

# Outlining & The Parts of the Paper



# A Seminar Paper



- Casenote or Comment**
- “Hot” Topic
- Strong Thesis
- Four-Part Structure
- Research
- Extensive Use of Footnotes (Bluebook)

# What is a Casenote?



- ❑ An analysis of one case (typically new, typically appellate or Supreme Court).
- ❑ Casenote **MUST** go beyond paraphrasing to analysis.
  - ❑ A casenote is not case-briefing.
  - ❑ **NEVER** sufficient to argue that the majority is correct for the reasons that the majority advances!
  - ❑ Critical writing – analyzing what lies between the lines.
  - ❑ Looking beyond the Court's “articulated” reasons.

# What is a Casenote?



- ❑ Casenote evaluates both the result and the reasoning of a judicial opinion.
  - ❑ The result was correct, but the court proposed no clear standard for guidance in the future; XYZ would be a workable standard;
  - ❑ The result was incorrect; further the court's standard is so complex that the outcome of future cases cannot be predicted; ABC would be a better standard;

# What is a Casenote?



- ❑ Casenote evaluates both the result and the reasoning of a judicial opinion.
  - ❑ The result was incorrect; the court failed to consider a significant issue which would have been dispositive;
  - ❑ The result was incorrect; the court misconstrued or misused precedent.
- ❑ See Page 10 of SW for more examples.

# What is a Comment?



- ❑ An analysis of a development or controversy in an aspect of the law.
- ❑ Four major versions, but scholarly comments can cover a wide spectrum. (SW pg.6-7 lists several different formats these can take).

# What is a Comment?



1. “*Typical*” article analyzes case law in an area that is confused, in conflict, or in transition.
  - ❑ Author resolves the conflict or problem by reference to policy, offering a solution that best advances goals of equity, efficiency, and so forth.
2. “*Law reform*” article argues that a legal rule or institution is not just incoherent, but bad – has evil consequences, inequitable, or unfair.
  - ❑ The writer shows how to change the rule to avoid these problems.

# What is a Comment?



3. “*Legislative*” article
  - ❑ Author analyzes proposed or recently enacted legislation, often section by section, offering comments, criticisms, and sometimes suggestions for improvement.
  
4. “*Interdisciplinary*” article
  - ❑ Author shows how insights from another field, such as psychology, economics, or sociology, enable the law to deal better with some recurring problem.



# A Seminar Paper



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- ❑ “Hot” Topic
- ❑ **Strong Thesis**
- ❑ Four-Part Structure
  - ❑ *Comprehensive* Legal Analysis
- ❑ Research
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# Developing a Strong Thesis



- ❑ Thesis – an original and supportable proposition about the subject.
- ❑ It is not enough to simply identify a problem – you need to try to resolve it.
- ❑ Narrow your thesis to something manageable.
  - ❑ If the focus is sufficiently narrow, you will be able to read a lot of material and become an expert in that one area in a short amount of time.
  - ❑ Sometimes, your initial research will suggest ways to narrow focus.

# Developing a Strong Thesis



- “[F]ind one new point, one new insight, one new way of looking at a piece of law, and organize your entire article around that. One insight from another discipline, one application of simple logic to a problem where it has never been made before is all you need.” (SW page 25).

# Develop Your Thesis



## ❑ **Develop a Thesis – an original and supportable proposition about the subject**

- ❑ Find one new point, one new insight, one new way of looking at the law, and organize your entire article around that.
- ❑ Probe sources to search for an original thesis – critical reading.
- ❑ Read for inconsistency, logical error, and omission.
- ❑ Write down ideas while you read.

## ❑ **After you identify your thesis, test it.**

- ❑ If your thesis identifies a problem and proposes a solution, bombard it with hypotheticals to see if the solution works in all its likely applications.

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# Four-Part Structure



- Introduction
- Background
- Analysis
- Conclusion

# Four-Part Structure



## I. Introduction

- ❑ Succinct overview of problem
- ❑ Major schools of thought
- ❑ Thesis
- ❑ Roadmap: This Comment will discuss.... Part II provides a background in .... Part III analyzes....

# Four-Part Structure



## II. Background

- ❑ *A. Overview of problem*
- ❑ *B. Codified law on point (including legislative history)*
- ❑ *C. Cases on point*
- ❑ *D. Major schools of thought*



# Four-Part Structure



## III. Analysis

- ❑ Restate thesis (solution to the problem)
- ❑ *A. Pros using experts to substantiate*
- ❑ *B. Cons using experts to substantiate*
- ❑ *C. Practical considerations for change*
- ❑ *D. Public Policy Considerations*

# Four-Part Structure



## III. Analysis

- ❑ Focal point of the article
- ❑ More than one sub-topic section is almost always required.
  - ❑ For example (casenote) – one section that criticizes the decision and one that outlines a solution
- ❑ Detail reasons/rationale for your solution
- ❑ Answer counter-arguments
- ❑ Should be *original* and closely reasoned, building to a convincing conclusion – NOT trailing off as the exhausted writer sees the deadline approaching.
- ❑ This is where you add to the discussion.

# Four-Part Structure



## IV. Conclusion

- ❑ A short conclusion summarizes—but does not rehash—the analysis
- ❑ Should also suggest related issues or ramifications, inviting the reader to further reflection.
- ❑ You may discuss shortcomings here and open the door to further exploration.
- ❑ Suggestions for practitioners are often seen in the conclusion.

# Creating an Outline



- ❑ **Adapt the Sample Outline**

# Creating an Outline



## ❑ Working on a Statement of Purpose

- ❑ A paragraph that articulates what you aim to do in your paper and how you intend to do it.
- ❑ Put your thoughts on paper as if you are thinking out loud.

## ❑ Freewriting “Dump” or “Zero” Drafts

- ❑ Write out every thought you have about your thesis and topic without regard to order, grammar, or brilliance (e.g. pg 62 SW text).
- ❑ This allows you to start adding structure to free-floating thoughts.
- ❑ Scrutinize what you wrote / tie things together / lose irrelevant ideas / cross-reference related themes.

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It's very simple:

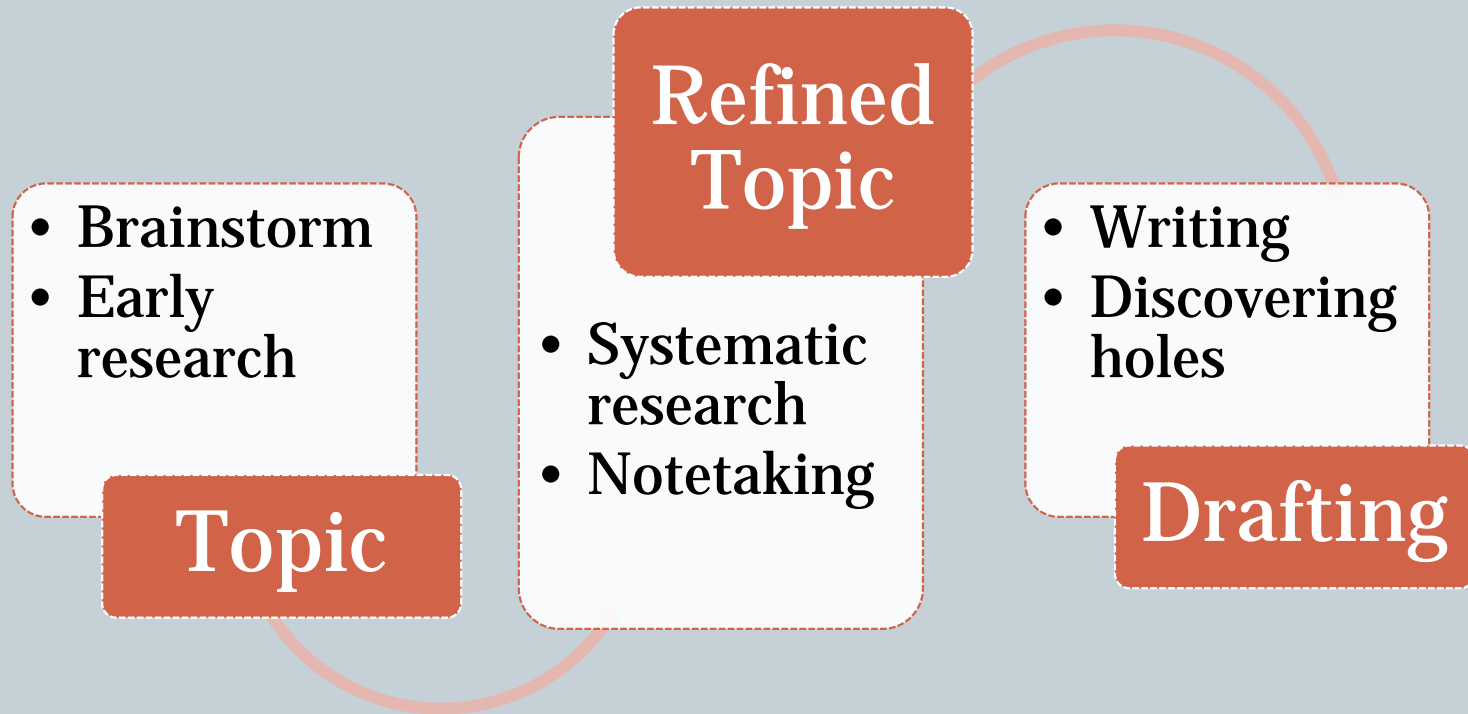


Research



Write

# Not so simple, really:







- **Research**
- **Writing**

**Filling in  
holes**

**Editing**

- **Answer  
Q?**
- **Flow?**

- **Clean up  
citations**
- **Tweak**

**Polishing**

# General Research Strategy



- Preliminary analysis (issue, parties, jurisdiction, keywords, secondary sources)
- Check for Codified Law (plus regs, ordinances)
- Mandatory (binding) precedent
- Persuasive precedent
- Refine, update, doublecheck

# How Might a Theory Paper Differ?



- Questions
- Purpose
- Sources
- Thoroughness
- Currentness
- Style

# State a Thesis (Even Tentatively)



E.g.,

Recent Supreme Court opinions on affirmative action in education and busing in public schools illustrate competing visions of fairness. Applying theories of Rawls and Nozick can help us understand the tension.

# Form a Plan



**Write questions you hope to answer with research:**

- What are recent S.Ct. cases re affirmative action in education?
- What rationales do justices apply?
- How do various articles analyze fairness issues?
- How about philosophy or public policy articles?

# Plan How You'll Look



- Already have citations for S. Ct. cases; just need to retrieve and read.
- Law review articles:
  - KeyCite or Shepardize cases; restrict to law review articles with key terms
  - Full-text searches, LN & WL; SSRN?
- Google Scholar

# Organize Your Thoughts



Thesis

Legal issue

Apply  
theory to  
issue

Test with  
examples

Conclude

# Do You Have What You Need?



- In your notes and files, do you have the material you need?
- If not, form questions and go research.
- If not sure, try writing a section and re-evaluate.



# Have You Addressed Your Thesis?



- If so, great.
- If not, can you add a section to fill in analysis?
- If not, can you restate problem to be what you *did* address?

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# Beginning to Write



- ❑ The hardest part of any writing project, after choosing a topic, is starting to write.
- ❑ Ideas can often occur in no logical order.
- ❑ Sometimes order does not start to take shape until several drafts have been sketched out.
  - ❑ During this process, we find out what we actually know and think about a subject.
- ❑ Details and good arguments may not emerge until you are writing.

# Beginning to Write



- ❑ Expand and revise your outline.
  - ❑ Keep track of your progression through updating your outline.
  - ❑ If you find through your research that your initial ideas need revising, try to update your outline.
  - ❑ You can always refer back to your outline if you lose your way.