ask students to write a description that both is accurate and emphasizes how easily their client can meet its burden, or how difficult it will be for the opposing side to prevail.

To set this exercise up, I first ask students to review several examples from practice to see how the same law is described in different ways by opposing parties.<sup>21</sup> Then I give students a snippet from an opinion that contains both the deductive rule of the case and the way it was applied. Ideally, the snippet is under a page, is well written, and is factually and legally simple. *Terry-stop* cases often meet these criteria.<sup>22</sup>

“One of the main benefits of this exercise is that it integrates students' own writing with a practitioner's writing on the same topic, to allow students to decide what works and what doesn't.”

<sup>17</sup> I agree with Professor Hemingway, who observed that when doing so, her class “came alive.” Hemingway, *supra* note 1, at 427.

<sup>18</sup> *Sandifer*, 678 F.3d at 591–93.

<sup>19</sup> *Id.* at 592.

<sup>20</sup> See Richard A. Posner, *DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY* 279–80 (2016) (responding to Professor Porter’s critique); Elizabeth G. Porter, *Taking Images Seriously*, 114 *COLUM. L. REV.* 1687, 1688–90 (2014) (critiquing Judge Posner’s use of photograph of law clerk who donned workers’ garb but who appeared in the calm of chambers, not the clamor of a steel mill); see generally MESSING, *supra* note 2, at 106–07 (discussing use of photographs).

<sup>21</sup> For this, I’ve sometimes used both sides of the trial court briefs in *Bauman v. DaimlerChrysler AG*. See *Bauman v. DaimlerChrysler AG*, No. C-04-00194, 2007 WL 486389 (Feb. 12, 2007), *rev’d*, 644 F.3d 909 (9th Cir. 2011), *rev’d sub nom.* *Daimler AG v. Bauman*, 571 U.S. 117 (2014). I’ve also used those from *Morse v. Frederick*, 551 U.S. 393 (2007) (deciding whether student banner reading “BONG HiTS 4 JESUS” was protected speech). Other contrasts are found in MESSING, *supra* note 2.

<sup>22</sup> I’ve used *United States v. Woods*, 829 F.3d 675, 679–80 (8th Cir. 2016) (detaining car to wait for drug-sniffing canine). I’ve also used the Government’s brief in *Fowlkes*, Government’s Answering Brief, *United States v. Fowlkes*, 804 F.3d 954 (9th Cir. 2015) (No. 11–50273), 2012 WL 5947263, at \*43–44 (plain-view seizure of narcotics following observed drug transaction), which has a fairly neutral description of the law and otherwise meets the criteria.

“This exercise has been helpful in transitioning students from noticing persuasive techniques to using them.”

I then provide each side with a simple set of canned facts that are similar to those in the opinion. I assign half of the class to be prosecutors, half to be defense attorneys. Students are given about 20 minutes to write two things: a persuasive version of the deductive rule from the case and a parenthetical that provides the key facts from the opinion supporting that rule in a way that favors the student’s side. For instance, a neutral version might be: “[Rule] There must be reasonable justification to support a stop. See Smith ([Key Facts] holding there was reasonable suspicion when the car was missing a bumper and weaving erratically through lanes).” Students write something similar but subtly emphasize the aspects of the rule and facts that favor their side of the case.

Students then pair and share, and I show on the board versions I’ve drafted for either side of the argument.

This exercise has been helpful in transitioning students from noticing persuasive techniques to using them. Well-written briefs make it seem easy to write persuasive accounts of the law; and the theory is not hard. But students often struggle when trying to do so as part of a long, end-of-course assignment. This quick exercise, performed in the middle of the semester, allows students to focus on just that technique.

This exercise also allows for further development, now that students have some facts and law with which they are familiar. For example, after my students study samples of response briefs, they sometimes then draft responses to a canned “bad” prosecutor’s brief I’ve drafted on the same topic—an exercise that allows students to explore the proper tone for a response brief.

### C. Simplifying sentences

This in-class exercise puts students in the fun role of complaining about and then fixing language they can’t understand in a brief or opinion. It helps them understand that often the fault lies with the writer, not the reader, a lesson I hope they carry into their own writing.

One aspect of dense writing I ask my students to focus on is nominalizations—nouns that are created

from verbs or adjectives, often by adding -ion or -ing to them.<sup>23</sup> We discuss when nominalizations are helpful and when they aren’t, and we practice fixing them by replacing a nominalization with a character and an action. So, the sentence “The propriety of the argument caused disagreement” becomes “The defendants disagreed about what to argue.” We similarly critique writing that inappropriately uses the passive voice, that is wordy, and that relies on legalese; and we work to shorten and simplify.

For this exercise, I show students a short passage of difficult language from a brief or judicial opinion, describe generally what the case is about, ask them to guess at what the language means, and then ask them to fix it. To find sample passages, I search online databases for opinions containing multiple nominalizations close together.<sup>24</sup>

Students often open the exercise by objecting that they don’t know what the passage means. That’s part of the point of the exercise—the poor language leaves it to the readers to try to figure out the meaning, rather than giving it to them.

I’ve sometimes run this exercise in two different game formats, depending on the technique I’m focusing on. The first version focuses on concision. I distribute a challenging passage of about 200 words to the students. Then I ask them to cut 50 words from it without changing the meaning.<sup>25</sup> After working on this individually, students compare notes in groups. I then challenge the groups to cut 100 words, and then 150 words. The winner is the one cutting the most words without loss of meaning.

The second version is a nominalization auction. I show a piece on the overhead for 30

<sup>23</sup> There is a terrific discussion of how to identify nominalizations and when and how to fix them in JOSEPH M. WILLIAMS & JOSEPH BIZUP, *STYLE: LESSONS IN CLARITY AND GRACE* 28–52 (11th ed. 2014). See also Helen Sword, *Zombie Nouns*, N.Y. TIMES, July 23, 2012, <https://opinionator.blogs.nytimes.com/2012/07/23/zombie-nouns/> (discussing how to identify nominalizations, those zombie nouns that “cannibalize active verbs, suck the lifeblood from adjectives and substitute abstract entities for human beings”).

<sup>24</sup> I’ve found it helpful to search for briefs and opinions containing words such as the following in close proximity: discussion, application, analysis, exception, accommodation, representation, and distinction. The more frequent and closer together they are, the more likely the passage is suitable for this exercise.

<sup>25</sup> I’ve adapted this exercise from one contained in WILLIAMS & BIZUP, *supra* note 23, at 140.

seconds and ask students, in groups, to bid on how many nominalizations they believe they can change. But groups get that many points only if they are able to successfully change that number in the time provided. If their bid exceeds their ability, they receive no points.

With both games, I live edit the passages after students have worked on each one, to show what students might have done. Depending on how I've structured the class, I sometimes skip the game formats, to save time.

These exercises emphasize to students how much a writing style can sometimes obfuscate meaning. Additionally, the exercises put students into the roles of editors of real briefs, a position they may find themselves in soon after graduation.

#### D. Fixing the introduction

This exercise aims to help students figure out the right amount of detail to include in an introduction. It's a modification of one introduced to me by my colleague Professor Helen Anderson. It involves a reading assignment outside of class and either writing in-class, with a substantial investment of class time, or writing outside of class.

While students are often able to recognize what makes an introduction problematic, they sometimes struggle to fix it. That's especially true when it comes to information needed by a reader unfamiliar with

the case: what's going on in this case; what's the specific issue in this motion, and why should you win? This exercise aims to help students figure out the answers. In my upper-level class, I've run it using student briefs from prior years, giving my new students a glimpse of their final products. But it's easily adaptable to the use of real briefs.<sup>26</sup>

For the first class, students read four short briefs. The briefs are all fairly well written, but they vary in how much background information is presented in the introduction. Some briefs are written as if the readers were already familiar with the law and facts; others take the time to describe what happened and to introduce the law before referencing it. Still other introductions are excessively long. That first class, we discuss what students liked about the briefs both as a whole and section-by-section.

A few classes later, my students turn to writing introductions. I mention that one of the components I like to see in an introduction is

<sup>26</sup> I've used the introductions from real briefs in support of and opposed to the Government's Motion to Dismiss for Lack of Subject Matter Jurisdiction in *Hoffman v. United States*, No. 707CV10714, 2009 WL 3232883 (S.D.N.Y. March 30, 2010), for a related exercise in my first-year class in which we critique (but do not rewrite) introductions from briefs involving the "Discretionary Function Exemption" to the Federal Torts Claims Act. The *Hoffman* briefs would work well for the exercise the article suggests, especially if presented to students alongside sections of briefs from similar cases, such as the Introduction to Defendant's Trial Brief in *Souchet v. United States*, No. 01 C 2115, 2004 WL 419905 (N.D. Ill. Feb. 25, 2004), and the Preliminary Statement in Plaintiff-Appellant's Brief in *Reichhart v. United States*, No. 10-1108, 2011 WL 286190 (2d Cir. Jan. 31, 2011).

“These exercises emphasize to students how much a writing style can sometimes obfuscate meaning.”

### Micro Essay

“Hello, Sonia. How can I help you today?” This is what I envision from my AI TA (“Aita”). Aita will be able to help me grade, because she will come equipped with natural language processing. As I instruct her to look for key words in my students’ papers, she will search for those words. Through semantic parsing, she will be able to find appropriate synonyms. And, with the advent of neural networks, Aita will be able to teach herself to be smarter after every paper. Will we still grade? Yes, course. But AI might just help ease the load.

By Sonia Bychkov Green, Associate Professor of Law, The John Marshall Law School.

“It's challenging but fun to create exercises that use real briefs.”

that it briefly describes the law and facts for a reader who may be unfamiliar with the case. We then revisit the introductions from the first class and discuss how well they met this goal, and we mull over how that may have impacted students' views of the briefs as a whole.

The students are then given a copy of one of the briefs with the introduction removed, and they are assigned to write a new introduction, either in class or outside of it. The goal is to make the introduction friendly for a reader unfamiliar with the case. Since the students aren't overly familiar with the law, their legal descriptions are necessarily general, avoiding the trap of turning the introduction into another argument section. And since the class had just discussed the reasons the original introduction wasn't helpful for a new reader, they are better able to provide the needed level of background.

Part of the reason I like this exercise is that it permits immediate practice in writing introductions. Without it, students may study introductions in week two but not write one until the end of the course. And by running the exercise in class, I have the opportunity to provide immediate feedback.

#### IV. Conclusion

It's challenging but fun to create exercises that use real briefs. While briefs can be messy, they also bring a depth of legal and factual detail that canned problems cannot match. Students also won't wonder how much is “made up” and how much is “real”; and that can help impress upon them what it means to write as a practitioner.

### Micro Essay

#### How Artificial Intelligence Has Changed My Classroom

We can show our students how AI can be a helpful but imperfect assistant, one whose output they should treat the way a supervising attorney treats a new associate's work—as something to review carefully and to probe for errors and omissions, while hoping for something worthwhile on which to build. We can also use AI to reinforce the fundamentals of strong legal writing: brief-checking software such as “Brief Catch” or “WordRake” can help students revise more quickly but they must check the program's choices against those fundamentals. Used well, AI can free up the lawyer's brain to ponder, create, and persuade.

By Elizabeth De Armond, Professor, Legal Research and Writing and Director of Legal Writing, Chicago-Kent College of Law.