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## GRADING RUBRICS: THEIR CREATION AND THEIR MANY BENEFITS TO PROFESSORS AND STUDENTS

BRENDA D. GIBSON\*

### I. INTRODUCTION

The grading rubric, defined as “ ‘detailed written grading criteria, which describe both what students should learn and how they will be evaluated,’”<sup>1</sup> has been in existence since 1961 when Paul B. Diedrich, John W. French, and Sydell T. Carlton of the Educational Testing Service published *Factors in Judgments of Writing Ability* (ETS Research Bulletin 61-15).<sup>2</sup> Though rubrics are not new to the corridors of higher education, as a non-academic for the first ten years of my legal career,<sup>3</sup> I was completely unfamiliar with their utility. As a fledgling director and academic in fall 2005, grading rubrics were an invaluable tool for me. In a sea of uncertainty about so many things, grading rubrics became something that I could trust, and I clung to the concrete nature of the grading rubric. I had never seen such an instrument as a law clerk and appellate staff attorney, but I knew immediately that it was a good thing. It helped me to be objective as I graded my papers late at night; it helped me to explain a student’s grade on a particular assignment when I returned his/her paper; it helped me to explain my expectations during student memo conferences; and it helped me to “head off” or defend against grade appeals.

Work on this article began shortly after my 2008 presentation, which consisted of six PowerPoint slides (including the title slide) at the LWI Bi-

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1. Karen Sneddon, *Armed with More than a Red Pen: A Novice Grader’s Journey to Success with Rubrics*, 14 No. 1 PERSP.: TEACHING LEGAL RES. & WRITING 28, 28 (2005) (quoting Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6

(2004)). Sneddon goes on to give a brief background of the use of rubrics in primary education, noting their increased use in higher education. *Id.*

2. Bob Broad, *WHAT WE REALLY VALUE: BEYOND RUBRICS IN TEACHING AND ASSESSING WRITING*, 6 (2003).

3. Gibson worked as law clerk to the Honorable Judge Clifton E. Johnson (now deceased) and Justice Patricia Timmons-Goodson (now retired) and Staff Attorney at the North Carolina Court of Appeals before joining the faculty of the School of Law in July 2005.

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ennial Conference titled, "Grading Rubrics: A Law Professor's Insurance."<sup>4</sup> The presentation was based upon my experience with the use of rubrics in NCCU's first-year, team-taught legal writing classes.<sup>5</sup> Since my 2008 presentation, the ABA has posited a set of new standards<sup>6</sup> that touts outcomes assessment,<sup>7</sup> shifting the focus in legal education from teaching to learning.<sup>8</sup> This talk of putting these new standards in place led to an evolution in the article to include a discussion regarding how the grading rubric does and can benefit law school professors in improving assessment and ultimately student learning.<sup>9</sup>

To that end, I enlisted the services of an extraordinary friend and librarian, Nichelle "Nikki" Perry,<sup>10</sup> and my research assistant, Nickeyea Wilkinson,<sup>11</sup> in conducting additional research. I also have Ms. Wilkinson to thank for a student survey, which gathered data regarding students' feelings about grading rubrics. This labor of love has grown and morphed into the present offering which discusses grading rubrics and their utility for the law professor and student.

Part II of the article discusses the methodology for creating an effective grading rubric, while Part III details the rubric's benefits for the law professor (specifically the legal writing professor) and for the students. Finally, Part IV of the article concludes with a summation of why the benefits of utilizing grading rubrics outweigh the costs.

4. Professor Timothy Blevins, formerly of Florida A & M University College of Law, and I jointly presented on the topic of grading rubric on July 17, 2008 during the 13th Biennial LWI Conference in Indianapolis, Indiana.

5. NCCU School of Law's first-year writing curriculum consists of four sections (including the evening program's section) with four teams of three professors (two professors in the evening) in the fall and four teams of two professors in the spring. The courses are team taught, with all of the professors sharing the same books, assignments, lecture topics, etc.

6. STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 304 (July 2011 Draft), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/legal\\_education/committees/standards\\_review\\_documents/july2011meeting/20110621\\_ch\\_3\\_program\\_of\\_legal\\_education\\_redlined\\_to\\_standards.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/july2011meeting/20110621_ch_3_program_of_legal_education_redlined_to_standards.authcheckdam.pdf)

7. David Thomson, *Outcomes & Assessment: A Golden Opportunity for LRW Professors*, THE SECOND DRAFT 4 (2010).

8. Susan H. Duncan, *The New Accreditation Standards are Coming to a Law School Near You—What You Need to Know About Learning Outcomes & Assessment*, 16 J. LEGAL WRITING INST. 606, 609 (2010).

9. See Beverly P. Jennison, *Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time*, 80 UMKC L. REV. 353, 370 (2011) ("We should use rubrics in law school because they help us focus our teaching and students' learning.").

10. Nichelle Perry is the Director of the NCCU School of Law Library. B.A., SUNY New Paltz; J.D., NCCU School of Law; M.L.S., NCCU. In addition, previous Senior Reference Librarian Michelle Cosby and Access Services Librarian Jonathan Becker were invaluable in obtaining sources for me through the inter-library loan program.

11. Nickeyea Wilkinson is a 2013 joint JD/MBA degree recipient from NCCU School of Law and School of Business. B.A., Hampton University.

## II. THE CREATION OF AN EFFECTIVE GRADING RUBRIC

The methodology for creating an effective grading rubric involves a formula, of sorts, that evaluates a student's assignment from the very creation of that assignment.<sup>12</sup> Opponents of grading rubrics have often criticized the purported "rigidness" of the grading rubric.<sup>13</sup> However, in creating an effective rubric, that rigidity readily gives way to fluidity.

Dependent upon various factors,<sup>14</sup> the process for rubric drafting may be different for each person.<sup>15</sup> The beginning point, however, is the same — the creation of the assignment.<sup>16</sup> After the assignment is created, the professor begins to craft the rubric, working through the assignment and highlighting the points or arguments that the students are expected to make.<sup>17</sup> At this juncture, the professor must also determine how the points for the assignment should be distributed.<sup>18</sup> The determination of the information (or arguments) to be listed on the rubric and the point allocation (or levels of performance<sup>19</sup>) for each is a step that should be repeated as many times as necessary, looking for any oversights and editing the rubric.<sup>20</sup> Lastly, and most importantly, the assignment and grading rubric should be reviewed by as many colleagues as possible,<sup>21</sup> which may require the repeating of the preceding steps in their review. Even after this last step, the authoring professor should be open to editing the rubric during the grading process.<sup>22</sup> It is possible (and entirely probable) that students may present an unanticipated, but otherwise relevant, argument that may be converted to

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12. See Sneddon, *supra* note 1, at 30.

13. Broad, *supra* note 2, at 12 (discussing the failures of rubric to be sufficiently complex or flexible to capture the "truthfulness, usefulness, and meaningfulness" needed in the assessment of student writing.).

14. The type of course, assignment, program, and information sought are all variables that will affect the drafting of a grading rubric.

15. Sparrow, *supra* note 1, at 32 (citing Barbara E. Walvoord & Virginia Johnson Anderson, *EFFECTIVE GRADING: A TOOL FOR LEARNING AND ASSESSMENT* (1998); Ethel Edwards ET AL., *RUBRICS: A HANDBOOK FOR CONSTRUCTION AND USE* ix (Germaine L. Taggart et al. eds., 1998)).

16. In her article, *Riding the Carousel: Making Assessment a Learning Loop through the Continuous Use of Grading Rubrics*, Sandra L. Simpson goes a step back. She submits that the first step in drafting an effective rubric is "complet[ing] the syllabus for the course." Sandra L. Simpson, *Riding the Carousel: Making Assessment a Learning Loop through the Continuous Use of Grading Rubrics*, 6 CAN. LEGAL EDUC. ANN. REV. 35, 48 (2011). I posit that Simpson and I are on the same page because by necessity an assignment (to be an effective assessment tool) is based on the objectives/goals stated in the syllabus.

17. Sparrow, *supra* note 1, at 32.

18. Sneddon, *supra* note 1, at 29; Sparrow, *supra* note 1, at 34.

19. Points are numerical, while levels of performance are descriptive. Levels of performance may be noted as "very good," "good," "fair," and "needs improvement"; or "excellent," "good," "fair," and "poor."

20. See Sneddon, *supra* note 1, at 29, 30.

21. See *id.* at 30.

22. Sparrow, *supra* note 1, at 34, 35; see Sneddon, *supra* note 1, at 29, 30.

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points (or a higher level of performance) on the rubric. Or perhaps, the entire class will miss a particular issue/argument and a professor may want to re-distribute the point structure (or re-think the performance level) to de-emphasize that issue or argument. As with anything written, the creation of a rubric is fluid and recursive. This is the point that I think many critics of grading rubrics are missing.

### A. *The Steps*

#### 1. Creating the assignment

In creating the assignment, the professor must honestly determine the skill set that she seeks to test.<sup>23</sup> This question is almost exclusively controlled by the course or student objectives, which should be on the course syllabus.<sup>24</sup> The students should also be aware of the skills that are to be tested on an assignment.<sup>25</sup> In our first year legal writing course at NCCU, student learning objectives are stated on the course syllabus and the objective (or skills) being tested is set out on each testing prompt/assignment.<sup>26</sup>

#### 2. Working through the assignment to construct the rubric

Working through the assignment, perhaps the lengthiest part of the process, requires that the professor be keenly aware of the subject matter and attuned to what issues/arguments the students are likely to spot and to which they would respond.<sup>27</sup> In theory, this is quite easy. In practice, however, this is often difficult. In working through the assignment, the professor may simply jot down a list of all of the information/points that she wishes the students to make or she may simply begin to construct the rubric.<sup>28</sup> The number of points/issues or type of information the professor

23. Simpson, *supra* note 16, at 47. See also Sparrow, *supra* note 1, at 34–35; Sneddon, *supra* note 1, at 30.

24. Simpson, *supra* note 16, at 48 (noting that “the syllabus should convey the goals for the course”). It follows, therefore, that the syllabus must be consulted in drafting the rubric.

25. Andrea A. Curcio et al., *Developing an Empirical Model to Test Whether Required Writing Exercise or Other Wise Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance*, 57 J. LEGAL EDUC., 195, 196 (2007) (discussing how law professors can improve student learning by giving students the opportunity to practice the skills they are expected to learn, and give students the opportunity for self-assessment); Simpson, *supra* note 16, at 38–39 (discussing how student learning improves when they know what skillset is to be tested or what is required to be successful on an assignment and discussing that this is accomplished by the use of “detailed rubrics” throughout the semester).

26. See *infra* Appendix A and B, examples of both simple and more complex grading rubrics.

27. See Sneddon, *supra* note 1, at 29; see also Jennison, *supra* note 9, at 360 (2011) (“The more efficient and effective way of preparing a rubric is to use something which not only helps the student with respect to expectations for the assignment but which also helps the professor to stay on track with respect to those same expectations.” (citations omitted)).

28. Sneddon, *supra* note 1, at 29.

wishes the students to discuss drives the complexity or level of detail the rubric should contain. Often in working through an assignment, the professor realizes some deficiency in the prompt and amends the assignment, which means that she may have to begin with step 1 again.<sup>29</sup>

The time necessary to construct grading rubrics may vary based upon the complexity of the assignment.<sup>30</sup> It is important not to establish some sort of false timetable to complete this step (or any of these steps for that matter). Instead, the rubric creator should concentrate on making the assignment and the rubric as accurate and meaningful as possible. To that end, both design and point allocation (or performance levels) are important, so as to appropriately reflect the objectives of the assignment/prompt.<sup>31</sup>

a. Deciding on the design of the rubric

The type of assignment that it is being used to grade most often determines the rubric's design.<sup>32</sup> In a shorter essay question, where only two to three issues will be discussed, the rubric may not be terribly long. However, an essay question on a final exam in a four-credit hour class may have more issues and, therefore, need a more detailed grading rubric. Additionally, the course's teaching structure will also determine the design of a rubric.<sup>33</sup> For example, in my experience, team-taught courses require a more detailed rubric, whereas a simpler rubric<sup>34</sup> can effectively be used in courses taught outside a team. The reasons for this dichotomy is the heightened need for objectivity and consistency in a team-taught course (especially when there are adjunct professors involved), while a professor who teaches a "stand-alone" course does not have this "heightened" concern — there's not the same propensity of the students to compare her grading intra-section (or within a single class).

If you are new to rubric design, an excellent starting point is a colleague's bank of old rubrics, some old books, or the Internet.<sup>35</sup> There is no need to re-invent the wheel.

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29. *Id.* at 30.

30. *Id.* at 29.

31. *Id.*

32. *Id.* at 28.

33. Sparrow, *supra* note 1, at 33; *see generally* Sneddon, *supra* note 1 (containing sample rubrics and guidance about how to create them); Walvoord & Anderson, *supra* note 15, at 65–91 (explaining the steps involved in creating detailed scoring criteria)

34. Sparrow, *supra* note 1, at 33

35. *Id.* at 34.

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b. Assigning points (or performance levels) for the parts of the rubric

This task can be as simple or difficult as you wish to make it. The point structure (or performance level) of your rubric should reflect a hierarchy of skills/issues you are testing on a particular prompt.<sup>36</sup> This is important, as oftentimes professors randomly assign points (or performance levels) for a particular part/point of a rubric, only to find out that a student who has not mastered the skill/point of law tested has done quite well.<sup>37</sup> This can only be as a result of the grading rubric's dysfunction, which must be attributed to the author's error during this step of the process.

I must confess that I did not understand the importance of proper assignment of points to achieve an assignment/course objective until another university colleague mentioned this concept during a fall training session for the Legal Writing Program. My writing program colleagues and I were discussing how we could reinforce the importance of grammar in legal writing, in light of the small amount of time we had in our courses. Our consultant, an English Professor,<sup>38</sup> asked a pointed question, "How many points do you allot for grammar and mechanics?" She went on to explain that if the students could still do well (make an A or B) on an assignment, without demonstrating proficiency on that very important skill set, we were not properly allotting points on our grading rubrics. It blew me away! Such a simple concept; but before that time, I somehow missed it.

3. Passing the finished rubric around for feedback<sup>39</sup>

This is also an important step. Oftentimes as we construct an assignment and our grading rubrics, we get "tunnel vision"; we get proprietary about our work product. As a result, we become blind to any deficiencies in the product. Collaborating with, or seeking feedback from our colleagues saves us from this result.

I would suggest that the colleague be somewhat familiar with the subject matter of the assignment (but not necessarily know all of its details) and have sufficient experience to be able to give you valuable feedback. Good friends do not necessitate good feedback. Sometimes conferring on the matter of assignment and rubric composition can be the beginning of a meaningful relationship between a junior and very-experienced (seemingly unapproachable) senior faculty member.

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36. Sneddon, *supra* note 1, at 29.

37. *Id.* at 30.

38. Dr. Karen Keaton-Jackson, an Associate Professor of English at NCCU, served as our plenary speaker during our fall 2009 training session. Dr. Keaton-Jackson spoke to us about how to incorporate grammar skills into our legal writing instruction.

39. Sneddon, *supra* note 1, at 30.

When a colleague, without any prior knowledge of the assignment, picks up the assignment and the rubric, she should be able to immediately determine its efficacy. After all, the assignment and rubric should be written just like we are teaching our students — simply and precise. If it is not, the faculty member should duly note this deficiency and you should consider editing the assignment and rubric to reflect any collegial recommendations to make the assignment and rubric a better work product.

#### 4. Calibration Sessions<sup>40</sup> — For teams only!

In a recent article, titled “Using Calibration Sessions to Create Reliable and Fair Assessments,” in *The Second Draft*, Stephanie Thompson and Hether Macfarlane wrote about this fascinating topic.<sup>41</sup> Calibration sounded delightfully like the informal mechanisms that we have previously employed in fits and starts to improve the reliability of assessment in the NCCU Legal Writing Program.<sup>42</sup> Well, after reading the article, I knew I had found the key to eliminating the last bit of nagging inconsistency (that’s reliability to you assessment gurus) in the use of grading rubrics in our team-taught, first-year courses. Calibration sessions, as explained by Thompson and Macfarlane, are sessions that assist groups in deciding “what [they] are trying to assess for a specific assignment” and introducing “new faculty to the assessment approach developed in preceding sessions by more experienced members of the group.”<sup>43</sup>

In previous years, I have struggled as a director and member of a team-taught program to ensure that we were all looking for and rewarding the same things. Even with a grading rubric, there is still a fair amount of subjectivity in this regard, and calibration sessions will go a long way towards eliminating it. As Thompson and Macfarlane pointed out, “Using a uniform rubric is not enough because it is worthless if everyone interprets the parts of the rubric differently.”<sup>44</sup> However, “[w]hen people can come to a shared understanding of the rubric through calibration work with the same samples, the assessments done by each individual in the group tend to show

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40. We used calibration sessions for the first time in the NCCU Legal Writing Program during the fall 2011 semester. All of my professors thought that it was an excellent tool.

41. Stephanie J. Thompson & Hether Macfarlane, *Using Calibration Sessions to Create Reliable and Fair Assessments*, 24 *THE SECOND DRAFT* 5, 6 (2010).

42. In the past, more experienced legal writing professors would grade a couple of papers belonging to a new or junior member of the team in an attempt to test the reliability of the interpretation of the grading rubric. While this was beneficial, this method is not as effective as the calibration sessions discussed in the Thompson and Macfarlane article as calibration sessions involve all team members.

43. Thompson & Macfarlane, *supra* note 41, at 5.

44. Thompson & Macfarlane, *supra* note 41, at 6.



more consistent evaluation criteria.”<sup>45</sup> That was enough for me — sign me up!

The live session requires the use of common student samples, usually student papers from the previous academic year, and uniform grading rubrics.<sup>46</sup> The samples and rubrics are distributed to the professors prior to the session.<sup>47</sup> All markings, identifying information and grades should be removed from the student samples prior to their distribution to the participating professors.<sup>48</sup> Professors have a number of days to review and grade the sample.<sup>49</sup> On the day of the calibration session, all participating professors bring the samples and reveal the grade assigned the paper and comments made about it, based upon the grading rubric.<sup>50</sup> The professors all discuss the grades they have given, eventually leading to an agreement regarding the proper focus of the assignment and/or interpretation of the grading rubric.<sup>51</sup> Thompson and Macfarlane noted, “It is this process of constructing an agreed assessment approach that reduces or eliminates the risk of grading and commenting inconsistency among the legal skills sections, thereby ensuring reliable and fair assessments.”<sup>52</sup>

I surmise that this same process can be completed over e-mail, but do not think that results will be as easily accomplished because of time lag between assessing the grades of all team members and commenting further on the grades until consensus is reached.

### III. BENEFITS TO THE LAW PROFESSOR AND THE LAW STUDENT

#### A. *Benefits to the Professor*

Grading Rubrics, though tedious to author and sometimes a tough master, are the law professor’s best insurance against a grade appeal.<sup>53</sup> A well-drafted rubric is designed to inform the student of the professor’s expectations and to remind that same professor, during the wee hours of midnight

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45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Ethel Edwards ET AL, RUBRICS: A HANDBOOK FOR CONSTRUCTION AND USE 95 (Germaine L. Taggart et al. eds., 1998) (discussing how rubrics verify student performance on a particular assignment, and showing this performance compared to that of other students).

grading, of those expectations.<sup>54</sup> Whether you are a professor in a team-taught class, or not, it keeps us all honest to a fault.

Though many may initially think that grading rubrics somehow limit academic freedom, my experience has been that the carefully drafted rubric, with the input of all of the players, is perhaps one of the most freeing experiences that a professor may ever have. This section of the article concentrates on the benefits of grading rubrics for the professor. It also extols the benefits of a grading rubric when faced with a recalcitrant student in search of a few extra points on a legal writing paper. Finally, this part of the article briefly discusses how some perceived deficiencies of grading rubrics can be addressed to the hesitant faculty member.

After completing the process of constructing the assignment and the rubric comes the freedom! By freedom, I mean that a professor feels a sense of being released from the “reins of subjectivity,” at least to some degree. In grading essay questions, most professors feel “confined” by the subjectivity that is necessitated in grading these types of exams. Well, with a properly constructed (and vetted) grading rubric, subjectivity is minimized.<sup>55</sup> I posit that the elimination of subjectivity is what also leads to the need to spend less time grading each paper.<sup>56</sup> Because the professor has spent a great deal of time and taken great care in preparing her assignment and rubric, the professor has confidence in both (the assignment and the grading rubric), which translates into less time being taken in re-reading a paper (again and again) to assure herself that she has accurately graded the paper.

In her article, “Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time,” Beverly Petersen Jennison describes a particular approach that she takes in grading her Legal Research and Writing papers with a rubric, the grading and assessment by section, or GAS approach.<sup>57</sup> She explains that her rubric is organized by sections of the final memo that she is grading and that she evaluates all of

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54. *Id.*; see also Jennison, *supra* note 9, at 360 (“As for keeping the professor honest, when utilizing a rubric which is well formulated, it certainly helps the professor with the grading process, since there are clear objectives that must be met by the student which the . . . professor seeks to find in the submission.”).

55. Jennison, *supra* note 9, at n. 41 (quoting ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 62 (Eric B. Easton ed., 2d ed. 2006) (“[u]sing a rubric/checklist may . . . result in a more balanced assessment of the writing . . . [and] assures students that objective, rather than subjective, criteria are being used to evaluate their work”).

56. Sparrow, *supra* note 1, at 28; Jennison, *supra* note 9, at 369 (“Even more than just saving a little bit of time in grading, however, [grading with a rubric, using her methodology] saves the LRW professor by providing consistency of evaluation across the whole set of papers being evaluated.”).

57. Jennison, *supra* note 9, at 364–68 (explaining the grading and assessment by section, or GAS approach).

her papers with respect to one section of the memo/grading rubric before moving to the next section.<sup>58</sup> Jennison posits that the GAS approach makes her “hyper-focused” as she goes through her papers, helping her to give more relevant and meaningful feedback and preventing her from tiring as she did when she attempted to grade an entire paper at one time.<sup>59</sup> In the end, Jennison opines that her method of grading all of her student papers one section at a time with a rubric is a great timesaver. More importantly, she notes that the GAS approach also translates into greater consistency.<sup>60</sup>

I conclude, however, that whether one grades an entire paper (for one student at a time) or just one section of a paper (for all of the students) with the use of a grading rubric, the result is the same — more meaningful feedback and greater consistency in grading.<sup>61</sup>

Additionally, one must not forget the benefits that grading rubrics bring to professorial interaction with students. First, there is a theory that post-assignment student conferences are more beneficial because professors are better able to give students quantifiable information about their mastery (or not) of the skills or information we have taught them.<sup>62</sup> In addition, the use of rubrics seems to re-direct the students’ attention towards their substantive performance and away from a hunt for “another point or two.”<sup>63</sup> Even in those conferences with students who did not do well (or as well as they expected) on an assignment, upon thoroughly examining the grading rubric and having a few questions answered by the professor, that is usually the end of the student’s discontent.<sup>64</sup> In the event that it is not and the student decides to appeal the grade in the course or on the assignment, a well-crafted grading rubric is presumptive evidence of a properly assigned grade.<sup>65</sup>

## B. Conclusion

For those naysayers who believe that grading rubrics have a stifling effect on the learning process, I can only say that this has not been my experience. Significantly, if the rubric is constructed in a vacuum, without editing after obtaining feedback from colleagues or grading a few papers, I would

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58. *Id.*

59. *Id.*

60. *Id.* at 369.

61. See discussion of Calibration Sessions above as it pertains to team-taught courses; see also SOURCEBOOK, *supra* note 55, at 62 (noting that the use of grading rubrics increases the objectivity of grading student papers).

62. Sparrow, *supra* note 1, at 28; Simpson, *supra* note 16, at 52.

63. Edwards, *supra* note 53, at 96.

64. *Id.*

65. *Id.*

tend to agree. But with the process described above, I must quarrel with that body of “non-believers.” Indeed, grading can be quantified. Our academic institutions require that it be quantified. Moreover, as Sneedon states in her article, “[g]rading should not be subjective but as objective as possible to measure a student’s performance. Rubrics help both the instructor and the student adhere to a scale.”<sup>66</sup>

### C. *Benefits for the Students*

Closely associated to the benefits that rubrics provide to professors are those that inure to the student.<sup>67</sup> Not only do rubrics allow professors to benefit from a more productive conference, but students benefit also.<sup>68</sup> With the help of a rubric, students are able to review their work product and discover exactly where their strengths and weaknesses lie.<sup>69</sup> This gives students the ability to self-manage and engage in metacognitive thought.<sup>70</sup> Sparrow notes in her article, “Using detailed performance criteria, such as a rubric, provides students with feedback that enables them to begin understanding how they can evaluate their own performance. Developing these criteria helps students in other courses and on the job.”<sup>71</sup>

Rubrics also remind students of course expectations.<sup>72</sup> Though course expectations are (or should be) listed on the syllabus, students would like to be (or have a need to be) reminded of those expectations.<sup>73</sup> Because rubrics do this, they have a calming effect on the intense, often high-strung law student. This is more so the case when the professor gives the students a “pre-assignment rubric,” which is also known as a checklist. The student is able to use this tool to his/her advantage in preparing the assignment.<sup>74</sup> In law school where things are so “grey,” the black and white of a checklist is

66. Sneedon, *supra* note 1, at 30.

67. Jennison, *supra* note 9, at n. 42 (“The point of a rubric, then, is not only to guide the professor but also to provide the student with information prior to the creation of a written document and insight into the professor’s grading approach after an assignment has been returned.”).

68. *Id.* at 357 (discussing the usefulness of transparency fostered by the use of grading rubrics).

69. Simpson, *supra* note 16, at 52 (citing Sparrow, *supra* note 1, at 9–11).

70. Sparrow, *supra* note 1, at 23.

71. *Id.* at 24.

72. *Id.* at 25 (noting that in “using rubrics to communicate specific learning goals, professors can communicate high expectations and help students learn better”).

73. Jennison, *supra* note 9, at n. 63 (noting that students “‘prefer having explicit grading criteria given to them in advance of a graded event [because] . . . [a]ny indication [of what the professor is looking for] is helpful and greatly appreciated.’” (quoting Sparrow, *supra* note 1, at 35)).

74. Jennison, *supra* note 9, at 360 (noting that the student views the rubric as helpful in “identifying things that are most important to the assessor, namely, the professor teaching the course[, which] [i]n turn, . . . instruct[s] the student as to what types of things are important in completing that same task in practice”); see also Simpson, *supra* note 16, at 39 (noting that when professors develop “detailed scoring rubrics and [had] student practice with them improves students’ critical thinking and problem solving”).

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reassuring. Certainly, when students begin to use these tools to improve their self-reflection skills or metacognition, they not only become better students, they also ultimately become better practitioners as they are better able to assess their work product.<sup>75</sup>

### 1. NCCU Student Survey Results

During spring 2012, my research assistant, Nickeyea Wilkinson, assisted me in composing and administering a random survey<sup>76</sup> to students at NCCU School of Law. The survey was advertised in the Weekly, the law school's weekly student publication, and on the Assistant Dean of Students' TWEN page for a three-week period. Unlike our earlier attempt,<sup>77</sup> this survey garnered 268 student responses. As with the initial attempt, the scientifically valid second attempt showed that students generally had a favorable attitude about grading rubrics. Specifically, 76 percent of the students thought grading rubrics were important: 45 percent of the students thought that grading rubrics were "very important," and 31 percent thought they were "somewhat important."<sup>78</sup> Only 23 percent thought that grading rubrics were "not important."<sup>79</sup> When asked specifically if they thought that grading rubrics assured that they were graded fairly, a similar response was garnered: a total of 76 percent of the students responded favorably — 45 percent responding "all of the time" and 31 percent responding "sometimes."<sup>80</sup> A mere 23 percent responded "never."<sup>81</sup> More importantly, when asked if grading rubrics allowed them to "better understand what is expected of you on a particular assignment,"\*\* the response rate was the same as with the first two questions: 45 percent responding "all of the time," 31 percent responding "sometimes," and only 23 percent responding "never."<sup>82</sup>

The student survey results also seem to support the concept that after reviewing their professors' grading rubric, students generally feel satisfied

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75. Simpson, *supra* note 16, at 52.

76. Survey Monkey, a electronic database, was used to gather information from NCCU School of Law students about the use and attitudes about the use of rubrics in their law school classes. This was our second survey as our first survey did not capture a sufficient number of student responses to make it scientifically valid. Notably, however, the student responses for both surveys were very similar, with respect to their attitudes about grading rubrics.

77. See *infra* Appendix G, Chart 2.

78. *Id.*, Chart 1.

79. *Id.*

80. See *infra* Appendix G, Chart 2.

81. *Id.*

\*\* This question was posed to test the theory, discussed in this article and held by many, that grading rubrics assist students in learning by helping them to understand what the professor expects of them

82. See *infra* Appendix G, Chart 3.

with their work.<sup>83</sup> While only 5 percent “strongly agreed” that they felt satisfied with their work after reviewing the professors’ rubrics, 47 percent “agreed.”<sup>84</sup> A smaller number, 38 percent, responded neutrally, while 12 percent of the responding students “disagree[d]” that they felt satisfied after viewing their professors’ grading rubrics.<sup>85</sup> Only 1 percent “strongly disagree[d].”<sup>86</sup> When asked conversely about feelings of dissatisfaction after viewing their professors’ grading rubric, students still reported general satisfaction.<sup>87</sup> Again, only 1 percent “strongly agree[d],” 19 percent “agree[d],” while 46 percent were “neutral,” 33 percent “disagree[d],” and 1 percent “strongly disagreed.”<sup>88</sup>

Lending credence to those members of the academy who are of the opinion that grading rubrics are important and effective in all law school classes, regardless of the subject matter, the survey results showed that a total of 79 percent of the responding students “strongly agree[d]” or “agree[d]” that grading rubrics were important for legal writing classes, while 13 percent were “neutral”;<sup>89</sup> and a total of 79.2 percent of the responding students reported that rubrics were used in their substantive law classes and that they were “effective, while 11.4 percent of the students reported that rubrics were not used in their substantive law classes.”<sup>90</sup> Indeed, 64.7 percent of the responding students reported that their belief in the efficacy of grading rubrics in their substantive law classes had been influenced by the use of rubrics in their legal writing classes.<sup>91</sup> Only a total of 11 percent of the students responded negatively to the importance of grading rubrics in legal writing classes,<sup>92</sup> and a mere 9.4 percent responded that thought rubrics were used in their substantive law classes, they were “ineffective.”<sup>93</sup>

Most telling were the students’ responses to the question as to whether grading rubrics provided consistency in grading. As noted earlier in the article, consistency in grading is one of the major reasons that many favor the use of rubrics in legal writing classes, and indeed, across the curricu-

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83. See *supra* Section III C (discussing the benefit of the rubric regarding student satisfaction).

84. See *infra* Appendix G, Chart 6.

85. *Id.*

86. *Id.*

87. See *infra* Appendix G, Chart 7.

88. *Id.*

89. See *infra* Appendix G, Chart 8 (showing 40 percent “strongly agree[d]” and 39 percent “agree[d]”).

90. See *infra* Appendix G, Chart 10 (showing 14.5 percent responding “Yes, grading rubrics are used in my substantive law classes and because of their use in my legal writing class, I feel that they are effective[]” and 64.7 percent responding “Yes, grading rubrics are used in my substantive law classes and are effective[]”).

91. *Id.*

92. See *infra* Appendix G, Chart 8.

93. See *infra* Appendix G, Chart 10.

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lum.<sup>94</sup> A total of 75 percent of the students responded favorably to the question, with only 17 percent responding neutrally, and only 9 percent responding unfavorably.<sup>95</sup>

Not surprisingly, however, some students felt that their professors' rubrics were too complex or broad.<sup>96</sup> Notably, 15 percent of the responding students reported that their professor's grading rubric was "often" too complex, 57 percent reported them to be "sometimes" too complex, 11 percent reported their professor's rubric to be "never" too complex, and 21 percent reported that their feelings about the complexity of the grading rubric "varies."<sup>97</sup> For some reason those numbers changed when the students were asked about the breadth of their professors' grading rubrics: 11 percent reported that their professor's grading rubric was "often" too broad, 49 percent reported that the rubrics were "sometimes" too broad, 23 percent reported that the rubrics were "never" too broad, and 20 percent of the students reported that their feelings regarding the breadth of their professors' rubrics "varies."<sup>98</sup>

## 2. Conclusion

My research, bolstered by the student survey responses, leads me to believe even more that grading rubrics are beneficial to professors and students alike. For those who feel that rubrics "spoon feed" or oversimplify legal concepts for students, I can only say that in my short experience, rarely can we present anything too simply for a law student and that "spoon feeding" can be of little assistance on an exam or in writing a legal memorandum which requires a student to use the rules of law they may have memorized or found through research and engage in any higher form of legal reasoning and analysis to present a cogent work product.<sup>99</sup> I am, however, cautious about being too rigid in structuring the rubric — which should be taken care of when drafting and editing the rubric and sending it around for feedback from colleagues.<sup>100</sup> Finally, based on the feedback on the student survey, professors must be attentive to creating simpler rubrics

94. See *infra* Section III A (discussing how grading rubrics foster more objectivity and/or consistency in grading).

95. See *infra* Appendix G, Chart 9 (showing that 27 percent of the students "strongly agree," 48 percent of the students "agree," 6 percent of the students "disagree," and 3 percent "strongly disagree").

96. See *infra* Appendix G, Charts 4 and 5. See also Jennison, *supra* note 9, at n.53 (noting that students often have no idea that they are struggling or have no idea how to improve and stating that this is the very reason that she favors the more detailed rubric, although she does admit that the more detailed rubric may still not help all the time).

97. See *infra* Appendix G, Chart 4.

98. See *infra* Appendix G, Chart 5.

99. Sparrow, *supra* note 1, at 26.

100. Sneddon, *supra* note 1, at 28–30.

that are narrowly tailored to accomplish the goals of not only grading an exercise, but also determining whether the course goals initially set forth in our course syllabus have been met.

#### IV. CONCLUSION

In conclusion, as the academy moves towards outcomes measurement and more “learning centered” teaching, grading rubrics will become vital. Not only will they assist the professor in more effectively carrying out her job duties, but rubrics will also help students become more active learners as they engage earlier and more often in the legal education process.<sup>101</sup>

For those who would point to the time and effort that goes into constructing these rubrics or the imagined limitation on academic freedom/grading flexibility, I would only point to the overwhelming benefits to student learning and engagement, increased objectivity and consistency in grading, and the deeper level of thinking that rubrics engender during the creation process. As with anything new (or anything perceived as such), grading rubrics will have to grow on some, but for me the grading rubric was a life-line in a sea of uncertainties when I took the helm of the Legal Writing program at NCCU School of Law just seven years ago.

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101. Jennision, *supra* note 8, at n.30 (“The switch to a learning-outcomes approach will likely positively impact legal education . . . [and] bring[] with it challenges . . . [but] this change [also] has the potential to make us better teachers, help students learn better, and make our institutions more efficient and more accountable.”) Duncan, *supra* note 16, at 631.



APPENDIX A — SAMPLE SYLLABUS (REDACTED)  
**NORTH CAROLINA CENTRAL UNIVERSITY  
SCHOOL OF LAW  
LEGAL REASONING & ANALYSIS SYLLABUS**

**Student Learning Objectives:**

Upon completion of the requirements for Legal Reasoning & Analysis, the student will:

- o be able to demonstrate a basic understanding of the main sources and types of law
- o be able to design a research strategy using both electronic and print resources
- o be able to identify and formulate issues
- o be able to select relevant legal sources and conduct searches
- o be able to analogize, distinguish and synthesize cases
- o be familiar with canons of construction and legislative history
- o be able to apply case and statutory law in an analytical framework utilizing the principles of analogies, distinctions, canons of construction and legislative history to write an objective legal memorandum
- o have acquired legal writing skills
- o have experienced improvement in basic writing skills, including grammar, tone, style, usage and attribution

. . .

**Assignments & Grades:**

Grades will be based on the following assignments:

Library Research Exercises	20%
Legal Writing Assignments	20%
Draft Memorandum	20%
Final Memorandum	40%

Grades for Legal Reasoning & Analysis are based upon three out of class library research exercises worth 5%, 5% and 10% respectively for a total of 20%, two legal writing assignments worth 10% each for a total of 20%, a draft memorandum of law worth 20% and a final memorandum of law worth 40%. **Any writing assignment (other than the memorandum), on which the student receives a grade of less than a C (C- through F), must be rewritten. There are no rewrites for legal research assignments.** Students who receive a grade of C or better on writing assignments other than the memorandum have the option of rewriting the assignment. All students who are required to rewrite or who exercise the option to rewrite will receive an average of the initial grade and the grade on the rewrite (e.g., if a student makes a "D" on Assignment 1 and a "B" on the rewrite, the student's grade for Assignment 1 is a "C.") If a student with a C- or below does not do the rewrite, the second grade of "F" is averaged with the first grade. **NOTE THAT ALL RE-WITES WILL BE ADMINISTERED IN COMBINED SECTIONS ON FRIDAYS FOLLOWING THE RETURN OF A GRADED ASSIGNMENT IN ROOMS 100 AND 102 AS INDICATED ON THE SYLLABUS.** There is no re-write requirement for graded research assignments.

Unless otherwise indicated, ungraded legal writing assignments, completed outside of class should not exceed two pages. ALL ungraded assignments completed outside of class should be typed and submitted electronically at the beginning of class. In addition, students should also bring a printed copy of the ungraded exercise to class. You should keep copies of all your submissions, **GRADED AND UNGRADED ASSIGNMENTS. WRITE THE LAST 5 DIGITS OF YOUR STUDENT ID NUMBER ON ALL ASSIGNMENTS.**

**ALL** assignments, except in-class assignments, are due **at the beginning** of the scheduled class. Late submissions will result in the following grade reductions: A graded assignment turned in up to ten minutes late will receive a 1/3 letter grade reduction (e.g., an "A" becomes an "A-"). After the first ten minutes, the assignment will receive an additional letter grade reduction for each 24-hour period that it is late (e.g., an "A-" becomes a "B-"). Any assignment submitted to someone other than the student's professor must be initialed by a secretary or a professor and must certify the time & date of submission. Failure to comply with these requirements may result in no credit being awarded for the assignment.

**2. NO UNGRADED ASSIGNMENTS WILL BE ACCEPTED LATE.** Students are required to submit their ungraded assignments electronically through TWEN and bring **1 copy** of the assignment to class. Students should make corrections on this printed copy and be prepared to dis-

cuss those corrections during class. Late submissions will be treated as if they were not submitted. Failure to submit an ungraded assignment will result in a 1/3 letter grade reduction of your **final** grade for the course.

Instructors may waive penalties for exigent circumstances that were beyond the student's control. We strongly recommend that you produce your work on word processing systems with save capabilities and backup files.

3. Library tours scheduled for the first two week of classes, Core Grammar for Lawyers Pretest and exercises (indicated as necessary by the Pretest), and follow-up interventions ARE MANDATORY. Failure to take a part in and/or complete these activities will result in a 1/3 letter grade reduction of your **final** grade for the course (as noted in section 2 for failure to submit ungraded assignments).

### **Reading Assignments:**

Reading Assignments from the below-listed required texts are set out in the syllabus. These readings are assigned to complement the lectures and assist in completing the graded and ungraded exercises. It is expected that reading assignments be completed prior to the corresponding lecture. Your comprehension of the materials will be necessary to follow the class lecture. The below-listed Recommended Resources, while not necessary, may be helpful in understanding and completing assignments in this course. These Recommended Resources are not required.

#### **Required Texts and Materials:**

*Legal Writing*, Richard K. Neumann, Jr. & Sheila Simon (ISBN 9780735564244)

*Experimental Legal Research: sources, strategies, and citation*, Diana R. Donahoe. (ISBN 9780735598355)

*Core Grammar for Lawyers*, Ruth McKinney & Katie Rose Guest Pryal (available at [coregrammarforlawyers.com](http://coregrammarforlawyers.com))

#### **Recommended Resources:**

*Plain English for Lawyers*, Richard Wydick (5<sup>th</sup> ed. 1994) (ISBN 0890892563)

*Elements of Style*, William Strunk, Jr., & E.G. White A(3<sup>rd</sup> ed. 1979) (ISBN 205191584)

*The Legal Writing Handbook*, Laurel Currie Oates & Anne Enquist (3<sup>rd</sup> ed. 2002)

*The Journey to Excellence in Legal Writing*, Pamela Newell & Timothy Peterkin (2010) (ISBN 9781609279677)

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*GRADING RUBRICS*

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**YOU ARE RESPONSIBLE FOR CHECKING YOUR SECTION'S LRA TWEN PAGE (ON WESTLAW) ON A REGULAR BASIS FOR OFFICIAL & UNOFFICIAL NOTICES REGARDING THE COURSE, INCLUDING READING ASSIGNMENTS, LAB ASSIGNMENTS, GRADED & UNGRADED ASSIGNMENTS, AND SCHEDULE & CLASS CHANGES.**

**Orientation****INTRODUCTION TO RESEARCH****8/20 – 8/31****LIBRARY TOURS (DAY)**

**Prior to the first day of class: View Panapto Pre-lecture Recording at <http://ncculaw.hosted.panopto.com/Panopto/Pages/Viewer/Default.aspx?id=180a493e-4bf7-408a-bbe1-ebad366fe360> (link also posted to TWEN)**

**Reading Assignment: Neumann, Chapters 1-6****Suggested Newell/Peterkin CHAPTERS 1-3****Assignment: Complete Core Grammar for Lawyers Pretest due on 8/23****8/21 Tuesday****LECTURE: INTRODUCTION TO LRA/RESEARCH & ISSUE****IDENTIFICATION****Reading Assignment: Neumann, Chapters 1-6****Suggested Newell/Peterkin CHAPTERS 1-3****Assignment A given****8/23 Thursday****LAB: ISSUE IDENTIFICATION****Assignment A due & discussed in lab****Core Grammar for Lawyers Pretest DUE****8/24 Friday****LECTURE: ISSUE FORMULATION****Reading Assignment: Neumann, Chapter 6****Suggested Newell/Peterkin CHAPTER 4****Assignment B given (issue identification/formulation)****8/28 Tuesday  
/FORMULATION****LAB: ISSUE IDENTIFICATION**

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tion/formulation)	Assignment B due and discussed in lab Assignment C given (issue identifica-
8/30 Thursday FORMULATION	LAB: ISSUE IDENTIFICATION/  Assignment C due and discussed in lab
8/31 Friday & due at end of class	WRITING ASSIGNMENT 1 given during class
9/4 Tuesday /FORMULATION	LAB: ISSUE IDENTIFICATION  Writing Assignment 1 returned and discussed
9/6 Thursday Overview	RESEARCH LECTURE: Resource/Civics  <i>Donahoe Reading: Pages 106-108</i>
9/7 Friday Search	RESEARCH LECTURE: Developing  Strategies I <i>Donahoe Reading: Pages 1-11</i> <i>Research Ungraded Assignment 1 due</i> <i>Research Graded Assignment 1 given</i> <b>Writing Assignment 1 Rewrite (1:00 p.m.</b>
<b>Rooms 100/102)</b>	
9/11 Tuesday (Part 1 -Federal)	RESEARCH LECTURE: Primary Sources  <i>Donahoe Reading: Pages 25-53</i> <i>Research Ungraded Assignment 2 due</i> <i>Research Graded Assignment 1 due</i>
9/13 Thursday (Part 2-State)	RESEARCH LECTURE: Primary Sources  <i>Donahoe Reading: Pages 54-65</i> <i>Research Ungraded Assignment 3 due</i> <i>Research Graded Assignment 2 given</i>

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**GRADING RUBRICS**

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9/14 Friday	<b>RESEARCH LECTURE: Secondary Sources</b> <i>Donahoe Reading: Pages 65-94</i> <i>Research Graded Assignment 2 due</i>
9/18 Tuesday	<b>RESEARCH LECTURE: Research Methods</b>
9/20 Thursday	<b>RESEARCH: In-class exercises, Hypo and</b> <i>Research Graded Assignment 3 given</i>
9/21 Friday	<b>RESEARCH: Office Hours - General Questions</b>
9/25 Tuesday	<b>LECTURE: ANALYSIS (CASE LAW)</b> <b>Reading Assignment: Neumann, Chapters 7 and</b>
9	<b>Suggested Newell/Peterkin CHAPTER 6</b>
in class)	<b>Assignment D given (Examples will be discussed</b>
9/27 Thursday	<b>LAB: ANALYSIS (CASE LAW)</b> Assignment D due and discussed in lab Assignment E given Writing Assignment 1 rewrite returned <i>Research Graded Assignment 3 due</i>
9/28 Friday	<b>LAB: ANALYSIS (CASE LAW)</b> Assignment E due and discussed in lab
10/2 Tuesday & due at end of class	<b>WRITING ASSIGNMENT 2 given during class</b> Assignment F given
10/4 Thursday PARAGRAPH	<b>LAB: CONSTRUCTING AN ANALYTICAL</b> Assignment F due and discussed
10/5 Friday	<b>LAB: ANALYSIS (CASE LAW)</b> Assignment 2 returned and discussed Assignment G given

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**10/08 – 10/12      NO CLASS - MIDTERMS**

[Prior to 10/16 lab, review recorded Panapto Lecture on Analysis: Statutory Law]

10/16 Tuesday      LAB: ANALYSIS (STATUTORY LAW)  
**Reading Assignment: Neumann, Chapters 4 and**  
**10**

**Suggested Newell/Peterkin Chapter 5**  
Assignment G due and discussed in lab

10/18 Thursday      LECTURE: SYNTHESIS [Held in lab sections]  
**Reading Assignment: Neumann, Chapter 13**  
**(and re-read Chapters 6, 16 and 17)**  
**Suggested Newell/Peterkin Chapters 7-8**  
Assignment H given

10/19 Friday      LAB: SYNTHESIS  
Assignment H due and discussed in lab  
**WRITING ASSIGNMENT 2 REWRITE (1:00**  
**p.m. Rooms 100/102)**

10/23 Tuesday      LECTURE: MEMORANDUM OF LAW (Room  
**100)**  
**Reading Assignment: Neumann, Chapters 14**  
**and 15**  
Assignment J given  
**MEMORANDUM ASSIGNMENT GIVEN**  
Assignment 2 rewrite returned

10/25 Thursday      LAB: SYNTHESIS & ORGANIZING A MEMO  
**ANALYSIS I**  
**Reading Assignment: Neumann, Chapters 16–**  
**19**  
**Outside Reading: Neumann, Chapters 20-24**

10/26 Friday      LAB: SYNTHESIS & ORGANIZING A MEMO  
**ANALYSIS II**  
**Reading Assignment: Neumann, Chapters 16-19**

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**Outside Reading: Neumann, Chapters 20-24**  
Assignment J due and discussed in lab

10/30 – 11/30 **NO CLASS: Memo Preparation**  
**Memos discussed in optional conferences 10/30**  
– 11/6

11/6 Tuesday **ASSIGNMENT 3:**  
**INITIAL DRAFT OF MEMORANDUM DUE**  
**at 12:00 pm**

11/15 Thursday **DRAFT MEMORANDUM RETURNED**  
**Memos discussed in MANDATORY conferences**  
**11/15 – 11/20**

11/28 Wednesday **FINAL MEMORANDUM DUE AT 1:00 pm**

APPENDIX B — SAMPLE TEST PROMPT AND RUBRIC

**LEGAL REASONING & ANALYSIS**  
**FALL 2011**

**ASSIGNMENT 1 –ISSUE FORMULATION EXERCISE**

To: Associate

From: Senior Associate, Jack & Daniels Law Firm

Re: Assignment 1, Issue Identification and Formulation

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Our firm will possibly be defending DJ Scott in an action brought by the state. Before we agree to take the case, please outline the rule(s) and state the issue(s) raised by the following fact pattern using either the “Under ... does ... when?” or “the issue is whether” format.

**Purpose:** This assignment will assess your ability to identify the relevant legal issue(s) based upon governing rules of law and a set of given facts and write the needed issue statement(s).

**Directions:** On a separate sheet of paper, please do the following:

1. Outline the applicable rule from the following statute;



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2. State whether each of the elements raises an issue based on the facts presented

below; and

3. Set out the fact(s) that support each of your conclusions (directly under the

applicable element).

**Note:** There may be more than one element that raises an issue. The facts listed should be expressed in complete sentences, and word choice, spelling, punctuation and grammar will be considered in the final grade for the assignment.

**Grading Weight:** This in-class exercise counts 10% of your final course grade.

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**N.C. Gen. Stat. § 18B-302. Sale to or purchase by underage persons**

(a) Sell or Give. It shall be unlawful for any person to sell or give alcohol to anyone less than 21 years old.

....

(c) Aider and Abettor.

(1) By Underage Person.--Any person who is under the lawful age to purchase alcohol and who aids or abets another in violation of subsection (a), of this section shall be guilty of a Class 2      misdemeanor.

(2) By Person over Lawful Age.--Any person who is over the lawful age to purchase and who aids or abets another in      violation of subsection (a), of this section shall be guilty of a Class 1 misdemeanor.

**Facts:** Andrea Nelson was planning her sweet sixteen birthday party with her mother, Gwen Smith, who had sole legal custody of Andrea. Andrea's father and Gwen's ex-husband, Frank Nelson, agreed to split the cost equally with Gwen. Frank found a recreational warehouse as a venue for the party. Meanwhile, Gwen contacted XYZ Catering for food and decorations. She contracted with XYZ to provide punch, cake and finger food. XYZ suggested that Gwen contact a local disc jockey, DJ Scott, to provide music for the party. Gwen spoke with and hired thirty year-old DJ Scott. She told him that Andrea would be in touch with a music list.

Andrea contacted DJ Scott and explained that this was a sweet sixteen birthday party and the invitees would be between fourteen and seventeen years old. She wanted a mix of pop, country and hip-hop music. DJ Scott, who frequently worked with XYZ Catering, asked Andrea if alcohol would be served at the party. Andrea replied that her parents would not allow it. DJ Scott stated that if Andrea could get her parents away from the party, he would provide beer and vodka for a "good price." Andrea considered this

offer and believed that the availability of alcohol would make her party very popular. Unbeknownst to Gwen and Frank, Andrea borrowed money from her maternal uncle, Paul Smith, to pay DJ Scott for the alcohol. Paul knew what the money was for and cautioned Andrea to be careful and not to tell his sister Gwen that he had given her the money for the alcohol.

Andrea invited seventy friends to the party. She told her parents that she did not want them to chaperone the party. Gwen agreed, but Frank pointed out that he was supposed to be present per his contract with Ray. Andrea insisted that her party would not be as fun if her parents were hovering over the partygoers. Because Frank felt bad that he had missed Andrea's fifteenth birthday, he agreed to not come to the party. Instead, Gwen and Frank came to the building prior to the party to help with the food layout and decorations. DJ Scott had set up his stand and was testing the sound equipment. At 8pm, Frank and Gwen left, telling Andrea to behave and that they would be in touch via her cell phone. They made her set it on vibrate and put it into her jeans pocket. If they called and she did not answer, they would crash the party. Andrea agreed.

As soon as Frank and Gwen left, DJ Scott pulled up his truck and unloaded three kegs of beer and twenty bottles of vodka, which he had bought from XYZ Catering for the party. He also brought some moonshine made by his grandfather. The owner of XYZ Catering was fully aware that DJ Scott was providing the alcohol for the party, but wanted to make the sale, even after Gwen told him that alcohol would not be served. Because Andrea was only a teenager, she did not know the average prices of alcohol. In reality, DJ Scott sold her the beer and vodka for the same price XYZ would have charged Gwen. XYZ paid DJ Scott an extra \$100 for selling the alcohol for the party after its consultants could not. DJ Scott placed all of the alcohol, including the moonshine, at the door of the venue. Andrea and some of her friends brought it inside the building.

Many of the partygoers retrieved beer from the kegs. Some also drank the vodka and moonshine. Unbeknownst to the partygoers, someone spiked the punch with vodka, so even the people who decided against drinking beer, moonshine or vodka still drank the alcohol in the punch. Most could not taste the alcohol in the punch. Gwen and Frank periodically called Andrea. By the fourth call, Andrea had partaken of a lot of the punch and her parents heard her words slurring. They rushed over to the party at 11:40pm and ordered everyone to go home. They noticed that many of the minors were staggering and had glassy eyes. A few had vomited in the parking lot.

Sixteen year-olds Angie Frost and Peter Davis drove home after Gwen and Frank kicked everyone out of the party. Both Angie and Peter were drunk from drinking the spiked punch. On the way home, Angie crashed

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into another car, killing the other driver, Morgan Grey. Angie and Peter also suffered severe injuries.

On behalf of the state, the district attorney wishes to bring charges against DJ Scott.

What issue(s) must be addressed?

APPENDIX C — SAMPLE COMPLEX LEGAL WRITING RUBRIC (KEY FOR  
ASSIGNMENT 1 ABOVE)

**Fall 2011**

**LEGAL REASONING & ANALYSIS**

**ASSIGNMENT 1 KEY**

**ISSUE IDENTIFICATION & FORMULATION**

Student ID # _____
Lab Instructor: _____
Grade: _____

**N.C. Gen. Stat. § 18B-302. Sale to or purchase by underage persons**

(a) Sell or Give. It shall be unlawful for any person to sell or give alcohol to anyone less than 21 years old.

....

(c) Aider and Abettor.

(1) By Underage Person.--Any person who is under the lawful age to purchase alcohol and who aids or abets another in violation of subsection (a), of this section shall be guilty of a Class 2 misdemeanor.

(2) By Person over Lawful Age.--Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a), of this section shall be guilty of a Class 1 misdemeanor.

**Issue Identification (Issue 1)**

It shall be unlawful for any person to

\_\_\_/5 Sell or

\_\_\_/1 Element listed \_\_\_/1 Separately stated \_\_\_/1 No issue

\_\_\_/2 DJ Scott sold Andrea beer and vodka.

\_\_\_/10 give alcohol

\_\_\_/1 Element listed \_\_\_/2 Separately stated \_\_\_/4 ISSUE

\_\_\_/3 Facts: DJ Scott brought moonshine that Andrea did not pay for to the party. He put it outside of his truck. Other teenagers carried it inside. DJ Scott did not keep the teenagers from drinking the moonshine.

\_\_\_/5 to anyone less than 21 years old

\_\_\_/1 Element listed \_\_\_/1 Separately stated \_\_\_/1 No issue

\_\_\_/2 Facts: All of the partygoers were under 21.

Issue Formulation (Issue 1)

Under N.C. Gen. Stat. § 18B-302(a), the rule governing the sale of alcohol to underage persons, did DJ Scott give underage teenagers alcohol when he brought moonshine to the party, but did not bring it inside the party, give the teenagers permission to drink the moonshine, or tell them not to drink it?

\_\_\_/8 Uses proper format.

Under...does...when

\_\_\_/2 Inserts rule after “under”: N.C. Gen. Stat. § 18B-302(a)/the rule governing the sale of alcohol to underage persons;

\_\_\_/2 Inserts legal question after “does/is/may/etc.”: did DJ Scott give underage teenagers alcohol

\_\_\_/2 Inserts key facts after “when/if”:

\_\_\_/2 Ends with question mark;

\_\_\_/6 Identifies specific element of the rule at issue: give alcohol

\_\_\_/6 Identifies relevant facts: he brought moonshine to the party, but did not bring it inside the party, give the teenagers permission to drink the moonshine, or tell them not to drink it

**OR**

The issue is whether, under N.C. Gen. Stat. § 18B-302(a), DJ Scott gave underage teenagers alcohol when he brought moonshine to the party, but did not bring it inside the party or give the teenagers permission to drink the moonshine.

\_\_\_/8 The issue is whether

\_\_\_/2 Inserts rule after “whether”: N.C. Gen. Stat. § 18B-302(a)/the rule governing the sale of alcohol to underage persons

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\_\_\_\_\_/2 Inserts legal question after “whether”: DJ Scott gave underage teenagers alcohol

\_\_\_\_\_/2 Inserts key facts after legal question /rule

\_\_\_\_\_/2 Ends with period.

\_\_\_\_\_/6 Identifies specific element of the rule at issue: gave alcohol

\_\_\_\_\_/6 Identifies relevant facts: DJ Scott brought moonshine to the party, but did not bring it inside the party, give the teenagers permission to drink the moonshine, or tell them not to drink it

\_\_\_\_\_/40

**Issue Identification (Issue 2)**

\_\_\_\_\_/5      Any person who is over the lawful age to purchase alcohol

\_\_\_\_\_/1 Element listed    \_\_\_\_/1 Separately stated    \_\_\_\_/1 No issue

\_\_\_\_\_/2 Facts: DJ Scott is 30 and over the lawful age to purchase alcohol.

\_\_\_\_\_/10 and who aids or abets another

\_\_\_\_\_/1 Element listed    \_\_\_\_/2 Separately stated    \_\_\_\_/4 ISSUE

\_\_\_\_\_/3 Facts: XYZ Catering knew that DJ Scott sold the beer and liquor to

Andrea and not Gwen.

\_\_\_\_\_/5 in violation of subsection (a) or (b) of this section shall be guilty of a Class      1 misdemeanor.

\_\_\_\_\_/1 Element listed    \_\_\_\_/1 Separately stated    \_\_\_\_/1 No issue

\_\_\_\_\_/2 Facts: The sale of the alcohol to Andrea was in violation of subsection (a).

**Issue Formulation**

Under N.C. Gen. Stat. § 18B-302(c)(2), the rule governing the sale of alcohol to underage persons, did DJ Scott aid or abet XYZ Catering when, it paid DJ Scott \$100 to sell the beer and vodka to Andrea instead of Gwen, knowing that Gwen did not want alcohol at the party?

\_\_\_\_\_/8 Uses proper format.

Under...does...when

\_\_\_\_\_/2 Inserts rule after “under”: N.C. Gen. Stat. § 18B-302(c)(2)/the rule governing the sale of alcohol to underage persons;

\_\_\_\_\_/2 Inserts legal question after “does/is/may/etc.”: did DJ Scott aid or abet XYZ Catering

\_\_\_\_\_/2 Inserts key facts after “when/if”

\_\_\_\_\_/2 Ends with question mark;

\_\_\_\_\_/6 Identifies specific element of the rule at issue: aid and abet another (XYZ Catering)

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\_\_\_\_/6 Identifies relevant facts: DJ Scott sold the beer and vodka to Andrea instead of Gwen. XYZ Catering was not able to make the sale of alcohol to Gwen and paid DJ Scott \$100 when he was able to sell it.

**OR**

The issue is whether, under N.C. Gen. Stat. § 18B-302(c)(2), DJ Scott aided or abetted XYZ Catering when, unbeknownst to XYZ, DJ Scott sold the beer and vodka to Andrea instead of Gwen.

\_\_\_\_/8 The issue is whether

\_\_\_\_/2 Inserts rule after “whether”: N.C. Gen. Stat. § 18B-302(c)(2)/the rule governing the sale of alcohol to underage persons

\_\_\_\_/2 Inserts legal question after “whether”: DJ Scott aided or abetted XYZ Catering

\_\_\_\_/2 Inserts key facts after legal question /rule

\_\_\_\_/2 Ends with period.

\_\_\_\_/6 Identifies specific element of the rule at issue: aided or abetted XYZ Catering

\_\_\_\_/6 Identifies relevant facts: unbeknownst to XYZ, DJ Scott sold the beer and vodka to Andrea instead of Gwen.

\_\_\_\_/40

\_\_\_\_/20 Writing (1 point deducted for incomplete sentences, incorrect grammar and punctuation, misspelling and obviously improper word choice)

\_\_\_\_/100 **TOTAL**

**APPENDIX D — SAMPLE COMPLEX RUBRIC FOR DOCTRINAL COURSE****Civil Procedure Fall 2010 Final Exam Answer Key<sup>102</sup>**

**Part I** \_\_\_\_ **Multiples 20 points**

**Part II**

**Essay One** \_\_\_\_ **20 points**

\_\_\_\_ (3 points) pursuant to 1441(a) removal by defendant, original basis to be in fed court

\_\_\_\_ (3 points) pursuant to 1446(b) 30 days of receipt of by the defendant of copy of initial pleading, if removable at that time. The case

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102. Credit to David A. Green

was removable during initial pleading because suit was against a federal officer on June 7, 2010, pursuant 1442(a).

\_\_\_ (3 points) def's removal untimely because occurred more than 30 days on July 12, 2010

\_\_\_ (2.5 points) while United States was added on July 1, 2010, with a claim under FTCA, the case was already removable, so the clock had begun to tick.

\_\_\_ (2.5 points) pursuant to 1441(b) removable without regard to citizenship because based on fed question.

\_\_\_ (3 points) case was correctly filed in right venue in state court because plaintiff, Kim, resides in Wake County

\_\_\_ (3 points) case was correctly filed in federal court because the substantial act or omission occurred in the Eastern District of North Carolina.

\_\_\_ (+2 bonus points) federal court has exclusive jurisdiction over FTCA claims, so claim against the U.S. must be in federal court.

Essay Two \_\_\_\_\_ 25 points

*Mahailia Jackson v. Airways Escorts, Inc.*

\_\_\_ (2 points) discuss that there is a two step approach to determining personal jurisdiction: long arm statute and due process (states it or alludes to it by organization)

\_\_\_ (2 points) discuss that under CA long arm statute, if meets due process then it meets CA long arm statute

\_\_\_ (1.5 points) discuss specific jurisdiction and "minimum contacts test", whether there is such minimum contacts with the state that it would be fair to require defendant to return to defend a lawsuit in that state

\_\_\_ (1.5 points) discuss purposeful avail itself of the privilege of conducting business within the state such that it is foreseeable being haled into court in the forum

\_\_\_ (2 points) contracts plus analysis (flip: K is for Nevada law)

\_\_\_ (2 points) tortious act/landing in CA

\_\_\_ (2 points) discuss in addressing "fair play and substantial justice" the factors the court will look at are burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system interest in obtaining the most efficient resolution of controversies, the shared interest of the several states in furthering fundamental substantive social policies.

\_\_\_ (3 points) use of key facts for MJ: Airways Escorts will transport its clients to any location within the United States, including Hawaii and Alaska. Mahailia Jackson made the arrangements with Airways Escort by telephone from her home in Los Angeles, California and Airways Escort mailed the contract to Mahailia Jackson's home. The contract is a standard contract, which must be accepted by all of the customers. While on route to Hawaii from Nevada, the airplane began to malfunction and the pilot, Jason Cooper, had to make an emergency landing in Los Angeles, California. The federal aviation authority determined that the malfunction was due to Airways Escorts failing to properly maintain regular service of the airplane and pilot error. Airways Escorts has only flown one customer to California, other than the emergency landing. Tortious act occurred in CA, not Nevada

\_\_\_ (3 points) use of key facts for AI, Inc.: Mahailia Jackson signed a contract with Airways Escorts, Inc. to transport her from Las Vegas, Nevada to Honolulu, Hawaii. Airways Escorts only advertises in Las Vegas, Nevada and it will only accept customers whose travel originates in Las Vegas, Nevada. During an earlier visit to Las Vegas, Nevada, Mahailia Jackson learned about Airways Escort. The contract contains a choice of law provision which provides that Nevada law will resolve all legal disputes. Airways Escort is incorporated and has its principal place of business in Nevada. Airways Escorts has only flown one customer to California, other than the emergency landing. Tortious act occurred in Nevada, not in CA.

**Mahailia Jackson v. Jason Cooper**

\_\_\_ (1 point) discuss that under CA long arm statute, if meets due process then it meets CA long arm statute

\_\_\_ (2.5 points) discuss whether gen'l jurisdiction due to continuous and substantial although unrelated to activities at issue, due to his twice a month visits to his girlfriend

\_\_\_ (2.5 points) possible basis for specific jurisdiction, due to the emergency landing in CA

Overall Writing\_\_\_5 points

Clear IRAC or CRAC

Clear and effective writing

Effective use of relevant facts

No reference to irrelevant issues and facts

Organization and separate discussion of issues

Midterm Grade\_\_\_20 points

Final Grade\_\_\_100 points



APPENDIX E — SIMPLE LEGAL WRITING RUBRIC (USED IN JUDICIAL  
OPINION WRITING COURSE)

Bench Brief

\_\_\_/5 Introductory Information

\_\_\_/1 Name of Case

\_\_\_/1 Date case will be heard

\_\_\_/1 Docket Number

\_\_\_/1 County

\_\_\_/1 Trial Judge

\_\_\_/60 Issues

\_\_\_/20 Issue 1: Did the trial court have jurisdiction over the first-degree  
sexual offense

because the indictment was fatally defective?

\_\_\_/5 Rule: N.C. Gen. Stat. 14-27.4(A)

\_\_\_/5 Standard of review: De novo

\_\_\_/5 Test: Is the language in the indictment certain enough for the de-  
fendant to prepare

defense? *State v. McGriff*. Short-form indictments.

\_\_\_/5 Impression

\_\_\_/20 Issue 2: Should the offenses have been joined for trial?

\_\_\_/5 Rule: N.C. Gen. Stat. 15A-926(a)

\_\_\_/5 Standard of review: Abuse of discretion

\_\_\_/5 Test: Is there a transactional connection between the offenses? Use  
factors in *State*

*v. Bracey*.

\_\_\_/5 Impression

\_\_\_/20 Issue 3: Did the trial court err in allowing character evidence  
through the

testimony of Jessica M.?

\_\_\_/5 Rule: N.C. Gen. Stat. 8C-1, Rule 404(b) and 801. Hearsay.

\_\_\_/5 Standard of Review: Abuse of discretion

\_\_\_/5 Test: What was the testimony in question about?

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\_\_\_/5 Impression

\_\_\_/35 Writing- Grammar, punctuation, concise sentences, spelling, confusables, clarity, complete sentences, objective tone, subject/verb agreement

\_\_\_/100 Total

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Appendix F — Sample Simple Doctrinal Grading Rubric<sup>103</sup>

**Trial Practice- Final Trial Evaluation**

**Spring 2012**

**Date/Time:** \_\_\_\_\_

**Student Name:** \_\_\_\_\_

	Superior	Very Good		Sufficient		Poor		Unprepared	
Direct Examinations of	8	7	6	5	4	3	2	1	0
Cross Examinations of	8	7	6	5	4	3	2	1	0
*Opening or Closing Argument	8	7	6	5	4	3	2	1	0
Use of Exhibits/Visual Aids	8	7	6	5	4	3	2	1	0
Case Theory & Theme	8	7	6	5	4	3	2	1	0
Courtroom Decorum/Trial Procedure	8	7	6	5	4	3	2	1	0

POINTS FOR APPEARING/SUPPLYING JURORS & WITNESSES: \_\_\_\_\_

+ PERFORMANCE POINTS: \_\_\_\_\_ = FINAL

TRIAL SCORE: \_\_\_\_\_

APPENDIX G — STUDENT SURVEY RESULTS (QUESTIONS AND CHARTS)<sup>104</sup>

103. Credit to Dionne Gonder-Stanley

104. A debt of gratitude is owed to my dear husband, Adolph Simmons, Jr., MS, who doggedly worked to make my survey results “look pretty” and, at the same time, show the data in such a clear and understandable manner for my audience. Words are not enough.









